*THIS PROPOSED RULE IS PENDING PUBLICATION IN THE FEDERAL REGISTER. PUBLICATION IN THE FEDERAL REGISTER WILL COMMENCE THE PUBLIC COMMENT PERIOD.*

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 888, 982, 983, and 985**

**[Docket No. FR-5855-P-02]**

**RIN 2501-AD74**

# Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

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

**ACTION:** Proposed rule.

**SUMMARY:** This rulemaking proposes the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. HUD is proposing to use Small Area FMRs in place of the current 50$^{th}$ percentile rent to address high levels of voucher concentration. HUD believes that Small Area FMRs gives HCV tenants a more effective means to move into areas of higher opportunity and lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

HUD proposes to use several criteria for determining which metropolitan areas would best be served by application of Small Area FMRs in the administration of the HCV program. These criteria include a threshold number of vouchers within a metropolitan area, the concentration of current HCV tenants in low-income areas, and the percentage of renter occupied units within the metropolitan area with gross rents above the payment standard basic range.

Public housing agencies (PHAs) operating in designated metropolitan areas would be required to use Small Area FMRs. PHAs not operating in the designated areas would have the option to use Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs. HUD's goal in pursuing this rulemaking is to provide HCV tenants with a greater ability to move into areas where jobs, transportation, and educational opportunities exist.

**DATES: Comment Due Date: August 15, 2016.**

**ADDRESSES**: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. **Submission of Comments by Mail**. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. **Electronic Submission of Comments**. Interested persons may submit comments electronically through the Federal eRulemaking Portal at http://www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the http://www.regulations.gov website can be

viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

***Note:*** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments*. Facsimile (fax) comments are not acceptable.

**Public Inspection of Public Comments**. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at http://ww.regulations.gov.

**FOR FURTHER INFORMATION CONTACT**: For information about this rule, contact Peter B. Kahn, Director, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402-2409; email: SAFMR_Rule@hud.gov. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling Federal Relay Service at 1-800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

A. Purpose of this Proposed Rule

The purpose of this proposed rule is to establish a more effective means for HCV tenants to move into areas of higher opportunity and lower poverty by providing the tenants with a subsidy adequate to make such areas accessible and, consequently, help reduce the number of voucher families that reside in areas of high poverty concentration. Subsidy for HUD's HCV program is currently determined by a formula that considers rent prices across an entire metropolitan area. However, rents can vary widely within a metropolitan area depending upon the size of the metropolitan area and the neighborhood in the metropolitan area within which one resides. The result of determining rents on the basis of an entire metropolitan area is that a voucher subsidy may be too high or may be too low to cover market rent in a given neighborhood. HUD's current policy for addressing high concentrations of voucher holders raises the level of the FMR from the $40^{th}$ percentile to the $50^{th}$ percentile (roughly a 7 – 8 percent increase) in the whole FMR area. This level of added subsidy is not targeted to areas of opportunity; consequently, this formula has not proven effective in addressing the problem of concentrated poverty and economic and racial segregation in neighborhoods. Experience with the 50th percentile regime shows that the majority of HCV tenants use their vouchers in neighborhoods where rents are low but poverty is generally high. Small Area FMRs will complement HUD's other efforts (such as mobility counseling) to support households in making informed choices about units and neighborhoods with the goal of increasing the share of households that choose to use their vouchers in low poverty opportunity areas.

Rather than determine rents on the basis of an entire metropolitan area, this rule proposes to determine rents on the basis of ZIP codes. ZIP codes are small enough to reflect neighborhood differences and provide an easier method of comparing rents within one ZIP code to another ZIP code area within a metropolitan area. Based on early evidence from PHAs using Small Area FMRs that are in place in certain metropolitan areas in the U.S., HUD believes that Small Area FMRs are more effective in helping families move to areas of higher opportunity and lower poverty.

B. Summary of Major Provisions of this Proposed Rule

The major provisions of this proposed rule are as follows:

The existing regulations at 24 CFR 888.113 would be amended to no longer provide for FMRs to be set at the 50th percentile rent. However, the regulations do not revoke any FMR currently set at the 50th percentile rent, and for which the current 3-year term for retaining a 50th percentile rent has not expired.

The proposed regulations provide for metropolitan areas with FMRs set at the 50th percentile rent to transition to either (1) the 40th percentile rent at the expiration of the 3-year period for the 50th percentile rent, or (2) designation as a Small Area FMR area in accordance with the proposed criteria for determining a Small Area FMR area.

The proposed regulations, in 24 CFR 888.113(d)(2), define Small Area FMR areas as the U.S. Postal Service ZIP code areas within a designated metropolitan area.

The proposed regulations would provide that a PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with the regulations in

24 CFR 982.503(f), which are not proposed to be changed by this rule.  PHAs would be required to continue to meet the provisions of 24 CFR 982.503(f) annually in order to maintain payment standards based on 50th percentile rents.

The proposed regulations provide, in 24 CFR 888.113(c), the criteria for those areas for which Small Area FMRs will be set.  This section provides that Small Area FMRs will be set for metropolitan areas where at least 2,500 HCVs are under lease; at least 20 percent of the standard quality rental stock, within the metropolitan area, is in small areas (that is ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and the measure of  the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55).

The proposed regulations provide, in 24 CFR 888.113(c)(2), that “concentrated low-income areas” means those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or any tract in the metropolitan FMR area where more than 50 percent of the households earn incomes at less than 60 percent of the area median income (AMI) and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

For all determinations of FMRs, 40th percentile or Small Area FMRs, HUD replaces “the most recent decennial census” with the “most recent American Community Survey conducted by the U.S. Census Bureau.”

The proposed regulations provide, in 24 CFR 888.113(c)(3), that if a metropolitan area meets the criteria for application of Small Area FMRs to the area, all PHAs administering HCV programs in that area will be required to use Small Area FMRs.

The proposed regulations, in 24 CFR 888.113(c)(3), also provide that a PHA that is not administering an HCV program in a metropolitan area subject to application of Small Area FMRs may opt to use Small Area FMRs by seeking approval of HUD's Office of Public and Indian Housing through written request to such office.

The proposed regulations provide in new 24 CFR 888.113(h) that Small Area FMRs also apply to project-based vouchers (PBVs), under certain conditions, when HUD designates a metropolitan area or approves a PHA jurisdiction for application of Small Area FMRs. The application of Small Area FMRs to PBVs occurs when a PHA notice of owner selection of existing regulations in 24 CFR 983.51(d) was made after the effective date of Small Area FMR designation.

The proposed rule provides HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year and make additional area designations every 5 years thereafter as new data becomes available.

C. Costs and Benefits of this Proposed Rule

The main benefit of the proposed rule is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. Such moves are expected to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty. Other benefits could arise through the reduction of overpayment of rent in areas where the neighborhood rent is below the metropolitan average. Early evidence from current Small Area FMR locations suggests that there could be per-voucher cost decreases relative to 50$^{th}$ percentile rents, depending on the choices made by tenants. Evidence also suggests that families moved to better neighborhoods with higher rents, which resulted in no overall program cost increases.[1] Finally, the proposed rule would eliminate the year to year volatility of some areas changing to and from 50th percentile FMRs.

Potential costs of the proposed rule include the administrative expenses associated with implementation on the part of PHAs. Additionally, if there are barriers to households moving to areas of higher opportunity beyond housing costs, such as transportation expenses or social factors, assisted households might be worse off if they can no longer afford their current units in their neighborhoods. This may be particularly true for elderly families or families with a disabled member; however, HUD regulations, not changed by this proposed rulemaking, allow PHAs wide latitude in setting payments standards for disabled tenants as “reasonable accommodations” of their disabilities. Finally, if the long-term impacts of the proposed rule cause per-voucher costs to rise, fewer households would receive assistance without an overall increase in program funds.

**II. Background.**

<u>The Housing Choice Voucher Program and Fair Market Rents</u>

HUD's HCV program helps low-income households obtain standard rental housing and reduces the share of their income that goes toward rent. Vouchers issued under the HCV program provide subsidies that allow individuals and families to rent eligible units in the private market. A key parameter in operating the HCV program is the FMR. In general, the FMR for an

[1] [1] Please see Collinson and Ganong, ‘‘The Incidence of Housing Voucher Generosity’’, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.

area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet rent reasonableness standards. Rent reasonableness is determined by PHAs with reference to rents for comparable unassisted units.

In the HCV program, the FMR is the basis for determining the “payment standard amount” used to calculate the maximum monthly subsidy for a voucher household (see 24 CFR 982.503). PHAs may establish payment standards between 90 and 110 percent of the FMR.[2] Voucher program households receive a housing assistance payment equal to the difference between the payment standard established by the PHAs and the family's Total Tenant Payment (TTP), which is generally 30 percent of the household's adjusted monthly income. Participants in the voucher program can choose to live in units with gross rents higher than the payment standard, but would be required to pay the full cost of the difference between the gross rent and the payment standard, in addition to their TTP. Please note that at initial occupancy the family's share cannot exceed 40 percent of monthly adjusted income.

HUD establishes FMRs for different geographic areas. Because payment standards are based on FMRs, housing assistance payments on behalf of the voucher household are limited by the geographic area in which the voucher household resides. Currently, HUD calculates FMRs for all nonmetropolitan counties and metropolitan areas. The same FMR is applicable throughout a nonmetropolitan county or metropolitan area, which generally is comprised of

[2] Moving to Work (MTW) agencies have the authority to waive 24 CFR 982.503 and can propose, for HUD approval, alternate rent policies in their Annual MTW Plan.

several metropolitan counties. FMRs in a metropolitan area (Metropolitan FMR) represent the 40th percentile (or in special circumstances the 50th percentile) gross rent for typical non-luxury, non-substandard rental units occupied by recent movers in a local housing market.[3]

As noted earlier, PHAs may set a payment standard between 90 percent and 110 percent (inclusive) of the FMR. PHAs may determine that payment standards that are higher than 110 percent, or lower than 90 percent, are appropriate for subareas of their market; in this instance, a PHA would request HUD approval for a payment standard below 90 percent or an exception payment standard above 110 percent. The total population of a HUD-approved exception payment area (i.e., an area covered by a payment standard that exceeds 110 percent of the FMR) may not include more than 50 percent of the population of the FMR area (see 24 CFR 982.503).

On October 2, 2000, at 65 FR 58870, HUD published a rule (2000 rule) establishing HUD's current policy to set FMRs at the 50th percentile for "areas where higher FMRs are needed to help families, assisted under HUD's Housing Choice Voucher Program as well as other HUD programs, find and lease decent and affordable housing." This policy was put in place to achieve two program objectives: (1) increase the ability of low-income families to find and lease decent and affordable housing; and (2) provide low-income families with access to a broad range of housing opportunities throughout a metropolitan area. The policy further provides that PHAs that had been authorized to use FMRs set at the 50th percentile rent may later be required to use FMRs set at the 40th percentile rent. This would occur if the FMR were set at the 50th percentile rent to provide a broad range of housing opportunities throughout a

[3] General information concerning FMRs including more detailed information about their calculation is available at https://www.huduser.gov/portal/datasets/fmr.html.

metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen.

Since HUD established the 50th percentile FMRs 15 years ago, research has emerged[4] that indicates that 50th percentile FMRs are not an effective tool in increasing HCV tenant moves from areas of low opportunity to higher opportunity areas. Specifically, it appears that much of the benefit of increased FMRs simply accrues to landlords in lower rent submarket areas in the form of higher rents rather than creating an incentive for tenants to move to units in communities with more and/or better opportunities. As currently provided in regulation, to determine the 50th percentile program's effectiveness, HUD must measure the reduction in concentration of HCV tenants (objective 2 above) presumably from high poverty areas, over a 3-year period. If there is no measurable reduction in the concentration of HCV tenants, the FMR area loses the 50th percentile FMRs for a 3-year period. A large number of areas have been disqualified from the 50th percentile program for failure to show measurable reduction in voucher concentration of HCV tenants since 2001 when the program started, which strongly suggests that the deconcentration objective is not being met. [5]

<u>History of Small Area FMRs</u>

Since the establishment of the 50th percentile program, HUD has developed Small Area FMRs to reflect rents in ZIP code based areas with a goal to improve HCV tenant outcomes.

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[4] From 2000 to 2010, however, voucher concentration *rose* in the largest metro areas, even though most of those areas used 50th percentile FMRs for at least part of that period. Kirk McClure, Alex F. Schwartz, and Lydia B. Taghavi, "Housing Choice Voucher Location Patterns a Decade Later," November, 2012, p 7. In 2010, 24 percent of vouchers in the 50 largest areas were used in tracts where at least 10 percent of households used vouchers, compared to 16 percent in 2000, p 7.

[5] Areas may subsequently requalify for 50th percentile status after a 3-year period.

Small Area FMRs have been shown to be a more direct approach to encouraging tenant moves to housing in lower poverty areas by increasing the subsidy available to support such moves.[6] Since 2010, when the United States Census Bureau made available data collected over the first 5 years of the American Community Survey (ACS), HUD has considered various methodologies that would set FMRs at a more granular level. HUD's goal in pursuing the Small Area FMR methodology is to create more effective means for HCV tenants to move into higher opportunity, lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

Toward this end, through a Federal Register notice published on May 18, 2010, at 75 FR 27808, HUD announced that in Fiscal Year (FY) 2011 it would seek to conduct a Small Area FMR demonstration project to determine the effectiveness of FMRs which are published using U.S. Postal Service ZIP codes as FMR areas within metropolitan areas. HUD also solicited public comment on the proposed demonstration. On November 20, 2012, at 77 FR 69651, HUD announced the commencement of the Small Area FMR Demonstration, for which advance notice was provided on May 18, 2010, and further announced the participation of the following PHAs: the Housing Authority of the County of Cook (IL), the City of Long Beach (CA) Housing Authority, the Chattanooga (TN) Housing Authority, the Town of Mamaroneck (NY) Housing Authority, and the Housing Authority of Laredo (TX).

[6] Please see Collinson and Ganong, ''The Incidence of Housing Voucher Generosity'', available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.

Through a second Federal Register notice published on August 4, 2010, at 75 FR 46958, HUD mandated the use of Small Area FMRs in place of metropolitan-area-wide-FMRs to settle litigation in the Dallas, TX, HUD Metro FMR Area.

While HUD awaits the overall evaluation of the demonstrations for wide-scale implementation, HUD is proposing the use of Small Area FMRs as an effective alternative to the 50$^{th}$ percentile for addressing high levels of voucher concentration. If HUD has additional data and information on the effects of these demonstrations prior to publishing the final rule, HUD will analyze, review and release those data prior to publishing a final rule.

Small Area FMRs have been in operation in Dallas, Texas, as part of a court settlement since 2010, and in a small number of PHAs since 2012. There is encouraging evidence from Dallas which finds that under Small Area FMRs voucher households in Dallas who chose to move are moving to significantly safer and lower poverty neighborhoods, with about the same average costs for vouchers overall. Collinson and Ganong find that Dallas tenants who have chosen to move since the implementation of Small Area FMRs have moved to higher quality neighborhoods in the southern and eastern portions of the metropolitan area from the lowest quality inner city neighborhoods.

Based on HUD's research and HUD's experience with the Small Area FMR demonstrations, HUD believes that amending its current FMR regulation to adopt the Small Area FMR methodology would provide HCV tenants with greater access to areas of opportunity. As a first step in this direction, on June 2, 2015, at 80 FR 31332, HUD published an advance notice of proposed rulemaking (ANPR) entitled "Establishing a More Effective Fair Market Rent (FMR) System; Using Small Area Fair Market Rents (Small Area FMRs) in Housing Choice Voucher

Program Instead of the Current 50th Percentile FMRs." In this ANPR, HUD announced its intention to amend HUD's FMR regulations applicable to the HCV program to provide HCV tenants with subsidies that better reflect the localized rental market, including subsidies that would be relatively higher if they move into areas that potentially have better access to jobs, transportation, services, and educational opportunities. The ANPR sought public comment on the use of Small Area FMRs for the HCV program within certain metropolitan areas. HUD received 78 public comments in response to the ANPR. Later in this preamble, HUD identifies and responds to significant issues raised by the commenters.

**III. This Proposed Rule.**

Through this rulemaking, HUD proposes to eliminate the use of 50th percentile FMRs as a means to reduce HCV tenant concentration and implement, in its place, Small Area FMRs. HUD's current policy for addressing areas in which voucher holders are particularly concentrated is based on a 2000 rule, which established the regulations allowing use of the 50th percentile rents, rather than the 40th, based on certain criteria which areas must meet. The regulations codified by the 2000 rule also specified criteria to be used in evaluating areas using the 50th percentile. The evaluation criteria yielded the unintended consequence of areas cycling in and out of 50th percentile FMRs.

In this rulemaking, HUD proposes to establish FMRs for certain metropolitan areas using ZIP codes within the metropolitan area. HUD also proposes the following criteria to determine which FMR areas would use Small Area FMRs for their voucher program operations:

1. Current HUD Metropolitan FMR areas where there are at least 2,500 HCVs under lease; and

2. Where at least 20 percent of the standard quality rental stock,[7] within the Metropolitan FMR, is in Small Areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and
3. HUD measurement of the percentage of voucher holders living in concentrated low-income areas relative to all renters within these areas exceeds 155 percent (or 1.55). HUD will calculate the percentage of HCV holders living in concentrated low income areas within each metropolitan FMR area using the count of HCV renters living in concentrated low-income areas divided by the count of HCV renters in the metropolitan FMR Area. HUD will then calculate the percentage of renter occupied units in concentrated low income areas within each metropolitan area using the count of renter occupied units in concentrated low income areas within each metropolitan FMR area divided by the count of renter occupied units within the metropolitan FMR area. HUD will divide the voucher percentage by the renter occupied unit percentage to arrive at a propensity or likelihood that a voucher holder is more likely to live in a concentrated low-income area than are renters in general. If this measure over the entire metropolitan area exceeds 155 percent (or 1.55) the area qualifies.[8]

[7] To ensure that units are suitable for voucher participants, HUD will use its special tabulations of American Community Survey data in assessing the location of rental units. Specifically, HUD will use the distribution of Adjusted Standard Quality Rental Units. Standard quality units are designated rental units, where the renter pays cash rent. The unit must be on less than 10 acres, have complete plumbing and kitchen facilities and does not include meals in rent. In order to also eliminate units that are likely to be assisted or otherwise unsuitable for HCV tenants, HUD also provides the Census Bureau with a "public housing cut off" rent. The Census Bureau adjusts the distribution of standard quality units by eliminating any unit in the distribution of gross rents with rents below the cut off.

[8] For any given metro area this is $(HCV_{lo}/HCV_{m})/(ROU_{lo}/ROU_{m})$ where HCV is the count of voucher tenants, ROU is the number of renter occupied units, *lo* represents the set of low opportunity tracts in the metropolitan area, and *m* represents the entire metropolitan area.

For the purposes of this proposed rule, "concentrated low-income areas" are defined as those Census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more, or any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated as Qualified Census Tracts (QCT) in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42). HUD is using the QCT income qualification standards as it is a normalized measure of low income to cover roughly the same population in each metropolitan area. Appendix A of this proposed rule lists the areas that currently meet the three criteria listed above. All other HUD programs that use FMRs would continue to use metropolitan area-wide FMRs.

In addition to amending § 888.113 to remove the $50^{th}$ percentile FMR approach and establish a Small Area FMR based approach, HUD proposes to amend the following regulatory provisions in order to facilitate operation of the voucher program under the Small Area FMR based approach:

1. HUD proposes to update paragraph (d) to provide that FMR areas include metropolitan and nonmetropolitan areas and Small Areas using ZIP Codes within the metropolitan area. HUD also proposes to revise § 888.113(e) to reflect current data sources used to determine FMRs and paragraphs (f), and (g) to reflect current terminology used in determining FMRs.

2. HUD proposes to add paragraph (h) to § 888.113 to address the transition of project based voucher (PBV) assistance to Small Area FMRs. Specifically, HUD proposes to make the Small Area FMRs only applicable to PBV projects where the PHA notice of owner selection is made after the effective date of the Small Area FMR designation. For all other PBV projects (those projects under an Housing Assistance Payment (HAP) contract or where the PHA notice

of owner selection was made an Agreement to enter into a Housing Assistance Payment (AHAP) contract prior to the effective date of the Small Area FMR designation), the metropolitan-wide FMR will remain applicable to the project unless the owner and the PHA mutually agree to use the Small Area FMR.

3. HUD proposes to add paragraph (i) to § 888.113 to address the transition of those areas designated $50^{th}$ percentile FMRs for which the 3-year period has not expired prior to the effective date of this rule. As proposed, a metropolitan area designated as $50^{th}$ percentile FMR area that is designated for Small Area FMRs in accordance with § 888.113(c) will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation. For $50^{th}$ percentile FMR areas that are not designated as Small Area FMR areas in accordance with § 888.113(c), the area will remain under $50^{th}$ percentile FMRs until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMRs based on the $40^{th}$ percentile rent. HUD does not propose removing the ability of PHAs with jurisdictions within an FMR area reverting to the standard $40^{th}$ percentile FMR to request HUD approval of payment standard amounts based on the $50^{th}$ percentile rent in accordance with the requirements of § 982.503(f). To implement this transition, and establish success rate payment standards amounts in accordance with § 982.503(e), paragraph (i)(3) provides that HUD will continue to determine the $50^{th}$ percentile rents. As is the case for determining 40th percentile rents, the $50^{th}$ percentile rents will be drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

4. HUD proposes to amend two regulatory provisions in part 982. Part 982 contains HUD's regulations for the Section 8 Tenant-Based Assistance: Housing Choice Voucher Program. Specifically, HUD proposes to:

a. Amend § 982.503, which addresses "Payment standard amount and schedule." This rulemaking proposes to amend § 982.503(c), which addresses HUD approval of exception payment standard amount and which currently reflects the $40^{th}$ and $50^{th}$ percentile rent method. This paragraph would be amended to reflect the changes proposed to § 888.113 to implement Small Area FMRs. Specifically, the current regulation for exception payment standards relies on rent differentials between a small portion of an FMR area and the FMR area itself and includes limitations on the size of the exception area based on the population of the FMR area. This new regulation is constructed to account for the FMR area now being defined as a ZIP code within certain metropolitan areas.

b. In part 982, HUD would also amend § 982.507(a)(2)(ii), which addresses "Rent to owner: Reasonable Rent" to provide for PHAs using Small Area FMRs, rent reasonableness redeterminations would be triggered if there is a 10 percent or greater decline in FMRs.

5. In part 983, HUD proposes to amend § 983.302(a)(2), which addresses "Redetermination of rent to owner" to provide that for PHAs designated to use Small Area FMRs, rent reasonableness redeterminations would be triggered if there is a 10 percent or greater decline in FMRs

6. HUD would also amend HUD's Section 8 Management Assessment Program (SEMAP) regulations in part 985, to amend § 985.3, which addresses "Indicators, HUD verification methods and ratings." The proposed rule would amend this section to provide that the reasonable rent indicator would, for PHAs designated to use Small Area FMRs, reference, similar to § 982.507, the 10 percent decline in FMRs in lieu of the 5 percent decline in FMRs currently referenced.

**IV. Overview of ANPR Comments and HUD Responses**

As noted earlier in this preamble, on June 2, 2015, HUD published an ANPR requesting public comment on replacing the 50th percentile FMR approach with the Small Area FMR approach. By the end of the public comment period on July 2, 2015, HUD received 78 public comments. The following presents a general summary of the comments received and HUD's response to those comments:

Comment: Complete the current demonstration. Several commenters urged HUD to take no further action in moving Small Area FMRs forward until the current Small Area FMR demonstration is concluded and a report has been issued examining the results of the demonstration.

HUD Response: HUD agrees that concluding the current demonstration and reviewing the results is an important step before deciding whether or not to implement Small Area FMRs for all metropolitan FMR areas. However, research shows that 50th percentile FMRs do not provide adequate subsidy to help voucher holders find suitable units in areas of opportunity. While 50th percentile FMRs increase the level of subsidy across the entire FMR area, Small Area FMRs better target opportunity areas by raising the FMRs in these specific areas. Furthermore, regulations pertaining to deconcentration and tri-annual recertifications may cause areas to cycle in and out of the 50th percentile program. This cycling is detrimental to the operations of the HCV program and the HCV tenants in these areas, which is why HUD is proposing to remove the 50th percentile approach, and replace it with a Small Area FMR based approach. HUD described the selection criteria in section III of this preamble. The criteria were selected such that the voucher concentration in low-income neighborhoods relative to all rental units and the proportion of all rental units with Small Area FMRs above the basic range exceed the national averages. The areas that meet these criteria by current data include about 564,000 voucher tenants, however not all of these voucher tenants will necessarily be affected because these areas contain several Moving-to-Work Demonstration PHAs that may or may not use Small Area FMRs.

Comment: Small Area FMR approach would run the risk that units currently with vouchers would not be renewed in HCV program. HUD received many comments from property owners, landlords and other housing providers that expressed this concern. These comments generally focused on property owners/managers with current voucher tenants, typically within the city of Baltimore, Maryland. These comments suggested that if HUD were to move to Small Area FMRs, these units would not be renewed in the voucher program because the rents for the units would be too low.

HUD Response: These units would be renewed if the family chooses to remain and the rent is reasonable. Furthermore, HUD believes that the use of Small Area FMRs removes a barrier that tenants currently have in accessing housing units in areas of opportunity; namely, that subsidy levels are not high enough to afford rental units in these high opportunity neighborhoods. HUD further believes that if housing authorities determine that current rents in areas with declining Small Area FMRs are reasonable, tools are in place to address these situations (exception payment standards, reasonable accommodation, etc.)

Comment: Small Area FMR approach would increase administrative burden. Several commenters expressed concern that Small Area FMRs would increase the administrative burden of operating the voucher program. Commenters stated that this concern is compounded because, as they stated, their administrative fee payments are inadequate to meet administrative costs.

HUD Response: HUD recently released a final report on the costs of running a high performing housing authority[9] and HUD is currently engaged in a proposed rulemaking effort regarding the administrative fee formula. Consequently, this proposed rule does not address the adequacy of administrative fees. HUD has undertaken several steps to minimize the burden of implementing Small Area FMRs. One of these ways is to round Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.

Comment: HUD should address the consequence for voucher tenants who choose not to move to units where Small Area FMR is below current metropolitan FMR. Commenters expressed concern about what happens to tenants who choose not to move from their housing units in areas where the Small Area FMR is below the current Metropolitan FMR. Commenters also expressed concern that a significant and abrupt decrease in the FMR for ZIP code areas could reduce housing choices for families by closing opportunities in low-rent areas before new opportunities emerge in higher rent areas.

HUD Response: Under the current FMR regulations, tenants in areas where the payment standard decreases do not face lower housing assistance payments until the second annual reexamination of income following the payment standard decline. Depending on the timing of income reexaminations, tenants will have between 13 and 24 months advanced notification prior to experiencing the payment standard decreases. HUD is not proposing any specific changes in

[9] Housing Choice Voucher Program Administrative Fee Study: Final Report (available at: http://www.huduser.gov/portal/publications/affhsg/hcv_2015draftfinalreport.html)

this proposed rule to the existing payment standard reduction protections for families currently under a housing assistance payment (HAP) or the existing methodology by which the Small Area FMRs are currently determined. If the PHA determines that higher rents are warranted in a particular area, PHAs are encouraged to apply for exception payment standards under §982.503(c). PHAs may seek payment standard waivers for reasonable accommodations.

Specific solicitation of comment: HUD is specifically seeking comment on these issues for areas that are transitioning to Small Area FMRs under this proposed rule so that HUD may make a more informed decision on incorporating protections in the final rule. HUD is particularly interested in suggestions that may alleviate the above concerns without appreciably increasing administrative complexity and burden in the HCV program. Please see Section V, Request for Comments, below.

Comment: Use of Small Area FMRs as they related to project-based voucher (PBV) units. In the ANPR, HUD solicited comment on the use of Small Area FMRs as they relate to PBV subsidized units. HUD received several comments in response to this specific solicitation. The commenters' recommendations went in a variety of directions (i.e. some suggested no PBV should use Small Area FMRs, some suggested only new PBVs should use Small Area FMRs, and others suggested that all PBV use Small Area FMRs)

HUD Response: In the PBV program, FMRs will impact the location of PBV projects because the rent to the owner generally may not exceed 110 percent of the applicable FMR for the bedroom count minus any utility allowance. Applying Small Area FMRs to project-based vouchers may further improve locational outcomes and deconcentrate poverty because the PHA may be able to establish PBV rents that will make projects financially feasible in higher opportunity neighborhoods that are typically out of reach under the metropolitan area FMRs. Project-based vouchers can be a very effective strategy for increasing the supply of rental units available to voucher families in areas of opportunity, especially in those neighborhoods where the number of private rental units and landlords willing to participate in the program may otherwise be very limited.

While Small Area FMRs present a promising opportunity to improve locational outcomes with respect to future PBV projects, HUD acknowledges that transitioning to Small Area FMRs could have negative consequences for some existing PBV projects. For example, PBV assistance has been used to support reinvestment efforts in neighborhoods that have historically experienced disinvestment. These projects (and other existing PBV projects) may be located in ZIP code areas where the Small Area FMRs are substantially lower than the metropolitan-wide FMRs. Some PBV projects may have long-term financing that relies on projected rental income that was based on metropolitan-wide FMRs. Applying the Small Area FMRs to future rent determinations may result in significant reductions in project income. These PBV projects are an important component of the affordable housing stock in many communities and HUD agrees it is important not to place them at financial risk when the area is transitioning to Small Area FMRs.

HUD is therefore proposing to make the Small Area FMRs only applicable to PBV projects where the PHA notice of owner selection under § 983.51 was made after the effective date of the area's designation as a Small Area FMR area. For a PBV project that is already under AHAP or HAP contract before the effective date of the Small Area FMR designation, or where the PHA notice of owner selection was made prior to the effective date of the Small Area FMR designation, the Small Area FMRs will not apply. Instead, the metropolitan-wide FMRs will remain applicable to the project, unless the PHA and the owner mutually agree to apply the Small Area FMRs to the project.

The application of the Small Area FMRs to a PBV project by mutual agreement of the PHA and the owner must be prospective, and the owner and PHA may not subsequently choose to revert to the metropolitan area FMRs. If the rent to owner will increase as a result of the mutual agreement, the owner's rent increase may not go into effect until the first annual anniversary of the HAP contract in accordance with § 983.302(b). If the PHA intends to offer owners the opportunity to mutually agree to apply the Small Area FMR to PBV projects, the PHA's policies must be included in the PHA's administrative plan.

Comment: Small Area FMRs will curtail redevelopment. Several commenters expressed concern that use of Small Area FMRs will curtail redevelopment.

HUD Response: The primary of objective of the tenant based HCV program is to provide families receiving assistance with the opportunity to find suitable dwellings throughout the market area. Rather than determining or influencing rents in an area, metro FMRs and Small Area FMRs are meant to reflect spatial variation in market rents. As such, we would not expect them to be the drivers of re-development, which is not easily accomplished with tenant-based subsidies. This is true at either the metro FMR or Small Area FMR level. By design, the voucher program is not a redevelopment program nor is it intended to be a catalyst for urban renewal. HUD has a variety of place based programs which are designed to spur redevelopment.

Comment: Use of Small Area FMRs should be voluntary. Some commenters stated that the use of Small Area FMRs should be completely voluntary.

HUD Response: In order for Small Area FMRs to work in expanding choice for voucher holders within designated metropolitan areas, all PHAs operating in the FMR area would be required to use Small Area FMRs. It is further noted that a PHA outside of a HUD designated Small Area FMR area may opt to use Small Area FMRs by requesting approval from HUD to do so.

Comment: The only selection criteria should not be poverty. Commenters stated that poverty should not be the only selection criteria.

HUD Response: Recent research demonstrates that long term outcomes for families are improved the sooner the family is able to move out of areas with high poverty rates.[10] However, HUD agrees with commenters that additional criteria should be used to determine targeted areas. Therefore, HUD has added an income-based criterion to the area selection algorithm to identify places where a majority of families qualify for HUD rental assistance but the area would not qualify as high poverty under a strict poverty only threshold. Specifically, areas where more than 50 percent of the households have incomes below 60 percent of area median family income and are designated as QCTs but do not have poverty rates in excess of 25 percent are eligible for to be identified as a Small Area FMR metropolitan area, if the other selection criteria (number of vouchers, concentration of vouchers) are met. By using an income-based criterion in addition to a strict poverty based criterion, HUD strives to ensure that lower income families have expanded access to areas of opportunity even if they are not currently living in areas with high concentrations of voucher holders in extreme poverty conditions.

[10] Chetty, Raj, Nathaniel Hendren, and Lawrence Katz, 2016. "The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project." American Economic Review 106 (4).

Comment: ZIP Codes may be too large and not constitute a housing market. Commenters are concerned that even within ZIP codes, there is significant variation among rents and Small Area FMRs do not capture these nuances.

HUD Response: PHAs will still have the ability to establish separate payment standard amounts for designated areas within an FMR area, so in cases where rents vary significantly, PHAs will be able to set multiple payment standards within a ZIP code. PHAs will also have the opportunity to request exception payment standards within ZIP codes.

**V. Request for Comments**

While HUD seeks comment on all aspects of this proposed rule, HUD specifically seeks comment on the following topics:

1. Should HUD provide for PBVs that are in the pipeline to continue using metropolitan FMRs even if the area is designated as a Small Area FMR area? Additionally, should HUD require newly proposed PBVs post Small Area FMR designation to use Small Area FMRs?

2. The proposed rule provides for Small Area FMR area selection parameters to be codified in regulatory text. HUD is seeking comment on whether these parameters should be codified or should be incorporated into each annual proposed FMR notice to provide HUD, PHAs, and other stakeholders with flexibility, in any given fiscal year, to offer changes to these selection parameters and have the opportunity to comment before any changes to the parameters are made.

3. Several commenters to HUD's ANPR suggested that HUD provide for tenant rent protections in ZIP codes where the Small Area FMR is below the metropolitan area and tenants choose not to move. No additional tenant protections were instituted for tenants serviced by

PHAs accepting HUD's invitation to participate in the Small Area FMR demonstration nor were additional tenant protections implemented for tenants living in the Dallas, TX HUD Metropolitan Area when Small Area FMRs were implemented there. However, as part of a transition strategy between Metropolitan FMRs and Small Area FMRs, HUD seeks comment on what additional policies or requirements the final rule should include that would mitigate the impact of significant and abrupt decreases in the FMRs for certain ZIP code areas on families currently under HAP contract in those impacted areas.

4. Related to question 3, HUD seeks comment on whether the final rule should limit the potential decline in the FMR for a ZIP code area resulting from the implementation of Small Area FMRs in order to ensure that sufficient housing opportunities remain available to voucher holders? If so, HUD seeks recommendations on specific policies or requirements that should be included in the final rule to achieve the desired outcome.

a. For example, an approach would be to allow the PHA to establish exception payment standards above the basic range for impacted ZIP code areas meeting certain conditions through a streamlined HUD approval process. One example of this may be that PHAs could have the discretion of setting their payment standards at up to 130 percent of the Small Area FMR in the 1st year of transition, at up to 120 percent of the Small Area FMR in the 2nd year of transition, and at up to 110 percent of the Small Area FMR in the 3rd and subsequent years following implementation.

b. With respect to protections for tenants currently under HAP contract, one possibility may be to increase the amount of time that the family is held harmless from a decrease in the payment standard. For instance, instead of the lower payment standard going into effect on the second reexamination following the effective date of the decrease in the payment standard, the final rule could provide that the lower payment standard would not go into effect for a family under HAP contract until a later re-examination (e.g., third, fourth, or fifth reexamination).

5. The proposed rule adds a new paragraph (i) to § 888.113 to address the transition of metropolitan areas that were previously subject to $50^{th}$ percentile FMRs. HUD believes that the Small Area FMR methodology will provide HCV tenants with greater access to areas of opportunity than metropolitan area wide $50^{th}$ percentile FMRs. As a result, this rule proposes that a $50^{th}$ percentile metropolitan area designated for Small Area FMRs would transition to Small Area FMRs on the effective date of the Small Area FMR designation. HUD is also proposing that a $50^{th}$ percentile FMR area that is not designated for Small Area FMRs would remain under the $50^{th}$ percentile FMRs until the end of the existing 3-year period for the $50^{th}$ percentile FMRs prior to reverting to the standard $40^{th}$ percentile FMRs. The rule does not eliminate provisions that permit a PHA with jurisdiction in a $50^{th}$ percentile FMR area that reverts to the standard $40^{th}$ percentile FMR to request HUD approval of payment standard amounts based on the $50^{th}$ percentile rent in accordance with the existing § 982.503(f); however, HUD is specifically seeking comment on whether this provision should be eliminated in order to phase out the use of $50^{th}$ percentile rents for deconcentration purposes. HUD would also appreciate comments as to whether or not the current SEMAP deconcentration standard is appropriate as the basis for PHAs requesting HUD to approve payment standards based on $50^{th}$ percentile rents under existing § 982.503(f).

HUD is specifically seeking comment on these proposed polices, as well as suggestions for alternative approaches or other recommendations on how best to phase-out $50^{th}$ percentile rent FMRs for impacted metropolitan areas and transition the area to either the Small Area FMRs or the standard metropolitan-wide $40^{th}$ percentile FMRs.

6. HUD is specifically seeking comment on how to reduce the administrative burden on PHAs and simplify the transition to Small Area FMRs. For example, HUD is proposing to change the percentage decrease in FMRs that triggers rent reasonableness redeterminations from 5 percent to 10 percent for Small Area FMR PHAs. HUD requests comments, however, regarding whether 10 percent is the right trigger for program-wide rent reasonableness redetermination, whether HUD should limit this proposal to Small Area FMR decreases, or also change the percentage of decrease that triggers rent reasonableness for all FMRs, and whether it should revise the trigger for program-wide rent reasonableness redeterminations at all. In regards to potentially expanding the 10 percent trigger for rent reasonableness redetermination to a program-wide requirement, HUD seeks comments on the trade-offs between administrative relief and decreased program oversight on rent levels. HUD also requests comments on what other changes would reduce the potential administrative burden and complexity for PHAs impacted by the implementation of Small Area FMRs.

7. HUD is currently proposing, through this rulemaking, to expand the use of Small Area FMRs within the HCV program. HUD seeks public comment as to whether or not other HUD rental assistance programs would benefit from using Small Area FMRs in their operations. For example, would the rental assistance component of the Housing Opportunities for Persons with AIDS (HOPWA) programs be a candidate for Small Area FMR treatment? Frequently, metropolitan FMRs are inadequate for HOPWA-assisted tenants to find units near health care facilities, or in neighborhoods with better job opportunities. Should the HOPWA program

regulations be amended to allow participating jurisdictions the flexibility to set tenant-based assistance rents according to Small Area FMRs either in areas that would be designated Small Area FMR areas or for the HOPWA program more generally? Would other HUD programs benefit as well?

8. As currently proposed, the Small Area FMR policy would apply to all residents within a ZIP code who receive housing vouchers. HUD seeks comment on whether there are certain situations or any specific groups of voucher recipients within the general population, such as persons with disabilities or elderly voucher recipients, where an alternate policy should apply that should exempt them from having their voucher level change as a result of this policy due to specific hardships they may encounter by having to choose between staying in their current area and receiving a smaller voucher or moving to a new area for the sake of obtaining a larger voucher?

9. Are there specific groups within the general population of voucher holders for whom this policy change would be particularly burdensome? What are the ways in which this policy change could create a disproportionate burden on certain groups like elderly and disabled voucher holders?

10. HUD is seeking comment on the criteria that HUD selected for determining which metropolitan areas should be impacted by the shift to a Small Area FMR instead of the current $50^{th}$ percentile policy. Did HUD use the correct criteria in making these choices? What other criteria should HUD be using to select metropolitan areas that will be impacted by this rule change and why are those criteria important?

11. The proposed rule makes no changes to 24 CFR 888.113(g), the FMR for Manufactured home space rental for voucher tenants that own manufactured housing units. Under this proposed rule Small Area FMRs would apply to manufactured home space rentals in areas designated for Small Area FMRs (i.e., FMRs for space rentals would be set at 40 percent of the 2-bedroom Small Area FMR). Given the costly nature of moving a manufactured home, HUD is seeking comment on whether or not current voucher holders using their voucher for a manufactured home space should be exempt from Small Area FMRs at their current address?

12. HUD has proposed to amend the Exception Payment Standard rules at 24 CFR 982.503 to account for the fact that FMR areas in Small Area FMR designated metropolitan areas will be ZIP codes. HUD is seeking public comment to determine if there are other amendments HUD should make to the Exception Payment Standard Regulations to better facilitate the approval process of Exception Payment Standards. For example, the current exception payment standard regulations require that an exception payment standard may not include more than 50 percent of the population of the FMR area. This may be an impractical requirement when determining exception payment standards within a ZIP code. Similarly, given that ZIP codes more narrowly define the FMR area, the provision within the regulation that program justification may include helping families find housing outside areas of high poverty may not be applicable even though an exception payment standard may be necessary. Therefore, HUD is soliciting feedback to ensure that the exception payment standard regulations are revised so that PHAs may use this component of the regulations to optimize the administration of their HCV programs.

13. HUD makes administrative data for research into HUD's programs available in a variety of ways (i.e. Public Use Microdata Sample – PUMS data, Research Partnerships, and Data License Agreements). HUD seeks comment on what additional data or dissemination strategies would be helpful to the public to assess the impact of the implementation of the Small Area FMR proposed rule.

**VI. Commitment to Study Effectiveness of Rule**

If following this proposed rule and consideration of public comments on this proposed rule, HUD proceeds to establish use of Small Area FMRs in the administration of the HCV program in areas where voucher tenants are disproportionately concentrated in high poverty neighborhoods, HUD recognizes the importance of monitoring the progress of use of Small Area FMRs in addressing high levels of voucher concentration. This proposed rule would set FMRs at the ZIP Code level as a tool to help voucher tenants deconcentrate rather than the current tool of FMRs being based on 50th percentile rents. The core hypothesis is that this will significantly expand the ability of HCV holders to access housing in neighborhoods with high-quality schools, low crime rates, and other indicators of opportunity, as well as integrated neighborhoods in support of HUD's goal of affirmatively furthering fair housing. However, HVC holders that choose to remain in lower-rent high-poverty neighborhoods will see a reduction in the subsidy provided by the voucher.

The move to expand the use of Small Area FMRs is a significant policy shift for HUD. Consequently, HUD believes that understanding the impact of the policy shift away from 50th percentile FMRs to using Small Area FMRs for deconcentration is important. There are a variety of avenues through which this policy review could be accomplished, in terms of assessing the direct effects on the primary goal of deconcentration, and in terms of long term, location-related impacts. Therefore, HUD is committed to partnering in these research efforts through a variety of channels including our current Research Partnerships, Data Licensing Agreements, as well as HUD-funded research efforts. Initial research efforts will likely focus primarily on location outcomes, such as neighborhood characteristics of voucher holders both pre- and post-implementation of this policy. This research will also look at the effect on after-rent incomes of voucher holders who move to new areas and of those who choose to stay in poorer neighborhoods. Longer term research efforts could expand to consider tenant outcomes and contribute to the growing research findings of the importance of neighborhood impacts, particularly on adult outcomes of children afforded the opportunity to move to higher quality neighborhoods.

The most immediate studies of nearer term effects of the rule, to be undertaken within 5 years of the effective date of a final rule, will focus on the following issues:

- ZIP-Code-level FMRs allow greater variation in payment standards within a metropolitan area. This increases the range of neighborhoods HCV recipients can access using vouchers relative to metro-wide FMRs. For examining these issues, research may focus on the potential of Small Area FMRs to increase access to opportunity by analyzing the characteristics of neighborhoods in the service areas of the Small Area FMR PHAs by the share of units renting below the FMR before and after introduction of Small Area FMRs. Additionally, the research in this arena would focus on the observed effect of the adoption of Small Area FMRs on location and relocation outcomes of both new and existing HCV families. Such outcomes may focus on neighborhood poverty rates pre- and post- implementation, as well as other neighborhood characteristics such as crime rates and school rankings. Voucher holders financial well-being may also be assessed through an examination of rent burdens both before and after the implementation of the Small Area FMR policy.

- Landlords' interest in and awareness of the HCV program may also be affected by a move to Small Are FMRs. HUD anticipates that higher payment standards in high-cost ZIP Codes would attract landlord interest while lower payment standards in low-cost ZIP Codes may discourage engagement with the program. The market response is likely to be based substantially on the extent to which the Small Area FMRs and the resulting payment standards actually provide sufficient funding to make it possible for tenants to rent units in areas of opportunity. While landlords in lower-cost neighborhoods may consider lowering (or not increasing) rent to retain a good tenant, it is less likely that landlords in opportunity areas will make rent concessions. However, landlords are still not required to participate in the HCV program so the success of Small Area FMRs in allowing HCV holders to access opportunity areas will depend on landlord willingness to participate in the program. Consequently, HUD may choose to study if the number of rental units in areas where the Small Area FMR is above the metropolitan FMR increases and/or the number of landlords offering those units increase.

- A switch to Small Area FMRs will also affect the local PHAs that administer the HCV program. The change in Small Area FMRs could ultimately alter the average amount PHAs pay to landlords for the units they offer. Initial estimates of the impact of Small Area FMR-based payment standards on program cost, where only tenants' current locations are observed and before any moves can happen, generally predict a reduction in average subsidy cost as current voucher tenants' locations bias toward lower rent ZIP Codes. If a large enough share of households respond to Small Area FMRs by more frequently moving to or selecting higher-cost areas, a PHA may be able to ultimately fund fewer vouchers relative to the 40th percentile (or, alternatively, require additional funding from HUD to continue serving their baseline number of voucher-holders). The need to derive payment standards from Small Area FMRs rather than metro FMRs will likely require changes to PHAs' administrative processes and systems, particularly for the initial switch. Research in this area may rely upon HUD's administrative data comparing the changes in Housing Assistance Payment (HAP) costs over time. Furthermore, HUD may choose to assess the number of different payment standards the PHA administers through their annual SEMAP reporting.

In addition, HUD seeks public comment on any other issues to be included in a future retrospective review of a final Small Area FMR rule.

## VII. Findings and Certifications

Regulatory Planning and Review

OMB reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This rulemaking was determined to be an "economically significant regulatory action," as defined in section 3(f) (1) of the order. The accompanying Regulatory

Impact Analysis (RIA) for this rulemaking addresses the costs and benefits that would result if this proposed rule were to be implemented can be found at http://www.regulations.gov. The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is not a toll-free number).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing (other than tenant-based assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the proposed rule, which is found in Appendix B to this proposed rule. HUD finds in the IRFA that this proposed rule will not have a significant economic impact on a substantial number of small entities. The IRFA, which is found in Appendix B to this proposed rule and can also be found at www.regulations.gov, elaborates, and provides details on how HUD made this finding. HUD invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives, as described in this preamble, and elaborated upon in the IRFA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 982 is 14.871.

**List of Subjects**

**24 CFR Part 888**

Grant programs-housing and community development, Rent subsidies.

**24 CFR Part 982**

Grant programs-housing and community development, Grant programs-Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 983**

Grant programs-housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 985**

Grant programs-housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 888, 982, 983, and 985 as follows:

**PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS**

**1.** The authority statement for part 888 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

**2.** Revise § 888.113 to read as follows:

**§ 888.113 Fair market rents for existing housing: Methodology**.

(a) Basis for setting fair market rents. Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at the $40^{th}$ percentile rent, the dollar amount below which the rent for 40 percent of standard quality rental housing units fall within the FMR area. The $40^{th}$ percentile rent is drawn from the distribution of rents of all units within the FMR area that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) Setting FMRs at the $40^{th}$ percentile rent. Generally HUD will set the FMRs at the $40^{th}$ percentile rent.

(c) Setting Small Area FMRs. (1) HUD will set Small Area FMRs for metropolitan FMR areas where:

(i) There are at least 2,500 Housing Choice Vouchers under lease; and

(ii) At least 20 percent of the standard quality rental stock, within the metropolitan FMR area is in small areas (ZIP codes) where the Small Area FMR is more than 110 percent of the metropolitan FMR; and

(iii) The measure of the percentage of voucher holders living in concentrated low income areas relative to all renters within these areas over the entire metropolitan area exceeds 155 percent (or 1.55).

(2) For purposes of determining applicability of Small Area FMRs to a metropolitan area, the term “concentrated low-income areas” means:

(i) Those census tracts in the metropolitan FMR area with a poverty rate of 25 percent or more; or

(ii) Any tract in the metropolitan FMR area where at least 50 percent of the households earn less than 60 percent of the area median income and are designated as Qualified Census Tracts in accordance with section 42 of the Internal Revenue Code (26 U.S.C. 42).

(3) If a metropolitan area meets the criteria of paragraph (c)(1) of this section, the metropolitan area will be designated a Small Area FMR and all PHAs administering HCV programs in that area will be required to use Small Area FMRs. A PHA administering an HCV program in a metropolitan area not subject to the application of Small Area FMRs may opt to use Small Area FMRs by seeking approval from HUD’s Office of Public and Indian Housing (PIH) through written request to PIH.

(4) HUD will designate Small Area FMR areas at the beginning of a Federal fiscal year, and make such area designations every 5 years thereafter as new data becomes available.

(d) FMR Areas. FMR areas comprise metropolitan and nonmetropolitan areas and Small Areas FMR areas as follows:

(1) Generally, FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the

most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(2) Small Area FMR areas are the U.S. Postal Service ZIP code areas within a designated metropolitan area.

(e) Data sources. (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent American Community Survey conducted by the U.S. Census Bureau, which provides statistically reliable rent data.

(ii) Locally collected survey data acquired through Address-Based Mail surveys or Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iii) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year recent mover adjusted FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities.

(f) Unit size adjustments. (1) For most areas the ratios developed incorporating the most recent American Community Survey data are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

(g) Manufactured home space rental. The FMR for a manufactured home space rental (for the voucher program under 24 CFR part 982) is 40 percent of the FMR for a two bedroom unit.

(h) Small Area FMRs and Project-based Vouchers. (1) This paragraph applies to project-based voucher (PBV) assistance when HUD designates a metropolitan area or approves a PHA jurisdiction for Small Area FMRs under paragraph (c)(3) of this section.

(i) The Small Area FMRs apply to all PBV projects where the PHA notice of owner selection under 24 CFR 983.51(d) was made after the effective date of the Small Area FMR designation.

(ii) The metropolitan area FMRs continue to apply to PBV projects where the PHA notice of owner selection under 24 CFR 983.51(d) was made on or before to the effective date of the

Small Area FMR designation, unless the PHA and owner mutually agree to apply the Small Area FMRs to the PBV project. This category includes all PBV projects that were under Housing Assistance Payment (HAP) contract or an Agreement to enter into a Housing Assistance Payment (AHAP) contract prior to the effective date of the Small Area FMR designation.

(iii) If the PHA and owner mutually agree to apply the Small Area FMR, the application of the Small Area FMRs must be prospective. The owner and PHA may not subsequently choose to revert back to the use of the metropolitan-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the Small Area FMRs to the PBV project, the rent increase shall not be effective until the first annual anniversary of the HAP contract in accordance with 24 CFR 983.302(b).

(2) For purposes of this section, the term "effective date of the Small Area FMR designation" means:

(i) The date that HUD designated a metropolitan area as a Small Area FMR area; or

(ii) The date that HUD approved a PHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

(i) Transition of metropolitan areas previously subject to $50^{th}$ percentile FMRs. (1) A metropolitan area designated as $50^{th}$ percentile FMR areas for which the 3-year period has not expired prior to **[Effective Date of the Final Rule]** shall transition to Small Area FMRs as follows:

(i) A $50^{th}$ percentile FMR area that is designated for Small Area FMRs in accordance with paragraph (c) of this section will transition to the Small Area FMRs upon the effective date of the Small Area FMR designation;

(ii) A 50th percentile metropolitan FMR area not designated as a Small Area FMRs in accordance with paragraph (c) of this section, will remain a 50th percentile FMR until the expiration of the three-year period, at which time the metropolitan area will revert to the standard FMR based on the 40th percentile rent for the metropolitan area.

(2) A PHA with jurisdiction in a 50th percentile FMR area that reverts to the standard 40th percentile FMR may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with 24 CFR 982.503(f).

(3) HUD will calculate the 50th percentile rents for certain metropolitan areas for purposes of this transition and to approve success rate payment standard amounts in accordance with 24 CFR 982.503(e). As is the case for determining 40th percentile rent, the 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers and adjustments are made to exclude public housing units, newly built units and substandard units.

**PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM**

**3.** The authority statement for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

**4.** Amend § 982.503 as follows:

a. Revise paragraphs (c)(2) introductory text and (c)(2)(ii);

b. In paragraph (f), introductory text, remove "§ 888.113(c)" and add in its place "§ 888.113(i)(3)"; and

c. In paragraph (f)(2), remove "§ 888.113(c)" and add in its place "§ 888.113(i)(3)";

The revisions to read as follows:

**§ 982.503 Payment standard amount and schedule.**

*** * * * ***

(c) * * *

(2) Above 110 percent of FMR to 120 percent of published FMR. The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by the median rent method or the 40th percentile rent or the Small Area FMR method as described in paragraph (c)(2)(ii) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

* * * * *

(ii) 40th percentile rent or Small Area FMR method. In this method, HUD determines that the area exception payment standard amount equals application of the 40th percentile of rents for standard quality rental housing in the exception area or the Small Area FMR. HUD determines whether the 40th percentile rent or Small Area FMR applies in accordance with the methodology described in 24 CFR 888.113 for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

* * * * *

**5.** Revise § 982.507(a)(2)(ii) to read as follows:

**§982.507 Rent to owner: Reasonable rent.**

(a) * * *

(2) * * *

(ii) If there is a 5 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect 1 year before the contract anniversary, unless the Small Area FMRs under 24 CFR 888.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is 10 percent or greater; or

* * * * *

**PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

**6.** The authority statement for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

**7.** Revise § 983.301(a)(3) to read as follows:

**§ 983.301 Determining the rent to owner.**

(a) * * *

(3) The rent to owner is also redetermined in accordance with § 983.302.

* * * * *

**8.** Revise § 983.302(a)(2) to read as follows:

**§ 983.302 Redetermination of rent to owner.**

(a) * * *

(2) When there is a five percent or greater decrease in the published FMR; unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is ten percent or greater.

* * * * *

**9**. Revise § 983.303(b)(1) to read as follows:

**<u>§ 983.303 Reasonable rent</u>.**

* * * * *

(b) * * *

(1) Whenever there is a 5 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect 1 year before the contract anniversary; unless the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA, in which case the decrease in the published FMR is ten percent or greater.

* * * * *

**PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

**10.** The authority statement for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

**11.** In § 985.3 revise paragraphs (b)(1), (b)(3)(i)(B), and (b)(3)(ii) to read as follows:

**<u>§ 985.3 Indicators, HUD verification methods and ratings</u>.**

* * * * *

(b) * * *

(1) This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: at the time of initial leasing; if there is any increase in the rent to owner; at the HAP contract anniversary if there is a 5 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary, or a 10 percent or greater decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.507)

* * * * *

(3) * * *

(i) * * *

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.507 of this chapter for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary, or a 10 percent decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA. 20 points.

(ii) The PHA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the

HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary, or a 10 percent decrease in the published FMR if the Small Area FMRs under 24 CFR 883.113(c)(3) are applicable to the PHA.  15 points.

*          *          *          *          *

Dated:  June 8, 2016.

Katherine O'Regan, PhD
Assistant Secretary for Policy Development and Research

**[FR-5855-P-02]**

The following appendixes will not be published in the Code of Federal Regulations.

**Appendix A – HUD Metropolitan FMR Areas Proposed for Small Area FMRs**

| HUD Metropolitan Fair Market Rent Area | Voucher Count* |
|---|---|
| New York, NY HUD Metro FMR Area | 119,362 |
| Chicago-Joliet-Naperville, IL HUD Metro FMR Area | 62,472 |
| Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA | 32,631 |
| Washington-Arlington-Alexandria, DC-VA-MD HUD Metro FMR Area | 32,109 |
| Atlanta-Sandy Springs-Marietta, GA HUD Metro FMR Area | 28,697 |
| Oakland-Hayward-Berkeley, CA Metro Division | 28,355 |
| Dallas-Plano-Irving, TX Metro Division | 28,135 |
| San Diego-Carlsbad-San Marcos, CA MSA | 27,970 |
| Tampa-St. Petersburg-Clearwater, FL MSA | 16,456 |
| Pittsburgh, PA HUD Metro FMR Area | 15,739 |
| San Antonio-New Braunfels, TX HUD Metro FMR Area | 14,633 |
| San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area | 14,307 |
| Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area | 12,831 |
| Sacramento--Arden-Arcade--Roseville, CA HUD Metro FMR Area | 12,672 |
| Fort Worth-Arlington, TX HUD Metro FMR Area | 12,620 |
| Virginia Beach-Norfolk-Newport News, VA-NC HUD Metro FMR Area | 12,291 |
| Nassau County-Suffolk County, NY Metro Division | 11,593 |
| Bergen-Passaic, NJ HUD Metro FMR Area | 11,503 |
| Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Metro Division | 10,486 |
| Charlotte-Gastonia-Rock Hill, NC-SC HUD Metro FMR Area | 7,951 |
| Monmouth-Ocean, NJ HUD Metro FMR Area | 7,811 |
| West Palm Beach-Boca Raton-Delray Beach, FL Metro Division | 6,058 |
| Jacksonville, FL HUD Metro FMR Area | 5,872 |
| Oxnard-Thousand Oaks-Ventura, CA MSA | 5,612 |
| Tacoma-Lakewood, WA Metro Division | 5,341 |
| Jackson, MS HUD Metro FMR Area | 4,742 |
| Urban Honolulu, HI MSA | 4,146 |
| Gary, IN HUD Metro FMR Area | 3,305 |
| Colorado Springs, CO HUD Metro FMR Area | 2,957 |
| North Port-Bradenton-Sarasota, FL MSA | 2,592 |
| Palm Bay-Melbourne-Titusville, FL MSA | 2,565 |
| * Voucher Counts as of June 30, 2015 - Includes MTW, Excludes PBV | |

**Appendix B – Initial Regulatory Flexibility Analysis**

## Initial Regulatory Flexibility Analysis
## Establishing a More Effective Fair Market Rent System;
## Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs

## 1. Introduction

The Regulatory Impact Analysis of the proposed Small Area Fair Market Rent (Small Area FMR) rule identifies two types of small entities that would be affected by the rule: small Public Housing Agencies (PHAs) and small private landlords. The Initial Regulatory Flexibility Analysis (IRFA) furthers the analysis of the impact of the rule on small entities by including more data on the relevant sectors as well as a more rigorous definition of what is a "small" PHA. The analysis of the proposed rule satisfies Section 603 of the Regulatory Flexibility Act. The requirements of the IRFA are listed below.[11]

(a) The agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. *This requirement is satisfied by the present IRFA.*

(b) Each initial regulatory flexibility analysis required under this section shall contain —

(1) A description of the reasons why action by the agency is being considered: *This requirement is met by Sections 2.1 and 2.3 of the IRFA. A lengthier discussion can be found in the Regulatory Impact Analysis and the Preamble of the Proposed Rule.*

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule: *This requirement is met by Sections* 2.1 *and 2.3 of the IRFA. A lengthier discussion can be found in the Regulatory Impact Analysis and the Preamble of the Proposed Rule.*

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply: *This requirement is met by Sections 3.1 and* 4.1 *of the IRFA.*

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities

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[11] HUD is not a covered agency, as defined in section 609(d)(2), and so is not required to comply with (d)(1) or (d)(2).

> which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record: *This requirement is met Sections 3.2 and 4.2 of the IRFA.*
>
> (5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule: *This requirement is met by Section* 7 *of the IRFA.*

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as —

> (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*
>
> (2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*
>
> (3) The use of performance rather than design standards: *This requirement is met by Sections 5 and 6 of the IRFA.*
>
> (4) An exemption from coverage of the rule, or any part thereof, for such small entities: *This requirement is met by Sections 5 and 6 of the IRFA.*

Before proceeding further, Section 2 of the IRFA provides a brief summary of the main findings from the Regulatory Impact Analysis. The summary is provided for those readers who do not have ready access to the Regulatory Impact Analysis. Some readers may want more details on the anticipated economic effects of the regulation. A wide-ranging discussion can be found in the Regulatory Impact Analysis. Most of the Initial Regulatory Flexibility Analysis is dedicated to a description of the primary small entities affected: private landlords and Public Housing Authorities (PHAs).

## 2. Summary of the Regulatory Impact Analysis

The summary of the Regulatory Impact Analysis provides: an overview of the proposed rule, a statement of the objectives of the rule, a justification for the regulatory action, and a brief description of the economic impacts. Readers who are familiar with the Regulatory Impact Analysis may skip to the subsequent sections.

### 2.1. Overview of Proposed Rule

This proposed rule proposes the use of Small Area Fair Market Rents (Small Area FMRs) in the administration of the Housing Choice Voucher (HCV) program for certain metropolitan areas. HUD is proposing to use Small Area FMRs in place of the current 50$^{th}$ percentile rent to address high levels of voucher concentration. HUD believes that Small Area FMRs gives HCV tenants a more effective means to move into areas of higher opportunity and lower poverty areas by providing them with subsidy adequate to make such areas accessible and to thereby reduce the number of voucher families that reside in areas of high poverty concentration.

HUD proposes to use several criteria for determining which metropolitan areas would best be served by application of Small Area FMRs in the administration of the HCV program. These criteria include a threshold number of vouchers within a metropolitan area, the concentration of current HCV tenants in low-income areas, and the percentage of renter occupied units within the metropolitan area with Small Area FMRs above the payment standard basic range. Public housing agencies (PHAs) operating in designated metropolitan areas would be required to use Small Area FMRs. PHAs not operating in the designated areas would have the option to use

Small Area FMRs in administering their HCV programs. Other programs that use FMRs would continue to use area-wide FMRs.

Note to Reader: A more comprehensive summary of the rule can be found in the Regulatory Impact Analysis and the Rule itself.

## 2.2. Objectives of Rule

This proposed rule, through establishment of Small Area FMRs as a means of setting rents in certain metropolitan areas, is intended to facilitate the Housing Choice Voucher (HCV) program in achieving two program objectives: (1) increasing the ability of low-income families to find and lease decent and affordable housing; and (2) providing low-income families with access to a broad range of housing opportunities throughout a metropolitan area. HUD's goal in pursuing this rulemaking is to provide HCV tenants with a greater ability to move into areas where jobs, transportation, and educational opportunities exist.

## 2.3. Justification for Rule

In October 2000, HUD published an interim final rule[12] that set higher (50$^{th}$ percentile as opposed to 40$^{th}$ percentile[13]) metropolitan area Fair Market Rents (FMRs) where program data showed that voucher holders and public housing agencies (PHAs) needed assistance in achieving the two program objectives specified in 2.2 above. Setting the metropolitan FMR higher at the

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[12] See Federal Register edition of October 2, 2000, at 65 FR 58870

[13] FMRs are typically set at the 40$^{th}$ percentile in the distribution of rents paid by recent movers into "standard quality" units within an FMR area, generally a metropolitan area or non-metropolitan county. For more information, see http://www.huduser.gov/portal/datasets/fmr.html.

50th percentile rent was expected to increase the number of neighborhoods affordable with a voucher, thereby aiding the dispersion of voucher holders throughout the FMR area.

Under the 2000 rule, FMR areas set at the higher 50th percentile rents revert to standard (40th percentile) metropolitan FMR status either when voucher holders are no longer considered geographically concentrated by the criteria established by the 2000 rule, which is codified in 24 CFR part 888, or when the voucher program fails to achieve measurable progress toward "deconcentration" within three years. If the program fails to show progress and loses its 50th percentile rent status, reestablishment of rents at the 50th percentile can be reconsidered in three years. Areas that demonstrate progress with deconcentration undergo reconsideration every year.

Many areas have cycled in and out of 50th percentile status (see Appendix of Regulatory Impact Analysis) since the 2000 rule went into effect, suggesting it has not been an effective tool in deconcentrating voucher households in a lasting way. An emerging body of research is confirming this conclusion.[14] The proposed rule therefore would replace the 50th percentile metropolitan FMRs with Small Area FMRs. Small Area FMRs are similar to metropolitan FMRs but set at the more local ZIP code level. Theory, and the early evidence from areas already piloting the Small Area FMRs,[15] suggests that setting FMRs at the ZIP code level will make more units available in higher rent neighborhoods while reducing the overpayment of rents

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[14] Collinson, R. and Ganong, P. (2015, May) The Incidence of Housing Voucher Generosity. Retrieved December 11, 2015 from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2255799.

[15] Small Area FMRs are only permitted to be used to set Section 8 Housing Choice Voucher payment standards in the Dallas, TX HUD Metropolitan FMR Area and by PHAs participating in the Small Area FMR Demonstration Program. See https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.

by the program in lower rent neighborhoods.[16] This, in turn, should make the program more cost effective and facilitate a more lasting geographic dispersion of voucher households.

The proposed rule does not treat Small Area FMRs as a temporary policy. Once areas are designated for use of Small Area FMRs and the new payment standards have been implemented, the rule makes no provision for a return to metropolitan FMRs. The 2000 rule was based on the assumption that once the $50^{th}$ percentile metropolitan FMR is successful in encouraging voucher households to move to a wider range of neighborhoods, rents set at the $50^{th}$ percentile were no longer needed.

## 2.4. Summary of Economic Impacts

HUD expects a variety of economic effects stemming from implementation of the proposed rule. Transfers involving vouchers would be the most sizable of those effects. PHAs will face both costs and benefits from the implementation of this rule. Social benefits and costs associated with the rule could be generated by a new settlement pattern among voucher holders. Quantified incremental impacts include an expected transfer of $265 million among participants and $4 million of implementation costs to PHAs. The Regulatory Impact Analysis includes a lengthy description of qualitative impacts as well details concerning the calculation of the quantitative impacts.

# 3. Landlords Affected

Some owners of rental real estate may experience a minor pecuniary impact (either positive or negative) from the regulation. Some of this economic impact is likely to be passed onto

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[16] See the Final Regulatory Impact Analysis for a detailed discussion.

property managers: the *lessors of residential building and dwellings*[17] is the private industry that is most likely to be affected by the regulation. While direct and indirect effects of changing the subsidy design is theoretically possible; it is empirically unlikely.

The following section describes the property management industry. It is important to keep in mind that while many businesses rent to voucher tenants, adverse effects are not expected for reasons described in this section.

## 3.1. Industry Data: Lessors of Residential Building and Dwellings

The Small Business Administration defines a lessor of residential real estate to be a small business if it earns annual revenues (sales receipts) of less than $27.5 million. In the 2012 Economic Census, the Census counted approximately 50,000 of which approximately 43,000 operated for the entire year of 2012. Our comparisons are made using the full-year data to be more consistent with the definition of what is small (firms operating the entire year).

Of the 42,911 firms operating all year, 42,618 can be considered small firms. Total annual revenue of the industry was $84 billion, [18] compared to $43 billion for small firms. Approximately 300,000 individuals were employed by firms operating all year during the pay period observed in March 2012; 200,000 of them were employed by small firms. Small lessors account for 99 percent of all firms, 51 percent of all revenue, 57 percent of all payroll, and 67

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[17] This industry (NAICS 531110) comprises establishments primarily engaged in acting as lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them.

[18] American Community Survey data indicate that the lessor industry revenue is approximately 20 percent of aggregate rents. The industry collects twice the average 10 percent commission for property managers. This difference could be explained by: realtors' commissions, other activities, and lessors owning property and thus collecting the full rent.

percent of employees hired during the first quarter. The industry is dominated by small firms in numbers of firms and employees, but is roughly equivalent to all large firms in terms of revenue and payroll.

**Lessors of residential buildings and dwellings (NAICS industry 531110)**
**Operated for the entire year 2012, United States.**

| Firm Size by revenue | Firms | Revenue ($1,000) | Payroll ($1,000) | Employees for period including March 12 |
|---|---|---|---|---|
| All firms* | 42,911 | 83,593,387 | 9,838,805 | 303,135 |
| Revenue less than $25,000,000 | 42,618 | 42,908,437 | 5,574,606 | 202,381 |
| Proportion small firms** | 99% | 51% | 57% | 67% |

*Note that there were 50,664 firms altogether but that 42,911 operated all year. Using the larger base would reduce the proportion of small firms.
**The official size standard of the SBA is $27.5 million. Statistics are not available for this cut-off so we use the closest one leading to a slight underestimate of the proportion "small."

HUD is able to provide information on the number of owners who participate in the housing choice voucher program. Note that counting real estate owners is not equivalent to lessors that operate the property. One would expect there to be many more owners than lessors. Nonetheless, the data provides insight as to the distribution of vouchers. It is evident that the overwhelming proportion of owners rent to very few voucher tenants. Approximately two-thirds of owners who rent to voucher tenants rent to only one voucher tenant household. Many of these are likely owners of single-family homes for whom the rental income is not the primary source of income. Approximately 90 percent rent to no more than 4 voucher tenant households, which could be housed in a large two-story building. Very few owners rent to enough voucher tenants to occupy multiple buildings.

**U.S. Residential Real Estate Owners Renting to Voucher Tenant Households***

| **Category** of Owner with Voucher Tenant Households | **Number** of Owners with Voucher Tenant Households* | **Percent** of Owners with Voucher Tenant Households |
|---|---|---|
| **1 Voucher** | 435,653 | 67.2 |
| **2-4 Vouchers** | 142,925 | 22.1 |
| **5-19 Vouchers** | 55,206 | 8.5 |

| | | |
|---|---|---|
| **20-49 Vouchers** | 10,773 | 1.7 |
| **50-99 Vouchers** | 2,564 | 0.4 |
| **100-199 Vouchers** | 687 | 0.1 |
| **200 or more Vouchers** | 148 | 0.0 |
| **All** | 647,956 | 100.0 |

**This table describes voucher tenants but NOT non-voucher tenants. It is likely that many owners rent to additional tenants, making the above table a slight overestimate of the small landlords affected by the rule.*

The data on the distribution of owners by number of vouchers implies that industry structure is not significantly different for vouchers than for other residential rental properties. The tables do not correspond perfectly because one describes property managers and the other property owners. In addition, the table for owners shows information for voucher tenants only and does not include any unassisted tenants.

HUD estimated that 28 percent of all vouchers are likely to be affected by the rule. If the number of lessor firms is proportional to the number of vouchers, then approximately 12,000 firms operating all year round (or 14,000 firms operating at any time) would manage units in Small Area FMR areas. They do not necessarily provide housing for voucher tenants but would be affected by any market externalities engendered by the rule. The median share of voucher holders in a census tract is 3.2 percent. Again, assuming proportionality we expect 400-500 NAICS industry 531110 firms to manage units occupied by voucher tenants in the Small Area FMR areas created by the proposed rule. The number of voucher units managed by any one firm will vary.

## 3.2. Economic Impacts and Compliance Requirements on Small Landlords

There are two types of possible effects of the rule on property owners and managers. The first is <u>direct</u>: an owner (and lessor) who receives income from a voucher tenant may experience a change in rental income without changing the contract or tenant. Consider a low-rent area in which the subsidy will decline. The owner (and lessor) would be held harmless if the tenant chose to make up the difference. However, suppose that the subsidy declined by a critical amount such that the tenant can no longer afford the unit. The owner has two choices: search for a new tenant who will pay the market rent or lower the rent by enough to maintain the current tenant. The former strategy would be chosen if the housing submarket were characterized by adequate demand. The latter strategy would be chosen if the reduction in rents are offset by the costs of finding a new tenant. Thus, while the owner (and lessor) may lose a particular voucher tenant, they will not lose the rental income from that unit. The rule may generate revenue for lessors of residential building and dwellings if a significant number of moves result. Managing turnover is one of the primary services provided by a lessor to an owner. This would not be a major effect but could serve to counterbalance any minor adverse effects on lessors.

The second type of effect is indirect (a pecuniary externality). A reduction (increase) of the voucher subsidy would lower (raise) the demand for housing in that submarket. Even properties without any voucher tenants would be affected by such a market-wide effect. However, a decline in demand would only result if voucher households make up a sufficiently large portion of rental households in a given neighborhood. Market spillovers are expected to be minimal in many areas due to the limited size of the voucher program in relation with the entire housing market. Of the 13,200 Census tracts in the areas affected by the proposed rule, the median share of voucher households is 3.2 percent. Even in areas where the share is larger, the rule does not eliminate the subsidy but reduces it. Small lessors will be disproportionately impacted by market effects only if the units leased by small lessors are disproportionately concentrated in low-rent areas.

The proposed rule does not impose any additional reporting, recordkeeping and other compliance requirements. Compliance and unit standards remain the same.

An additional effect of the rule is that six current $50^{th}$ percentile areas will revert to $40^{th}$ percentile FMRs, as the Small Area FMR rule uses different selection criteria than the $50^{th}$ percentile rule. These areas currently cover 84,000 vouchers. On average, the FY16 $40^{th}$ percentile FMR is $79 lower than the $50^{th}$ percentile FMR, meaning a transfer of $6.6 million is expected through a combination of landlords accepting lower rent, tenants increasing out of pocket rent, or tenants moving to lower cost, less desired units.

## 3.3. Public Comment in Response to Advance Notice of Proposed Rulemaking Concerning Impact on Housing Providers

Comment: Small Area FMR approach would run the risk that units currently with vouchers would not be renewed in HCV program. HUD received many comments from property owners, landlords and other housing providers that expressed this concern. These comments generally focused on property owners/managers with current voucher tenants, typically within the city of Baltimore, MD. These comments suggested that if HUD were to move to Small Area FMRs, these units would not be renewed in the voucher program because the rents for the units would be too low.

HUD Response. These units would be renewed if the family chooses to remain and the rent is reasonable. HUD's regulation at 24 CFR 982.507 directs that PHAs must determine if the rent to owner is reasonable at time of determining the initial rent to owner or when the FMR decreases by more than 5 percent (this proposed rule proposed to change the standard to 10 percent). Consequently, if after an FMR decrease, if the PHA deems that the rent is reasonable, the unit may be renewed, albeit with the tenant increasing their portion of the rent. Furthermore, HUD believes that the use of Small Area FMRs removes a barrier that tenants currently have in accessing housing units in areas of opportunity; namely, that subsidy levels are not high enough to afford rental units in these high opportunity neighborhoods. HUD further believes that if housing authorities determine that current rents in areas with declining Small Area FMRs are reasonable, tools are in place to address these situations (exception payment standards, reasonable accommodation, etc.)

## 4. Public Housing Agencies Affected

PHAs operating in metropolitan areas that meet the established Small Area FMR criteria of the proposed rule will be required to use Small Area FMRs in their HCV programs. As of issuance of this proposed rule, there are 31 areas listed that meet these criteria. These areas contain approximately 564,000 (28 percent) of the HCV households nationwide.[19] Of these 564,000 vouchers, 387,000 vouchers are administered by PHAs that may not yet use multiple payment standards.

### 4.1. Data: Small PHAs

A small PHA is defined by HUD to be one of less than 250 units.[20] Using this definition, approximately half of the PHAs (1,100 out of 2,200) that administer HCVs are considered small.

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[19] This number includes areas that have already implemented Small Area FMRs and Moving to Work Agencies, which may not be compelled to adjust their payment standards as a result of the rule. The analysis below considers these exceptions.

[20] For regulatory definitions of small PHAs, see: Deregulation of Small PHAs Final Rule, 24 CFR Part 902, 903, and 985.

In the 31 metropolitan areas affected by the proposed rule, there are 292 PHAs, of which 80 are small. The Regulatory Flexibility Analysis authorizes an agency to adopt and apply definitions of small, “which are appropriate to the activities of the agency” for each category of small entity.[21] The 250 unit limit is one traditionally used by HUD in data collection as well as by city governments. In addition, it has been shown that PHAs of this size class face greater average costs of administering housing choice vouchers.[22] A greater average cost is an indicator for smaller entities is suggestive evidence of fixed costs of operation. Small PHAs make up 27 percent of the PHAs in affected areas and would manage no more than 4 percent of the vouchers.

## 4.2. Economic Impacts and Compliance Requirements for PHAs

PHAs administering Small Area FMRs will likely face higher administrative costs. Initial costs would include training employees and setting up new systems. Periodic costs include costs related to payment standard and rent determinations as well any increase in moves and contract rent changes than those operating under one metropolitan FMR. PHAs change their payment standards as the FMR changes. Once the payment standard is established, and the PHA board approves, the PHA creates materials to inform their customers (and landlords) of the new payment standards. Making the transition from one to many payment standards is likely to impose some burden at initial implementation of the Small Area FMR rule.

There are at least two ways that a PHA would respond to the increased complexity of multiple payment standards. First, it could pursue a more labor-intensive solution and ask staff to determine the payment standard manually. This would not be particularly difficult for a small

[21] The RFA standard definition of a "small governmental jurisdiction" is the government of a city, county, town, school district or special district with a population of less than 50,000.
[22] Abt Associates, 2015

PHA with few payment standards. Small PHAs typically have smaller service areas with fewer ZIP codes and therefore fewer Small Area FMR-based payments standards to determine and administer than do larger PHAs. Another solution is to make an upfront investment to automate the process of subsidy determination. A unit's address is already entered into a PHA's database. All that is needed is a tool that calculates the rental subsidy as a function of the address. HUD has the intention of developing such an application for PHAs and voucher holders tenants. For it to work, PHAs will have to provide data on their payment standard decisions to HUD. Thus, compliance costs of PHAs are expected to rise slightly but not significantly. Because the tool will be developed, tested, and provided by HUD, it is not expected that the cost of implementation will be disproportionate.

A 2015 study[23] reports that, according to a Dallas PHA official, implementation costs of multiple payment standards were minimal at roughly $10 a household. Though it is unclear what this estimate considers, and assuming it can be applied elsewhere, as a rough measure of magnitude this would mean $3.9 million to $5.6 million in implementation costs over the 31 areas designated and 292 PHAs affected by this proposed rule. The more accurate estimate is the lower because it is based on PHAs that do not already use multiple payment standards. Both were considered for completeness. The impact on small entities would be a fraction of this impact. Assuming that all PHAs are affected and that all small PHAs are at the maximum, then the total impact on all small PHAs would be $200,000 (80 X 250 X $10). Such a conservative estimate would reduce any downwards bias in the estimate of the impact stemming from returns to scale.

[23] Collinson and Ganong, (2015, May)

The Small Area FMR rule will be beneficial to PHAs in some important respects. First, the rule intends to eliminate the possibility that an area will cycle in and out of the 50th percentile FMR as it can currently occur under the 2000 rule. This change is expected to reduce the year-to-year administrative uncertainty and the costs of adjusting the program to changing FMR calculations over time. Second, the proposed rule is also expected to facilitate PHA and regional compliance with consolidated planning and Fair Housing requirements and allow counseling and similar efforts to be more effective.[24] Finally, the use of Small Area FMRs is expected to decrease the costs of rent reasonableness determinations as the payment standards better reflect local rent levels.

## 4.3. Public Comment in Response to Advance Notice of Proposed Rulemaking Concerning PHA Compliance Burden

Comment: Small Area FMR approach would increase administrative burden. Several commenters expressed concern that Small Area FMRs would increase the administrative burden of operating the voucher program. Commenter stated that this concern is compounded because, as they stated, their administrative fee payments are inadequate to meet administrative costs.

HUD Response: HUD recently released a final report on the costs of running a high performing housing authority[1] and HUD is currently engaged in a proposed rulemaking effort regarding the administrative fee formula. Consequently, this proposed rule does not address the adequacy of administrative fees. HUD has undertaken several steps to minimize the burden of implementing

[24] Advancing mobility is one of the costliest activities of a PHA.
[1] Housing Choice Voucher Program Administrative Fee Study: Final Report (available at: http://www.huduser.gov/portal/publications/affhsg/hcv_2015draftfinalreport.html)

Small Area FMRs. One of these ways is to round Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups.

## 5. Major Policy Alternatives Considered and Rejected

There were several major alternatives to Small Area FMR rule, all of them either less effective or more costly than what was finally proposed. The obvious alternative was to retaining metro level FMRs at either the $40^{th}$ or $50^{th}$ percentile. However, an FMR that does not vary geographically within a metropolitan area has not achieved the policy objective of promoting location choice. Even making the subsidy more generous by increasing it from the $40^{th}$ to $50^{th}$ percentile has not led to long-term success in encouraging geographic mobility.

More appropriate alternatives concern the implementation of the Small Area FMR by changing the scope of the rule to extend the Small Area FMR to more (or fewer) metropolitan areas. The proposed rule mandates the use of the Small Area FMRs in metropolitan areas meeting specific criteria and makes it voluntary elsewhere. A reasonable alternative to consider would be mandating use of Small Area FMRs everywhere. The disadvantage of such an expansive approach is that it may include metropolitan areas whether one or both of the following is true: (1) there is no problem to be solved (i.e., voucher tenants are not especially concentrated in high-poverty neighborhoods), and/or (2) the Small Area FMR is not a viable solution (i.e., nearly all opportunity areas have Small Area FMRs within the basic range of the metropolitan FMR). The Small Area FMR selection criteria in the proposed rule validate that the HCV population are unevenly distributed before implementing the program. If not, then there is no reason to impose the potential administrative costs of a deconcentration policy. If already deconcentrated, then either there is no friction in the housing market or the PHA has found alternative means of solving this problem. Second, the criteria ensure that the Small Area FMR is a potential solution by qualifying only housing markets with sufficient housing stock in areas with Small Area FMRs above the basic range (more than 110 percent) of the metropolitan FMR. Providing higher rent subsidies for high-rent ZIP codes will have little impact if there is demand but no supply. Thus, the proposed rule is a judicious trade-off between the mobility gains of voucher holders and administrative costs of PHAs.

## 6. Alternatives Which Minimize Impact on Small Entities

Under the Initial Regulatory Flexibility Analysis, HUD must discuss alternatives that minimize the economic impact on small entities. In order to lessen the burden on PHAs, and specifically small PHAs, HUD has taken, or is committed to taking, several measures in implementing Small Area FMRs designed to facilitate transition to this approach and minimize costs and burdens. Specifically, HUD is pursuing the following strategies to mitigate adverse impacts:

- Publish Small Area FMRs grouped by overlapping potential payment standards. Although the proposed rule does not specifically address the format of HUD's publication of Small Area FMRs, in on-line materials HUD will provide a version of Small Area FMRs formatted and organized so as to facilitate compliance by PHAs.
- Develop a mobile application to automate payment standard determination and significantly reduce administrative costs of implementing the Small Area FMR rule for all parties involved (tenant, landlord, PHA). As noted above, HUD will be developing such an application for PHAs, voucher holders, and landlords.

- Allow the rounding of Small Area FMRs to the nearest ten dollars to make it easier to arrange the small areas into payment standard groups. Although the proposed rule does not specify the calculation methods for Small Area FMR estimates, HUD's practice in the Dallas, TX HUD Metro FMR Area and in the Small Area FMR demonstration sites has been to round Small Area FMR estimates to the nearest $10.00 to make it easier to arrange small areas into payment standard groups. Doing so reduces the number of payment standards PHAs would be required to administer.
- Consider an exemption for PHAs administering very few vouchers in Small Area FMR areas. The proposed rule exempts HUD Metropolitan FMR Areas with less than 2,500 HCVs under lease from using Small Area FMRs. HUD is seeking public comment in this proposed rule on allowing small PHAs in Small Area FMR areas to continue to use metropolitan FMRs, particularly if such PHAs' tenants are not concentrated in high poverty neighborhoods.

In addition to the above, the presentation of the information in HUD's proposed revision to its PHA administrative fee formula would also soften any adverse impact by providing additional resources to small PHAs generally.

## 7. Overlapping Federal Regulations

The Housing Choice Voucher program is the major rental assistance program of the federal government, providing assistance to 2.2 million households. While there are many other government policies aimed at providing affordable housing, the Small Area FMR change in policy will not adversely interact with any one of them. Instead, the rule will make it easier for

PHAs to comply with HUD's Affirmatively Furthering Fair Housing rule by providing greater access to areas of opportunity. In other efforts, HUD has cooperated with other federal agencies through the Rental Policy Working Group to identify and eliminate overlap or duplication that increase the cost of providing affordable housing.

## 8. Conclusion

The majority of lessors of residential real estate and a substantial fraction of PHAs are characterized as small. If there were disproportionate effects on small entities, then a more detailed regulatory flexibility analysis would be merited. However, after an in-depth discussion of the industry structure and impact of the rule, HUD cannot conclude that there is a significant and disproportionate impact on small entities. It is true that many lessors may receive income from voucher tenants but it is not likely that they will be adversely affected once market forces are accounted for. Small PHAs could face an additional administrative burden but HUD has offered solutions to significantly reduce any burden.