

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

Office of the Secretary

24 CFR Part 888

[Docket No. R-95-1764; FR-3694-P-01]

RIN 2501-AB76

**Fair Market Rents for Section 8
Housing Assistance Payments
Program; Amendments to Method of
Calculating**

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to the Department's regulations at 24 CFR part 888 governing the method of calculating Fair Market Rents (FMRs) for the Section 8 Rental Certificate program (including space rentals by owners of manufactured homes under that program); the Moderate Rehabilitation program (including Single Room Occupancy); housing assisted under the Loan Management and Property Disposition programs; payment standards for the Rental Voucher program; and any other programs whose regulations specify the use of such FMRs.

DATES: Comments due date: April 3, 1995.

ADDRESSES: Interested persons are invited to submit comments on this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications must refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Benoit, Rental Assistance Division, Office of Public and Indian Housing, (202) 708-0477 (TDD: (202) 708-0850), for questions relating to the Section 8 Rental Certificate, Rental Voucher, and Moderate Rehabilitation programs;

Barbara Hunter, Program Planning Division, Office of Multifamily Housing Management, (202) 708-3944 (TDD: (202) 708-4594), for questions relating to all other Section 8 programs.

David Pollack, Office of Community Planning and Development, (202) (708-1234) (TDD: (202) 708-2565), for questions relating to Moderate

Rehabilitation, Single Room Occupancy (SRO).

Michael Allard, Office of Policy Development and Research, (202) (708-0577) (TDD: 708-1455), for questions relating to measurement of rent levels.

Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Introduction and Applicability

Section 8 of the U. S. Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid low-income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) established by HUD for the Rental Certificate program, or by payment standards established by local housing authorities for the Rental Voucher program based on the FMRs. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately-owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. (The amount of rent payable by a resident of assisted housing is based on income, not the FMR.)

Under section 8(c) of the Act, the Secretary of HUD is directed to establish FMRs periodically, but not less frequently than annually. HUD publishes proposed FMRs each year, and after a period of public comment, publishes the final FMRs for the next fiscal year.

The method used to calculate FMRs is described in 24 CFR part 888, subpart A. With this publication HUD is updating that regulation to specify the most current information being used. This rule would amend the regulations:

(1) To change the FMR rent standard from the 45th to 40th percentile rent of the rent distribution of rental housing units;

(2) To identify Random Digit Dialing (RDD) telephone surveys as a data source used to establish FMRs for selected individual areas and to develop rent-change factors for updating FMRs;

(3) To provide that FMRs for manufactured home spaces are set at 30 percent of the FMR for a two-bedroom housing unit;

(4) To authorize the Secretary to establish FMR areas that differ from the OMB definitions of metropolitan areas where the OMB definitions are determined by HUD to be larger than housing market areas; and

(5) To state the requirement that, in order to be considered as a basis for

revising the FMRs, public comments on proposed FMRs must contain statistically valid rental housing survey data justifying the requested changes.

The amendments to the method of calculating FMRs proposed in this rule would apply to the following Section 8 Housing Assistance Payments programs: The Rental Certificate program, including space rentals by owners of manufactured homes; the Moderate Rehabilitation program and Moderate Rehabilitation SRO Program; the loan management program for projects with HUD-insured or HUD-held mortgages, as well as the Property Disposition program; and any other HUD programs whose regulations provide for the use of these FMRs (e.g., programs to assist the homeless). In addition, the rule would amend the regulations to reflect use of FMRs to establish payment standards for the Rental Voucher program.

II. Discussion of Amendments

Change in Percentile (§ 888.113(a))

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent.

This rule would change the definition to the 40th percentile rent of the rent distribution of standard quality rental housing units. The impact of this proposal is that FMRs on average will be 3.3 percent less than if they were set at the 45th percentile level. The current FMR standard is believed to be higher than necessary for successful operation of the affected programs. HUD believes that the change in the FMR standard will not significantly alter the amount, or quality, of rental housing available to program participants. The sample data used to calculate FMRs will continue to exclude substandard units and public housing units, and the FMR standard will continue to be based on only units occupied by recent movers.

Added Data Source (§ 888.113(c))

In developing the base-year FMR estimates, HUD uses the most accurate and current data available. The

regulations currently provide for two sources of survey data: (1) The decennial Census and (2) post-Census American Housing Surveys (AHSs). The regulations also currently provide for base-year FMRs to be updated each year using Consumer Price Index (CPI) data for rents and for utilities. This rule would amend the regulations to include Random Digit Dialing (RDD) telephone surveys as a third data source for base-year estimates and for rent-change factors for updating rents in FMR areas without a local CPI survey. The RDD telephone survey technique is based on a sampling procedure that uses computers to select random samples of telephone numbers. Each sampled number is phoned to establish eligibility for the survey and, if eligible, the respondent is asked about the unit's rent and utility usage.

Three types of RDD surveys are used, the first two on behalf of HUD, and the third by individual PHAs. Under contract with HUD, a professional survey firm does large-scale RDD surveys to establish base-year FMRs for areas where HUD suspects FMRs might not correspond well with current market conditions. About 60 areas are chosen to be surveyed each year. In addition, the same firm also does 20 RDD surveys to establish rent-change factors in the metropolitan and nonmetropolitan parts of each of the ten HUD geographic regions.

Finally, individual PHAs are encouraged to sponsor or conduct various levels of RDD surveys if they wish to comment on proposed FMRs. The larger PHAs are encouraged to contract with professional survey firms to do large-scale RDD surveys. Smaller PHAs are allowed to use a simplified version of the RDD survey that makes it possible for them to do their own RDD surveys. (PHAs and other commenters are not required to use RDD surveys as long as they provide statistically-reliable, unbiased estimates of the 40th percentile gross rent.)

All of the RDD survey techniques involve drawing random samples of renter units. All exclude public housing units and other subsidized housing where the respondent does not know the full market rent. The surveys also exclude newly-built units and units for which no cash rent is paid. They do not exclude substandard units because there is no practical way to determine housing quality from telephone interviews. However, a HUD analysis conducted specifically to address this issue has shown that the slight downward bias caused by including some rental units that are in substandard condition is almost exactly

offset by the slight upward bias that results from surveying only units with telephones.

Tests in areas where Census, AHS, and CPI data on rents are available have shown that professionally-conducted RDD surveys have a high degree of statistical accuracy. In those tests, HUD concluded that there was a 95 percent likelihood that the rent estimates developed using this approach were within 3 to 4 percent of the actual rent value and that virtually all were within 5 percent. The PHA-conducted surveys using the modified RDD technique are less precise but are still within acceptable ranges of accuracy.

FMRs for Manufactured Home Spaces (§ 888.113(e))

This rule also proposes to calculate FMRs for manufactured home spaces as a percentage of the FMR for two-bedroom units. The base estimates used to calculate the FMRs for manufactured home spaces were not revised in FY 1994 because no data were available in the 1990 Census on manufactured home space rentals, and no other source of reliable data was found that could be used for this purpose.

Originally the FMRs for rental of manufactured home spaces were established using AHS data (no longer available) for the nonmetropolitan parts of states and HUD Field Office surveys of the metropolitan areas. Over the years the FMRs for additional individual areas were established on the basis of local surveys submitted as public comments.

Because the FMRs for manufactured home spaces are based on old survey data, and there is no current data source to update these estimates, HUD does not consider them to be sufficiently accurate for continued use. Further, the very limited use of this part of the Certificate program does not justify the cost of obtaining the necessary survey data to re-benchmark the FMRs. HUD is proposing, therefore, to amend this rule to establish FMRs for manufactured home spaces at 30 percent of the applicable Section 8 two-bedroom FMR for the Rental Certificate program. HUD arrived at the 30 percent standard after analyzing the existing manufactured home space FMRs and concluding that the substantial majority of the FMRs were within a 20 to 30 percent range of the two-bedroom FMRs.

HUD will continue to accept public comments requesting modification of the proposed manufactured home space FMRs for those areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-valid survey data that show

the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. This program uses the same FMR area definitions as the Rental Certificate program. In addition HUD is proposing to retain the manufactured home space FMR revisions approved since 1990. The reason for continuing to use the revised FMRs is that they are based on recent survey data that HUD determined to be valid. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

FMR Areas (§ 888.113(b))

Section 888.113(b) would be amended to authorize the Secretary to make exceptions to the use of the Office of Management and Budget definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) as FMR areas where HUD determines that use of an MSA or PMSA would encompass an area that is larger than a housing market area.

Public Comments On Proposed FMRs (§ 888.115)

The proposed rule states the requirement that, in order to be considered for approval, public comments on proposed FMRs must contain statistically-valid rental housing survey data justifying the requested revision. Each year, the Department receives, in response to its request for public comments on proposed FMRs, comments that merely object to the proposed FMRs for the area, but do not contain any documentation to support the assertion that the FMRs are inaccurate. The Notice announcing proposed FMRs has always stipulated that such documentation be included in the comment. This rule would make the regulations for the program clear that adequate supporting rental housing survey data are necessary to justify a requested change.

III. Justification for Reduced Comment Period

HUD's general policy is to provide a 60-day public comment period. For this proposed rule, however, HUD is providing only a 30-day comment period. The reduced comment period is justified because the public has had ample notice that HUD was contemplating the 40th percentile Fair Market Rent (FMR) standard.

On June 23, 1994 (59 FR 32492), HUD published a notice in the **Federal Register** containing two separate sets of proposed FMRs—one based on the 45th

percentile rental distribution of standard quality rental housing units, and the other based on the 40th percentile rent of the same rental housing distributions. The published notice explained that HUD was considering a 40th percentile FMR standard. A reduction in the FMR standard was also announced as a proposed cost savings measure in HUD's FY 1995 budget presentation.

The June 23, 1994 Notice requested public comment on the proposed FMRs at both the 45th and 40th percentiles. Since the public has already had the opportunity to consider the proposed change in the FMR standard and to comment on the actual proposed FMRs at the 40th percentile level, an abbreviated comment period on the same idea will not have an adverse impact on the ability of the public to participate in this rulemaking.

The Department believes this abbreviated comment period is justified in order to speed the publication of a final rule which will allow more low income families to receive housing assistance.

IV. Other Matters

Executive Order 12866, Regulatory Planning and Review

This proposed rule was reviewed and approved by the Office of Management and Budget as a significant rule, as that term is defined in Executive Order 12866, which was signed by the President on September 30, 1993. Any changes to the proposed rule as a result of that review are contained in the public file of the rule in the office of the Department's Rules Docket Clerk.

Environmental Assessment

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321-4374) is unnecessary, since the establishment and review of fair market rents is categorically excluded from the Department's regulations implementing the National Environmental Policy Act at 24 CFR 50.20(I).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have a significant impact on family formation, maintenance, or well-being. The proposed rule would amend the method for calculating Fair Market Rent for various Section 8 assisted housing programs, and would not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that this proposal would not involve the preemption of State law by Federal statute or regulation and would not have Federalism implications. The establishment of Fair Market Rents does not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

Semi-Annual Regulatory Agenda

This rule was listed as sequence number 1727 in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641) under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

Accordingly, title 24 of the Code of Federal Regulations would be amended as follows:

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

1. The authority citation for part 888 would continue to read as follows:

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

2. Sections 888.101 and 888.105 would be removed, and § 888.111 would be revised to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

The Fair Market Rents (FMRs) for existing housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Certificate Program, including space rentals by owners of manufactured homes under the Section 8 Certificate Program, the Section 8 Moderate Rehabilitation Program, Section 8 existing housing project-based assistance, and Section 8 existing housing assisted under part 886. FMRs are also used to determine payment standard schedules in the Rental Voucher program.

3. Section 888.113, would be revised 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. They 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 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude Public Housing units and newly built units.

(b) *FMR Areas.* 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) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs 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.

(c) *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 decennial Census, which provides statistically reliable rent data.

(ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.

(iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

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

(2) Base-year 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 or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts

of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.

(d) *Bedroom size adjustments.* (1) For most areas the ratios developed from the most recent decennial Census 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.

(e) *Manufactured home space.* The FMR for a manufactured home space is 30 percent of the FMR for a two-bedroom unit, or, where approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home space FMRs for areas where space rentals are thought to differ from the 30 percent standard. To be considered for approval, the comments must contain statistically-

valid survey data that show the 40th percentile manufactured home space rent (excluding the cost of utilities) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the Rental Certificate program FMRs.

4. Section 888.115 would be revised to read as follows:

§ 888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically-valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

Dated: January 30, 1995.

Henry G. Cisneros,

Secretary.

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