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HASTY CHANGES TO HUD'S "FAIR MARKET RENTS" WOULD DISRUPT HOUSING ASSISTANCE

HUD Plans to Put New Rent Standards into Effect Before Completing Process for Ensuring They Are Set at the Proper Level

by Will Fischer and Barbara Sard

On August 6, 2004, HUD published proposed rent standards — known as "Fair Market Rents" or FMRs — for use in the Section 8 housing voucher program and other low-income housing assistance programs in fiscal year 2005. For many local areas, the proposed 2005 FMRs are sharply different from the 2004 level for the same area.

In most years, HUD publishes proposed FMRs (which are based on market rents in local areas around the country) in May, allowing more than four months for the Department to receive and process public comments before the final FMRs go into effect at the start of the following fiscal year on October 1. This year, HUD published the proposed FMRs about three months behind the normal schedule and has failed to delay their implementation beyond October 1. As a result, only a very brief period is available for the submission of public comments, which often provide local rent data that HUD relies on to set FMRs more accurately, before the FMRs are put into effect. Moreover, under this hurried implementation schedule, the new Fair Market Rents will take effect *before* HUD has completed surveys of local rent data it has planned to ensure that FMRs accurately reflect local market conditions.

Implementation of the proposed 2005 FMRs — even for a few months — will result in major disruptions to low-income housing assistance, particularly in areas where there will be large FMR reductions. In large areas of the country:

- low-income families will face higher rents and more limited housing choices;
- developers may be forced to cancel some planned affordable housing developments; and
- landlords and local housing agencies will need to take on costly, unnecessary administrative burdens.

HUD has provided no reasonable explanation for its decision to provoke such disruptions when it has not completed the process of setting FMRs and will likely make major revisions to the rents after they go into effect. HUD should exercise its legal authority to delay implementation of the new FMRs until it has received all public comments and completed the planned study and analysis of local rent data. In addition, HUD should provide that final reductions in FMRs will not apply to families now using vouchers to help pay their rent, as long as they remain in their current homes.

HUD's Proposed "Fair Market Rents" for Fiscal Year 2005 Contain Unusually Large Changes Compared to 2004

HUD sets FMRs for several thousand local areas around the country based on market rents for modest housing of different bedroom sizes. Generally, the FMR is the amount that would be sufficient to cover rental charges for 40 percent of the housing units in an area. FMRs are used to set maximum rent levels in the "Section 8" housing voucher program and other housing assistance programs.

Each year, FMRs are adjusted to reflect trends in local market rents. The proposed 2005 Fair Market Rents, however, contain unusually large changes compared to the fiscal year 2004 Fair Market Rents. The proposed 2005 FMR is at least 5 percent above or below the 2004 level for at least one bedroom size in *99 percent* of the nation's counties. By contrast, the 2004 FMR represented a 5 percent or greater change from the 2003 FMR in *fewer than 2 percent* of counties nationally. In addition, under the proposed 2005 FMRs, more than three-fifths of counties face an FMR increase or decrease of *20 percent or more* for at least one bedroom size. In some cases, the proposed changes in 2005 are quite extreme. In parts of the Boston metropolitan area, for example, the proposed 2005 FMRs for some bedroom sizes are *less than half* of the 2004 level. Unless earlier FMRs were grossly inflated, a cut of this magnitude is likely to make it difficult or impossible for families with vouchers to rent housing in these communities.[1]

There appear to be three main reasons for the large shifts in the proposed 2005 FMRs:

- **The fiscal year 2005 FMRs are the first to make use of data from the 2000 Census.** It takes several years after completion of the decennial Census for the Census Bureau and HUD to process rent data for use in calculating FMRs. In the intervening years, HUD updates FMRs using data from rent surveys that are less comprehensive and reliable than the Census, and when the Census data become available they often result in large changes to FMRs. Unusually large changes in FMRs also occurred in 1994, when data from the 1990 census became available.

- **HUD has set the proposed 2005 FMRs for local areas with very different boundaries from the boundaries used in 2004.** The 2005 FMRs are the first to be set using Office of Management and Budget (OMB) metropolitan area definitions published in 2003. HUD used these definitions to determine the boundaries of the areas for which FMRs are set, and those boundaries are substantially different from the boundaries used in 2004.

[1] In most of the country, HUD groups a number of counties in a single FMR area. For comparisons of 2004 and proposed 2005 FMRs in every county, see http://www.nlihc.org/2005fmrs/data.htm. In the New England states, however, until now FMR areas have consisted of various cities and towns, without strict regard to county lines. The proposed 2005 FMRs would redraw all the FMR areas in New England using county boundaries. This radical change would cause particularly extreme increases and decreases in FMRs for particular cities and towns. For a comparison of the 2004 and proposed 2005 FMRs in Massachusetts, see http://www.chapa.org/fy05fmrlistcounty.pdf.

Changes in area boundaries can result in large shifts in FMR levels. Many metropolitan areas with relatively high rents were expanded to include formerly rural counties on their fringes, where rents are often considerably lower. A single FMR for each bedroom size is set for the now-enlarged area, with the result that the proposed FMRs for the newly added rural counties often increase substantially while the proposed FMRs for the counties already in the metropolitan area can decrease markedly. The Atlanta metropolitan area, for example, was expanded from 20 counties to 28 counties. Under HUD's proposed FMRs, the 20 original metropolitan counties would experience FMR declines, while the eight newly added counties would see FMRs for some bedroom sizes double.

HUD has the authority to adjust OMB's metropolitan area definitions for purposes of calculating FMRs. In the past, HUD has made use of this authority to detach some counties on the fringes of metropolitan areas that it did not find to be part of the metropolitan area's housing market and to calculate FMRs separately for those counties. For example, in prior years, HUD detached six counties in Virginia and West Virginia that OMB had defined as part of the Washington, DC, metropolitan area. This year, however, HUD adopted OMB's definitions without adjustment.[2]

- **HUD made changes in the methodology it uses to set FMRs.** HUD has found over time that setting FMRs at the 40th percentile of local market rents tends to result in levels that are too low to provide adequate housing opportunities in some rural areas and for large families. As a result, for a number of years, HUD has made statistical adjustments to raise FMRs for rural areas and housing units with three or more bedrooms. When it calculated the 2005 FMRs, HUD substantially altered the methods it uses to make these adjustments, resulting in sharply different FMRs than would have resulted had the adjustment methods been left unchanged.[3] The changes to HUD's adjustments for units with three or more bedrooms have the effect primarily of lowering large-unit FMRs, which is likely to reduce housing opportunities for large families participating in the voucher program and other housing assistance programs.

HUD Plans to Put the New FMRs into Effect Before Completing the Process for Ensuring That They Are Set at the Proper Level

HUD has stated that the 2005 FMRs will go into effect on October 1, 2004, less than two months after they were first proposed on August 6. This short interval is a major departure from HUD's usual process. Typically, HUD has published the proposed FMRs in May, more than

[2] HUD has given no indication that it reviewed OMB's new metropolitan area definitions to determine whether they accurately represent the boundaries of housing markets.

[3] A detailed discussion of changes in FMR area boundaries and HUD's methodology for calculating FMRs, together with a set of recommendation on those issues, is contained in technical comments submitted to HUD on September 7, 2004 by the Center on Budget and Policy Priorities and ten other organizations. Those comments are available on the internet at http://www.nlihc.org/2005fmrs/comments.pdf.

four months before the final FMRs go into effect. As a result of the hurried timeline that HUD has established for implementing the 2005 FMRs, two key parts of the process for ensuring that the FMRs are set at the proper level will not be completed until *after* the FMRs are in effect.

First, HUD will not have completed local rent surveys that it has commissioned in order to ensure that FMRs in a number of areas accurately reflect local market conditions. In most years, HUD conducts telephone surveys of local rents in various areas to supplement the rent data available from the Census Bureau. Under HUD's normal process, the results from these local surveys are available before October 1, and are incorporated into the final FMRs that are published on that date.

Local telephone surveys take on particular importance this year, because the proposed 2005 FMRs show such large changes compared to the 2004 FMRs, and surveys of current rental charges are the best tool for determining whether these changes are justified by local conditions. HUD has indicated that it has planned and commissioned local surveys in 70 metropolitan areas where it is proposing "unusual changes" in the local 2005 FMRs. The results from some of these surveys, however, will not be available until after October 1.[4]

Second, HUD's process for receiving and responding to public comments on the proposed FMRs will not be completed for more than a month after the FMRs go into effect. Public comments are a critical part of the process of setting FMRs. Without public input, it is not possible for HUD to understand the implications for thousands of local FMR areas of changes in area boundaries and other decisions that HUD makes in setting FMRs. In addition, local housing agencies and other organizations that believe the proposed FMRs for their area are not accurate, but that are *not* located in one of the limited number of areas where HUD is carrying out a local survey, have the option to conduct their own surveys and submit the results as part of their comments. These surveys then enable HUD to set FMRs for that area more accurately than it otherwise could. In recent years, HUD has increased FMRs for a majority of the areas for which local survey data were was submitted as part of the public comment process.

HUD's August 6 notice stated that only comments submitted within 30 days after the proposed FMRs were published will be reflected in the FMRs that go into effect on October 1. This 30-day period is too short to allow agencies to conduct local rent surveys or to provide informed assessments of changes in area boundaries and other technical matters. Recognizing this fact, HUD indicated that it would accept comments for an additional 60 days after the end of the initial 30-day period (that is, through November 8), but comments submitted during this period will have no effect on the FMRs that are put into effect on October 1. In contrast, HUD allowed 116 days for submission of public comments when it proposed similarly extensive changes in 1993 based on the 1990 decennial census.

In addition to allowing an inadequate period of time for comment before the FMRs go into effect, HUD explicitly requested comments on the FMR levels for local areas and requested that such comments be supported by local rent survey data. HUD did not specifically request comments on whether the new geographic FMR area boundaries it used to set the proposed

[4] According to HUD's schedule, surveys for 24 metropolitan areas are due to be conducted in August, 25 in September, and 21 in October.

FMRs better reflect actual housing markets, even though these boundaries are quite different from those used for the 2004 FMRs. This seems inconsistent with a directive from OMB instructing all federal agencies to request public comments on the appropriateness of the new geographic areas before using OMB's area definitions for a non-statistical purpose.[5]

Changes in Fair Market Rents Will Disrupt Housing Assistance to Low-Income Families

Because HUD will continue to analyze local rents and receive public comments after October 1, HUD is likely to revise some of the FMRs that go into effect on October 1 at some unspecified later date. In some areas, FMRs thus will be reduced far below the 2004 level on October 1, and may later be restored to close to or above the 2004 level.

Large reductions in FMRs, however, will cause major disruptions is housing assistance to low-income families even if the FMR changes are later undone. For example:

- **Families with housing vouchers will face higher rent burdens and more limited housing choices.** Housing agencies that administer vouchers must set the maximum amount of rent that a voucher can cover between 90 and 110 percent of the local FMR, unless they receive special permission from HUD (which has not been granted in the last year) to set the maximum rent higher.[6] This range allows agencies some flexibility to insulate families with vouchers from the effects of FMR shifts, because an agency could respond to a drop in the FMR by raising the percentage of the FMR at which it sets the maximum rent. In 21 percent of the counties in the country, however, the proposed 2005 FMRs for at least one bedroom size are low enough that even if the maximum rent were set at 110 percent of the new FMR, it would still be below the 2004 FMR. As result, housing agencies in these counties will have to reduce their maximum rents below the 2004 level (unless they happen to have set the maximum rent below the FMR

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[5] See OMB Guidance of Uses of Statistical Area Definitions, February 18, 2004, page 1, http://www.whitehouse.gov/omb/bulletins/fy04/b04-03.html):

> In cases where there is no statutory requirement and an agency elects to use the Metropolitan, Micropolitan, or Combined Statistical Area definitions in nonstatistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. When an agency is publishing for comment a proposed regulation that would use the definitions for a nonstatistical purpose, *the agency should seek public comment on the proposed use.* …In addition, in light of recent changes to the statistical area definitions, OMB urges Federal agencies that use the statistical areas for allocating program funds to provide information to the public on their plans and schedules for using the new definitions. (Emphasis added.)

[6] In rejecting requests from commenters in 2001 to revise the geographic area used to set the FMR to separate higher cost from lower cost areas, HUD relied on its ability to offset resulting lower FMRs for large areas by allowing agencies in the higher cost portion of FMR areas to provide maximum voucher payments above 110 percent, or even 120 percent, of the FMR. See 66 Federal Register 50026 (October 1, 2001). Since at least the fall of 2003, HUD has refused to exercise this discretionary authority.

in 2004 or receive permission from HUD to raise the maximum rent above the 110 percent of the FMR in 2005).

When the maximum amount of rent that a voucher can cover is reduced, families must either rent an apartment with a rent below the new cap or pay all of the rent above the cap themselves, which can be a difficult prospect for families that typically have incomes below the poverty line. One likely effect is a greater concentration of low-income families in low-rent areas with fewer job opportunities and poorer schools. In areas where the new FMRs are substantially below the current FMRs, a greater number of families with vouchers are likely to locate in poorer neighborhoods in which rents are close to the new FMRs, but crime rates may be higher, employment opportunities may be fewer, and schools may be of lower quality.

Families that already have vouchers and remain in their current apartments should not face this choice right away, as they have a grace period of one to two years before they are affected by such changes. But they (and their landlords, who will be at risk of losing rental income) will be affected eventually.[7] And new voucher recipients, as well as families with vouchers that seek to move to another apartment, will be affected immediately.

Moreover, families with vouchers typically enter into rental leases for one year. A family compelled by a FMR reduction to sign a lease for an apartment in a high-poverty, high-crime neighborhood will generally be stuck in the bad neighborhood for a full year even if HUD subsequently corrects and raises the FMR.

- **Housing agencies that administer the voucher program will be forced to carry out burdensome, unnecessary reviews of rents covered by vouchers.** Housing agencies are required to review the rent covered by a voucher at the time the voucher is first used to rent a unit and whenever the landlord seeks to raise the rent in order to ensure that the rents are reasonable when compared to rents in the local market. This process is administratively burdensome but helps ensure that the voucher program does not pay for exorbitant rents. If the local FMR falls by five percent or more, housing agencies in the area are required by HUD regulations to review the rents covered by every voucher again, regardless of whether the landlord wishes to raise the rent.

This rule is intended to ensure that agencies reassess the reasonableness of rents in the wake of major changes in local housing market conditions, but it applies equally to FMR reductions that, like many of the proposed changes, result from changes in area definitions and in HUD's methodology for calculating FMRs. It would begin to apply within two months of the date the new FMRs go into effect,

[7] Since the late 1990s, HUD regulations have provided this grace period in order to allow families time to find another unit if they would rather move than shoulder the increased rent burdens that result from a reduction in the maximum voucher payment. Senior HUD staff have indicated, however, that they are considering removing this protection in order to reduce voucher costs.

even if HUD is still considering revisions to the FMRs, as is likely to be the case for a number of areas. (Based on past practice, it is unlikely that HUD could review the results of the local telephone rent surveys it plans to conduct in October, and review rent survey data submitted by commenters in early November, in time to incorporate valid results and publish final FMRs by December 1.) The added rent reasonableness assessments that would be required would impose substantial added administrative costs on housing agencies, many of which are already straining to meet their administrative costs with the funding HUD has provided, and in some cases would place burdens on landlords as well.

- **Efforts to construct or preserve affordable housing may be canceled.** Several HUD programs that build new affordable housing or preserve existing affordable housing units set maximum rents based on the local FMR. For example, rents charged to families in units funded by the HOME program, which supports construction and preservation of affordable housing as well as other housing-related activities, cannot exceed the FMR. A reduction in the FMR will reduce the amount of rental income that developers can expect to receive from HOME-funded developments that are in the planning stages[8] and consequently will lower the amount of money the developer can borrow to finance the project, sometimes to such a degree that the project will become financially infeasible. Even a temporary cut in the FMR could derail development projects, since such projects are sometimes quite sensitive to timing.

HUD Should Delay Implementation of 2005 FMRs Until They Are Finalized

HUD has the legal authority to delay the implementation of fiscal year 2004 FMRs while it completes the process of ensuring that the FMRs are set at the proper level. There is precedent for such an approach.[9]

HUD's proposed FMRs for 1994 contained major changes compared to the 1993 level, mainly because it was the first year in which HUD made use of data from the 1990 Census. HUD was unable to process all of the comments it received that year in time to set final 1994 FMRs on October 1, 1993, even though it had published the proposed FMRs on May 6, nearly five months earlier. To avoid changing FMRs that might shortly need to be changed again, HUD kept the fiscal year 1993 FMRs in effect beyond October 1 for areas where it was still considering comments. Furthermore, based on concerns that in the face of FMR reductions owners "would not renew leases at a lower rent and families would be forced to move," HUD put in place an indefinite "hold-harmless" directive specifying that the FMR reductions would not apply to families receiving rental assistance as long as they remained in the same housing units.

[8] Under program rules, reductions in the FMR that occur after HOME funds have been committed to a project do not reduce the amount of rent that owners can charge.

[9] Section 8(c)(1) of the U.S. Housing Act requires HUD to publish FMRs for effect each October 1, "based on the most recent available data." As described below, when HUD has not been able to make a final determination by October 1 using recent data, it has published the prior year's FMRs for effect in the new fiscal year and then adjusted them in the following months.

In addition, HUD's request for comments on the proposed fiscal year 2005 FMRs is so narrowly framed that it likely deterred public comments on issues such as changes in the geographical definition of FMR areas. As a result, simply following the approach HUD took in 1993, while helpful, would not be an adequate response. Consequently, we recommend that HUD:

- Immediately reissue a notice specifically soliciting comments on the area definitions used in the proposed 2005 FMRs and other methodological changes and allow until the current deadline of November 8 for submission of comments in response to the notice.
- Keep 2004 FMRs in effect in all areas until the November 8 deadline for the submission of comments. In areas for which comments that HUD needs to consider are not submitted by November 8, new FMRs could then take effect.
- For areas where comments have been submitted or local rent surveys are in progress, keep 2004 FMRs in effect until review of comments and processing of survey results has been completed.
- Specify, just as it did in fiscal year 1994, that current voucher holders will not be affected by reductions in maximum payments that housing agencies are compelled to impose due to the new FMRs until the voucher holder moves to a new housing unit. (If housing agencies determine that the rent of particular units exceeds the rents of similar units in the same neighborhood, however, they would continue to require the owners to reduce the rent and would reduce the amount of subsidy paid.)