DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888, 982, 985

[Docket No. FR 4606–I–01]

RIN 2501–AC75

Fair Market Rents: Increased Fair Market Rents and Higher Payment Standards for Certain Areas

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements HUD's new fair market rent (FMR) policy. The new FMR policy targets relief to 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. With respect to the Housing Choice Voucher Program, the policy provides that where necessary to ensure the effective operation of this program, PHAs will be allowed to set their payment standards based on the 50th percentile rent rather than the published 40th percentile FMR. This aspect of the policy is designed to ensure that families with housing vouchers have access to at least half of all available units in those areas. In addition, the new FMR policy increases FMRs to the 50th percentile in those metropolitan areas where an FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. Where it is determined that an FMR increase is needed in a metropolitan area, the increased FMR applies to all the HUD programs that use FMRs in that metropolitan area.

DATES: *Effective Date:* December 1, 2000. *Comment Due Date:* November 16, 2000.

ADDRESSES: Interested persons are invited to submit written comments regarding this interim rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0477; or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, Room 8224, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone number (202) 708–0590. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

I. HUD's New FMR Policy

HUD's new FMR policy, being implemented through this interim rule, is designed to achieve two fundamental program objectives: (1) Ensuring that low-income families are successful in finding and leasing decent and affordable housing; and (2) ensuring that low-income families have access to a broad range of housing opportunities throughout a metropolitan area. To achieve the first objective, the policy provides that for the Housing Choice Voucher program, PHAs will be allowed to set their payment standards based on the 50th percentile rent rather than the published 40th percentile FMR in areas where families are having difficulty using housing vouchers to find and lease decent and affordable housing. To achieve the second objective, FMRs will be increased to the 50th percentile in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. Where it is determined that a FMR increase is needed in a metropolitan area, the increased FMR applies to all the HUD programs that use FMRs in that area.

Section II of this preamble which immediately follows further discusses how HUD intends to achieve these two objectives through its new FMR policy.

II. Increasing the Proportion of Voucher-Holders That Find Housing and Expanding Housing Opportunities Throughout the Metropolitan Area

Ensuring that voucher-holders are successful in finding decent affordable housing. In many areas, HUD's current FMRs based on the 40th percentile rent are adequate to allow low-income families with housing vouchers to find and lease decent and affordable housing. In some areas, however, these FMRs are inadequate to enable these families to lease decent and affordable units. HUD's new FMR policy authorizes PHAs to use voucher payment standards based on a 50th percentile rent (rather than the published 40th percentile FMR) where fewer than three-fourths of the families issued vouchers succeed in using them to find and lease housing.

Unlike HUD's former certificate program, in which maximum subsidy levels were governed by the FMR, maximum subsidies under the new Housing Choice Voucher program are governed by a ''payment standard.'' Rather than being required to set subsidy levels at the FMR that applies to the entire FMR area—which may be too low or too high for the particular communities they serve—PHAs have discretion, without requesting HUD approval, to set voucher payment standard amounts anywhere between 90 and 110 percent of the published FMR for each unit size. PHAs also may set different payment standard amounts within this range for designated parts of the FMR area. This gives PHAs substantial flexibility to adapt the voucher program to local market conditions.

Most PHAs can run a successful voucher program within this normal 90 to 110 percent range of the current published 40th percentile FMR. In some cases, however, even the maximum 110 percent of the FMR is too low to enable families to find suitable housing with a voucher. The new policy addresses this problem by providing that where a PHA has increased its voucher payment standard to 110 percent of the FMR, but still finds that fewer than 75 percent of all families issued rental vouchers over the course of six months have become participants in the voucher program, the PHA will be eligible to set its payment standard based on a 50th percentile rent (rather than the published 40th percentile FMR).

PHAs that qualify for the higher payment standard amounts will still retain the flexibility to vary their payment standard amounts. The range of payment standards available to them will simply be 90 to 110 percent of a 50th percentile rent (rather than 90 to 110 percent of a published 40th percentile FMR).

This policy which is directed to achieving higher success rates among voucher-holders in finding decent and affordable housing is implemented in § 982.503(e).

Ensuring that low-income families have access to a broad range of housing opportunities throughout the metropolitan area. Another objective of the new policy is to ensure that low-income families are free to move to neighborhoods of their choice throughout the metropolitan area—to have access to a broad range of housing opportunities. Families should not be restricted by low subsidy levels to a narrow range of neighborhoods, and in particular should not be restricted to areas of high poverty concentration. Moreover, to promote welfare-to-work objectives, families with tenant-based rental assistance should have access to housing in areas of job growth or with good transportation access to job centers.

To advance this objective, the new policy provides that HUD will increase FMRs to the 50th percentile in metropolitan areas where there is both: concentration among voucher-holders and evidence suggesting that this problem may be due to the distribution of affordable rental units in the area. This two-part test ensures that scarce resources are properly targeted on the areas most in need of assistance. As a first step in identifying the areas in need of assistance, there obviously needs to be evidence of concentration among low-income families. Because this concentration may be due to low FMRs or to other factors that are unrelated to FMRs, such as family choice, HUD has added a second test to identify those areas where affordable rental housing is not well-distributed throughout the metropolitan area.

Specifically, HUD will increase FMRs to the 50th percentile for metropolitan areas that HUD determines meet the following criteria at the time of annual publication of the FMRs:

- The FMR area contains at least 100 census tracts;
- 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and
- 25 percent or more of the tenant-based rental program participants in the FMR area reside in the five percent of the census tracts within the FMR area that have the largest number of program participants.

For the purposes of this analysis, census tracts have been identified as ''accessible'' to voucher-holders where at least 30 percent of the two-bedroom rental units in the tract fell below the 40th percentile FMR in the last decennial census.

Because mobility is an issue primarily for large metropolitan areas, this aspect of the new FMR policy provides for FMR increases only in metropolitan areas with more than 100 census tracts.

A PHA with jurisdiction in an area with a published FMR at the 50th percentile rent to provide a broad range of housing opportunities may choose to establish its payment standards between 90 and 110 percent of the 50th percentile FMR in accordance with § 982.503(b)(1)(i). However, in the event a PHA determines that its jurisdiction does not require higher payment standards based on the 50th percentile the PHA may request HUD approval to keep or establish payment standards below 90 percent of the 50th percentile FMR in accordance with § 982.503(b)(2).

This aspect of the new FMR policy which is directed at ensuring a broad range of housing opportunities for section 8 voucher holders is being implemented in § 888.113(c).

As provided in this rule, there may be circumstances in which PHAs that had been authorized to use FMRs set at the 50th percentile rent may 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 metropolitan area for three years, but the concentration of voucher holders in the metropolitan area did not lessen and the PHA issuing the voucher did not meet minimum deconcentration objectives. HUD's existing regulations in 24 CFR part 982 provide that a family is not subject to a subsidy reduction because of a reduction in the payment standard until the second regular reexamination of family income and composition following such a payment standard reduction. After this protection period of 13 to 24 months, depending on the timing of recertifications for a family, the family would no longer be protected from the reduction in federal subsidy and thus would have to pay a greater share of rent or move. This rule would provide the same level of protection for families who live in an area where PHAs are no longer authorized to use the 50th percentile FMR.

III. PHA Performance Measurement

HUD is committed to ensuring that its funding to PHAs is spent in an efficient manner that achieves the desired programmatic outcomes. HUD believes that PHAs that adopt payment standard amounts based on the 50th percentile rent to increase success rates of families leasing housing must be held accountable for results through the use of new performance measurements. Accordingly, the interim rule amends HUD's Section 8 Management Assessment Program (SEMAP) regulations in 24 CFR 985.3(p) to provide how the PHA's actions to increase success rates may be measured.

To similar effect, PHAs that choose to utilize the higher FMRs awarded to promote mobility and deconcentration (as indicated by the adoption of payment standards in excess of the new 50th percentile FMR) will be measured under SEMAP to determine their progress in achieving deconcentration.

To allow time for the full effects of the higher FMRs or payment standards to be felt, the new SEMAP measures will not apply during the first year in which the 50th percentile rent is utilized.

IV. This Interim Rule and Related Initiatives

HUD believes that implementation of the new FMR policy through this interim rule (as described above and reflected in the regulatory text that follows) will increase the effectiveness of HUD's programs in assisting families find and lease decent and affordable housing, and increase the pool of housing units available for rent by voucher holders. HUD recognizes, however, that increasing FMRs and allowing PHAs to adopt a higher payment standard may not be sufficient to achieve the results HUD is seeking through this new policy. HUD recognizes that PHAs must also promote and assist the families they serve by providing better housing search assistance. HUD will promote PHA efforts and initiatives to enhance the level and scope of housing search assistance provided and increase the availability of information that explains how the voucher program works.

V. Specific Issues for Comment

HUD seeks comments on its new FMR policy and the implementation of this policy as provided in this interim rule. HUD specifically seeks comment on the following issues:

1. HUD solicits comment on whether the higher FMRs adopted to ensure that low-income families have access to a broad range of housing opportunities throughout the metropolitan area should apply to all HUD programs that use FMRs or just to the Housing Choice Voucher program. Currently, HUD publishes a single FMR for each bedroom size in each FMR area. If the higher FMRs were applied only to the Housing Choice Voucher program, and the current FMRs were applied to other HUD programs, HUD would be required to publish two different sets of FMRs for the same FMR area which could cause confusion. On the other hand, utilizing the higher FMRs in connection with other HUD programs would have cost and policy implications.

Among other purposes, the FMRs published by HUD are used (1) to establish payment standards for the Housing Choice Voucher program; (2) to determine initial contract rents in new commitments for Section 8 project-based assistance (e.g., the project-based voucher program); (3) to determine whether comparability applies to adjustment of contract rents during the term of an existing Housing Assistance Payments contract in the Section 8 new construction, substantial rehabilitation and moderate rehabilitation programs; (4) as a limit on renewal rents for certain Section 8 projects; and (5) to determine eligibility for mark-up-to-market and the maximum rent that may be granted for that program. FMRs are also used to determine subsidy levels in the HOME tenant-based rental assistance program and maximum rent levels in multifamily rental housing developed with HOME funds. HUD welcomes comments that assess the costs and benefits of utilizing the higher FMRs in connection with HUD programs other than the Section 8 Housing Choice Voucher Program.

2. HUD invites proposals on how best to allow State, regional, and multi-jurisdictional PHAs to justify and implement the success-rate payment standard, including whether multi-jurisdictional PHAs should be able to request success rate payment standards for only one or more jurisdictions, and if so, what data should be required to justify such a request and measure performance.

3. HUD also solicits comments on the SEMAP requirements that will apply to PHAs that take advantage of the 50th percentile rent under the terms of this rule. Although the SEMAP rule changes will take effect on the published effective date, the new SEMAP standards will not be implemented for rating purposes until the second PHA fiscal year following implementation of higher payment standards based on the 50th percentile FMR. The final rule, responding to any comments received on the rule, will be published for effect before any ratings are assigned for the new SEMAP standards.

VI. Publication of FMRs

Section 8(c) of the U.S. Housing Act of 1937 (1937 Act) requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations reflect this statutorily required process. Section 888.115 provides that HUD will publish FMRs at least annually. Both section 8(c) of the 1937 Act and § 888.115 also provide that HUD first publish proposed FMRs and provide a comment period for the proposed FMRs of at least 30 days. For the areas that meet the three criteria described earlier in this preamble, HUD will be publishing at a later date the proposed FMRs at the 50th percentile for comment.

VII. Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without a delay in effectiveness that would result from first soliciting public comment, in that such a delay in the implementation of this rule would be contrary to the public interest.

With the recent merger of HUD's tenant-based certificate and voucher programs into a new Housing Choice Voucher program, HUD has made significant strides in increasing housing choice for voucher holder families. However, even with HUD's own investment in expanding the supply of affordable housing and a booming economy, there are a record number of families with worst case housing needs. The nation's strong economy is actually pushing up rents, and as the economy has grown stronger, it has become more difficult in some markets for voucher holders to find affordable housing. In many communities, Housing Choice vouchers holders are literally being priced out of the market, and some recipients are being forced to return their vouchers because they cannot find suitable housing that qualifies under HUD's existing FMR policy. Families have a minimum of 60 days in which to locate suitable housing; PHAs have the discretion to extend this search time.

Over the last several months, PHAs, low-income families, and State and local officials have contacted HUD about the increasing shortage of available affordable housing in certain metropolitan areas and their increasing concern about the growing number of voucher holders who are unsuccessful in finding and leasing affordable housing. Those involved in and affected by this housing issue acknowledge that HUD has done much to increase housing choice, but have requested that HUD take action to increase the pool of rental housing options affordable to families with vouchers, and thereby make housing choice a real opportunity for all voucher holders. These constituents advise that HUD's Fair Market Rents are unrealistically low in certain rental markets, and that HUD's FMRs must be raised to reflect the changing market conditions and assist voucher holder.

Issuance and implementation of this rule, which puts in place the new FMR policy described in this preamble, responds to these concerns. The new FMR policy will significantly increase the pool of housing affordable to voucher holders in difficult rental markets. While HUD's new FMR policy does not adopt all measures requested by HUD constituents to address housing availability problems and concentration of poverty, the rule is a significant step forward in resolving these concerns. The new FMR policy, when implemented, will offer relief to those areas where market conditions are contributing to difficulties that voucher holders experience in successfully using Housing Choice vouchers.

Delaying the effectiveness of this rule to first solicit prior public comment would only contribute to the significant housing problems already documented and experienced in these areas. As noted, HUD has heard from the public on this issue and their comments have been that FMRs need to be raised as soon as possible to a level that will provide relief in tight markets.

For the reasons stated above, HUD believes that good cause exists to publish this rule for effect without prior public comment. HUD also recognizes, however, the value of public comment in the development of its regulations. HUD has, therefore, issued this rule on an interim basis and has provided the public with a 45-day comment period. HUD welcomes comment on the regulatory amendments made by this interim rule. The public comments will be addressed in the final rule.

VIII. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Housing Choice Voucher Program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is an ''economically significant regulatory action'' under section 3(f) of the Order because this rule when fully implemented will have an annual effect on the economy of $100 million or more. In accordance with the Executive Order and OMB's determination, HUD has prepared an economic analysis for this rule.

HUD's economic analysis estimates the increased level of transfers that would result from implementation of the interim rule. The economic analysis measures transfers because in economic terms, HUD's tenant-based program provide transfers from the general population to program participants, transfers that enable the program participants to enjoy better housing and have more income left over after rent for other needs. Changes in the regulations governing these transfers do not generate costs or benefits in economic terms and, therefore, the economic analysis does not involve a comparison of costs and benefits. The actual increase in transfers in the year with highest increase (year 5 of the five years studied) is $174 million. This is 1.8 percent of total program transfers that year. The economic analysis assumes the new FMR policy provided by this rule would be implemented in Fiscal Year 2001. The economic analysis for this rule, which presents HUD's detailed analysis, is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Additionally, any changes made to this rule as a result of review under Executive Order 12866 are identified in the docket file for this rule, which is also available for public inspection in the Office of the Rules Docket Clerk.

Congressional Review of Major Final Rules

This rule is a ''major rule'' as defined in Chapter 8 of 5 U.S.C. The rule will be submitted for Congressional review in accordance with this chapter at the final rule stage.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities because FMRs do not change the rent from that which would be charged if the unit were not in the program. While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

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

List of Subjects

24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 982

Grant program—housing and community development, Rent subsidies.

24 CFR Part 985

Grant programs—housing and community development, Rent subsidies.

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

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

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

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

2. In § 888.113, paragraph (a) is revised, paragraphs (b) through (e) are redesignated as paragraphs (d) through (g), the heading of newly redesignated paragraph (f) is revised, newly redesignated paragraph (g) is revised, and new paragraphs (b) and (c) are added to read 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 either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th 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, newly built units and substandard units.

(b) *Setting FMRs at the 40th or 50th percentile rent.* Generally HUD will set the FMRs at the 40th percentile rent. HUD will set FMRs at the 50th percentile only in accordance with paragraph (c) of this section.

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.* (1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the

FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term ''concentration measure'' means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503(f).

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(f) *Unit size adjustments.* * * *

(g) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the voucher program under part 982 of this title) is:

(1) 40 percent of the FMR for a two bedroom unit; or

(2) When approved by HUD on the basis of survey data submitted in public comments, either the 40th or 50th percentile as applicable of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show either the 40th or 50th percentile manufactured home space rent (including the cost of utilities for the manufactured home) 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 FMRs.

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

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

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

4. In § 982.503, paragraphs (b)(2), (c)(2) and the introductory paragraph of (c)(3)(i) are revised, paragraph (e) is redesignated as paragraph (g), and new paragraphs (e) and (f) are added to read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount (''exception payment standard amount'').

(c) *HUD approval of exception payment standard amount.* * * *

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) 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 either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th or 50th percentile rent method.* In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in § 888.113 of this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(3) *Above 120 percent of published FMR.* (i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

* * * * *

(e) *HUD approval of success rate payment standard amounts.* In order to increase the number of voucher holders who become participants, HUD may approve requests from PHAs whose FMRs are computed at the 40th percentile rent to establish higher, success rate payment standard amounts. A success rate payment standard amount is defined as any amount between 90 percent and 110 percent of the 50th percentile rent, calculated in accordance with the methodology described in § 888.113 of this title.

(1) A PHA may obtain HUD Field Office approval of success rate payment standard amounts provided the PHA demonstrates to HUD that it meets the following criteria:

(i) Fewer than 75 percent of the families to whom the PHA issued rental vouchers during the most recent 6 month period for which there is success rate data available have become participants in the voucher program;

(ii) The PHA has established payment standard amounts for all unit sizes in the entire PHA jurisdiction within the FMR area at 110 percent of the published FMR for at least the 6 month period referenced in paragraph (e)(1)(i) of this section and up to the time the request is made to HUD; and

(iii) The PHA has a policy of granting automatic extensions of voucher terms to at least 90 days to provide a family who has made sustained efforts to locate suitable housing with additional search time.

(2) In determining whether to approve the PHA request to establish success rate payment standard amounts, HUD will consider whether the PHA has a

SEMAP overall performance rating of ''troubled''. If a PHA does not yet have a SEMAP rating, HUD will consider the PHA's SEMAP certification.

(3) HUD approval of success rate payment standard amounts shall be for all unit sizes in the FMR area. A PHA may opt to establish a success rate payment standard amount for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to § 888.113(c), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in § 985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to § 888.113(c). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

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PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

5. The authority citation for part 985 continues to read as follows:

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

6. Section 985.3 is amended by amending paragraph (h)(1) introductory text to add two new sentences to the beginning of the paragraph and adding a new paragraph (p) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

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(h) *Deconcentration bonus.* (1) Submission of deconcentration data in the HUD-prescribed format for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent to provide access to a broad range of housing opportunities throughout a metropolitan area in accordance with § 888.113(c) of this title, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50th percentile rent. Submission of deconcentration data for this indicator is optional for all other PHAs. * * *

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(p) *Success rate of voucher holders.* (1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that have received approval to establish success rate payment standard amounts in accordance with § 982.503(e). This indicator becomes initially effective for the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

(2) HUD verification method: MTCS Report.

(3) *Rating (5 points):* (i) The proportion of families issued rental vouchers during the last PHA fiscal year that have become participants in the voucher program is more than the higher of:

(A) 75 percent; or

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under § 982.503(e)(1) plus 5 percentage points; and

(ii) The percent of units leased during the last PHA fiscal year was 95 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 percent or more following the methodology of § 985.3(n).

Dated: September 12, 2000.

Andrew Cuomo,

Secretary.

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