

(including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2011 were updated to FY 2012 using the same data used to estimate the Housing Choice Voucher program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D. The FMR area definitions used for the rental of manufactured home spaces are the same as the area definitions used for the other FMRs.

V. Review of Comments and HUD's Responses Regarding the Methodology for Calculating the FMR Trend Factor

As previously stated, the comments delivered to HUD in response to the March 9, 2011 (76 FR 12985) **Federal Register** notice concerning the trend factor methodology yielded only one consensus, the need for a trend factor. This section summarizes the comments received and provides HUD's responses. In order to respond to all comments received, HUD has summarized the comments below, and has grouped the comments into two sections: General Comments and Comments on Specific HUD Questions.

A. General Comments

1. *Ensure fairness in FMR methodology.* One commenter states that one of the most basic needs is housing and, especially in these times, many citizens who are willing to work lack opportunities to do so. As a result, these individuals may not have enough to meet their basic needs. The commenter requests that whatever methodology chosen, that it fairly and accurately evaluate the FMR for those in need, so that they might assist these individuals in meeting this most basic need.

HUD Response: HUD's methodology for calculating Fair Market Rents is constructed to be as fair as possible using the most recent data available. HUD will keep these comments in mind as it determines the appropriate method for future FMR calculation decisions.

2. *FMR methodology fails to consider the cost of accessible units.* Another commenter states that the process for calculating FMRs is neither fair nor sensible when applied to units that are wheelchair accessible. The current HUD process treats accessible and non-accessible units as being similar, both in terms of availability and price, when evidence suggests the opposite. The commenter states that until HUD requires a separate analysis of FMRs for accessible units, HUD will be making policy in the dark.

HUD Response: HUD's regulations allow PHAs to approve a higher payment standard on a case-by-case basis, as a reasonable accommodation for a family with a person with disabilities (refer to PIH Notice 2010-11, which was extended by PIH Notice 2011-19). There is no data available that would allow HUD to calculate a separate FMR for accessible units.

3. *Correct failure of FMRs to consider cost of accessible units.* The same commenter recommends that HUD, to correct the defect with respect to FMRs for wheelchair accessible units, (1) grant a 10 percent increase in rent (not to the 50th percentile, but 10 percent more dollars to the FMR), (2) grant an additional 10 percent increase with HUD approval; and (3) grant an extension of time (allowing the family to search longer for an apartment which may not even exist in that price range). The commenter notes that while there may not be statistical evidence regarding the availability of accessible apartments at current FMRs, the commenter's experience as a person with a disability and an attorney with 30 years experience in housing law is that families looking for accessible units have fewer housing choices that cost more than average.

HUD Response: HUD's regulations concerning housing for disabled persons allow PHAs to request exception payment standards as a reasonable accommodation for families with a disabled family member.

4. *Maintain the publication of FMRs in a timely manner and on a certain date.* Two commenters emphasize the importance of timely publication of HUD's FMRs. They state that timely publication permits PHAs and property owners to be able to forecast and plan for rent adjustments and operating expense budgets. Further, FMRs are used in the determination of annual income limits which cannot be published until FMR calculations are completed. Without a date certain for publication of FMRs, uncertainty surrounding the timing of the publication of income limits could worsen and owners of Low Income Housing Tax Credit (LIHTC) properties would not be able to set annual rents.

HUD Response: Under current statutes and regulations, the publication date for Final FMRs remains October 1. Under current rules, FMRs must also be published for comment and given at least a 30-day comment period. HUD has suggested changes to the manner in which the publication of FMRs is completed, and due to the local coverage of ACS data, HUD has recommended that proposed FMRs no

longer are necessary and that comments with requests for FMR reviews could be made following the publication of Final FMRs.

5. *Review of Alternative Tending Methodologies.* One commenter addressed each of the alternative trending methods suggested in the notice. The commenter states that it does not support Alternative 1 (use of overall Consumer Price Index (CPI) data) because local and regional CPI provides a more accurate FMR calculation for specific geographic areas than national CPI data. It also recommends that should HUD use national CPI data rather than local or regional data, it should limit its use to rent and utility, instead of overall, CPI data. The commenter supports Alternative 2 (use of rent and utilities CPI) since, according to the commenter, the use of a local or regional trend factor is a more appropriate way to calculate FMRs. The commenter does not support the use of proprietary information (Alternative 3) since the likelihood of this data providing timely, complete, and usable data, particularly for rural and remote areas, is low. The commenter also supports alternative 4 (seeking legislative change, trending to the midpoint of the fiscal year) as providing a good balance between the use of the most recent local data available and the need to publish the trend factor in advance. Finally, the commenter does not support Alternatives 5 (seeking legislative change, trending to the beginning of the fiscal year) and requests more information to fully consider Alternative 6 (eliminating the need for trending by using the most recent half-yearly CPI and publishing final FMRs between October and December).

HUD Response: HUD takes these comments under advisement, and continues to consider all of these methods as well as others suggested by different commenters.

B. Comments on Specific HUD Questions

HUD Question: Should HUD continue to use a constant trend factor or should the trend factor be updated annually to attempt to capture market changes?

1. Four commenters recommend that HUD use a trend factor that is updated annually, noting that a constant trend factor can substantially understate true costs and put clients who depend on rental assistance and landlords who accept vouchers, at risk. One commenter, for example, states that the volatility of utility costs makes it critical that the trend factor be updated

annually to capture market changes. According to the commenter, this is especially important in the Northeastern United States where heating accounts for a significant portion of utility costs and price volatility is exacerbated by the significant use of fuels such as fuel oil and natural gas. According to the commenter, unless the trend factor is updated annually HUD will not be able to fairly account for utility price volatility. Annual updates of the trend factor would minimize the negative impacts of market changes.

2. A commenter states that the use of the CPI Fuels & Utilities Index masks changes in specific fuels used for home energy, and recommends that HUD replace the use of the Fuels & Utilities Index with three indices (Electricity, Utility (piped) Gas service and Motor Fuels) with the indices used to calculate a state specific trend factor by weighting them based on the percentage of rental units in the state heated by each of the 3 fuels, as provided by the ACS. The commenter recommends use of a fuel oil-specific index if one was available, but believes that the price of heating fuel oil tracks motor fuel prices enough that the Motor Fuels Index is a fair substitute.

3. Another commenter supports use of a trend factor that is updated annually but cautioned that HUD build in stopgaps that eliminate sharp peaks and valleys due to short-term instability. HUD might consider, for example, a stopgap that prevents the factor from changing more than a certain percentage each year. Another commenter recommends that HUD use a rolling average or other techniques to eliminate significant increases or decreases in FMRs. A third commenter states that using a national, constant trending factor does not make sense in a world where many of HUD's programs depend on the local market and its changing activity. The commenter recommends the use of a trend factor that can be updated annually and based on local or regional data. The commenter also cautions that the trend factor should not be negative, as that could have serious programmatic implications, particularly for Section 8 project-based and tax-credit properties. As a result, HUD should treat trends less than or equal to zero growth as zero growth.

4. One commenter recommends that HUD continue its use of a constant trend factor since it minimizes large fluctuations from year to year. The commenter stated that a 10-year or 5-year trending factor would accomplish this goal. The commenter specifically recommends, however, that HUD use a single, national trend factor, based on a

rolling five years of national median gross rent in the ACS. Since the commenter does not believe that ACS data are reliable enough to use as a basis for a trend factor prior to 2005, the year that the ACS was first fully implemented and collected data from every county or county equivalent in the country, the commenter states that a 5-year rolling average using ACS could be implemented within a year, as soon as the ACS data becomes available.

HUD Response: While more commenters supported the use of a trend factor updated annually, all were concerned with controlling volatility in the trend factor. Some who want an annual trend factor were only willing to consider annual increases. Instituting caps and floors for annual trend factors would be new to the FMR estimation process and not necessarily improve the process. Using more detailed utility data would be of little benefit. The more detailed the index of the CPI, the larger the geographic area for which this data is available on a current basis. The ACS does not provide data based on type of heating fuel for rental units, as one commenter suggested, so allocating national utility data to states and determining an appropriate fuel index cannot be done with the ACS. Caps and floors, such as never allowing the trend factor to be less than zero, could be instituted to reduce volatility, but this would also reduce anticipated improvements in accuracy of trend estimates.

HUD Question: The constant trend factor that HUD has used in the past cannot be replicated for 2000 to 2010 based on available 2010 Census data. If a constant trend factor is appropriate, what data and time period should be used for a constant trend factor?

1. One commenter restates its position that a constant trend factor is not appropriate because the results will not reflect the reality of the local rental marketplace. Another commenter that expressed support for a trend factor that is updated annually, and states, should HUD use a constant trend factor, that HUD consider using ACS data for a similar period as has been used previously (10 years).

2. Another commenter expressed a preference for the CPI as the most appropriate basis for the trend factor, and restating the disadvantages of using proprietary data on rental markets. The commenter states that CPI would not add too much additional variation to FMR estimates, noting that FMRs already vary considerably from year-to-year, which in some years, has nothing to do with market conditions but rather

with corrections from prior years. Should the CPI be selected as the basis for the trend factor, the commenter recommends that HUD use the BLS series that calculate annual changes to avoid seasonality issues, since seasonal adjustments are not available at the local/regional level.

3. The same commenter states that HUD's use of a rolling average of local/regional ACS increases in gross rent would be a viable option, as long as HUD determined that such use better met programmatic needs of key constituencies using FMRs in their operations. The commenter concludes that any factor that is more locally-derived and that reflects changes in the market would be an improvement over the current constant, nationally-derived factor.

HUD Response: Since most commenters do not support a constant trend factor, any consensus on this issue is irrelevant. The one commenter that supports the use of a constant trend factor would use the gross rents from the ACS to calculate the trend factor and that is the only way to have a constant long-term trend factor. Although some commenters recommend using CPI data for a constant long-term trend factor, their comments lacked specificity as to how to make the concept operational. CPI data seems best suited to a trend factor that changes on an annual albeit lagged, basis.

HUD Question: Is a national trend factor appropriate, or should HUD limit itself to use of more local options such as regional factors?

1. One commenter states that a regional or local trend factor is more appropriate than a national factor because it provides the most accurate FMR calculation for specific geographic areas. A second commenter agreed, adding that ideally the trend factors should be state specific because there can be substantial differences in utility costs (and the factors that affect them) even within a region. A third commenter encouraged HUD update factors based on regional trends and those in the largest metro areas, or use a data set that provides the lowest level of geography without causing undue problems with sample size or computation or delays in the release.

2. A commenter recommends that HUD consider using regional CPI indices as they are readily available and include regional Fuels and Utilities Index, and more specific Indices for certain utilities (e.g., piped gas). Another commenter states that basing the trend factor on monthly local or regional CPI data would be particularly

ill-advised because monthly CPI numbers are available for a very limited set of local areas, and when available, only every other month or semi-annually. In addition, the commenter states that only the national CPI data are seasonally adjusted and that potential problems with using seasonally unadjusted monthly data should be enough to preclude their use in computing FMRs.

HUD Response: As with the other two issues, one commenter is concerned with the volatility of the data and prefers the use of a national, constant trend factor other commenters want the trend factor to change annually and be at least regional, or the lowest level of geography that is possible. HUD reiterates that these suggestions are contradictory: The more detailed the data the less often it is published, and then at a broader geography. That is, more detailed fuel data cannot be used along with data for the lowest geography possible.

HUD Question: Should HUD allow changes between the proposed and final FMRs resulting from updated trend factors?

1. One commenter states that HUD should be able to allow changes between proposed and final FMRs as long as the changes result in rents that more accurately reflect current, local market conditions. A second commenter agrees that permitting HUD to make changes would permit HUD to use the most recent and most local data possible. The commenter also stated that it would be more effective to discontinue the publication of proposed FMRs, but allow for public comments on the final FMRs, releasing revised final FMRs as needed.

2. One commenter states that allowing updates would provide for less certainty for housing entities. Assuming the proposed FMRs are susceptible to challenge prior to becoming final, the commenter concludes that automatic changes due to updated trend factors should not be necessary.

HUD Response: The purpose of the publishing proposed FMRs would be circumvented if HUD re-estimated FMRs for the final publication using more current data. All proposed FMRs would be subject to change. HUD would prefer not to publish proposed FMRs for comment, but such a change would require a change to the statute.

HUD Question: Is using the more current data for estimating the FMRs more important than providing for public comment before establishing final FMRs for effect?

1. Most commenters support HUD's continued publication of the FMRs for comment. One commenter, for example, notes that the opportunity to comment may present HUD with current data that ensures that changes to FMRs reflect actual changes in the local rental market. The commenter states that a shorter comment period of 30 days may be appropriate and reasonable if HUD uses regional data adjusted for state specific characteristics for estimating trends. The commenter added that a 90-day comment period should apply if HUD changes more than just FMR levels, (e.g., changing the geographic regions where the FMRs apply) or if HUD does not start with regional and State specific data for estimating trends.

2. Another commenter that supports the elimination of a constant national trend factor states that using the most recent data possible would still not merit eliminating the public comment period. The commenter stated public comment permits its members to assess the proposed FMRs and whether they need to request reevaluation in light of current market conditions. Changing the FMRs between the publication of the proposed and final estimates would render the public comment process meaningless.

3. A third commenter states that HUD's use of more current regional or local factors is more important than providing for public comment before establishing the final FMRs as long as there is the opportunity for public comments on the final FMRs and HUD is willing to revise the FMRs as necessary. The commenter recommends, however, that HUD release as proposed for public comment any significant changes to the data sources and the methodology it intends to use in calculating final FMRs at least 60 days prior to their release.

4. One commenter strongly opposes the elimination of a public comment period, stating that public comment adds to the reliability of the FMRs by ensuring that the expertise of individuals affected by the FMRs is considered before HUD publishes its final FMRs. Without a public comment period, there would be no way to contest FMR levels, changes in methodology, or other policy issues. The commenter concludes that while HUD suggests that using CPI data would provide more recent data and potentially shorten the trending period,

it does not believe this is an acceptable trade off for losing the certainty of publication on October 1 and for losing the public comment period.

HUD Response: HUD would prefer to eliminate the comment period, but no commenters support this position. The commenters, if anything, want a longer comment period whenever there are substantial changes to FMR estimation methodology. Given the timing of the data releases, longer comment periods of 60 to 90 days are not possible even when there are major changes, such as for geographic areas. In the past HUD has dealt with this issue of short comment periods by publishing revised final FMRs and sees this as an appropriate mechanism for the future. Clearly the commenters want a formal comment period for FMRs, so HUD will take this under advisement.

HUD Question: Is the seasonality of rent and utility prices important in considering what month to collect data for trending? If so, how should HUD select the month to use or to compare it with?

1. One commenter that strongly supported the use of an annually updated trend factor states that if current, regional data with appropriate state adjustments are used, seasonality adjustments should be relatively unimportant. Another commenter states that seasonality is an important consideration if trending uses data releases separated by less than a year. A third commenter states that seasonality should be used rather than be avoided, particularly depending on the geographic area affected.

HUD Response: There is disagreement on whether seasonality is a concern. HUD views seasonality as a concern because it potentially adds to the volatility of the FMR estimate. While some have proposed caps and floors for trend factor changes to reduce the volatility of FMR estimates, caps and floors tend to increase the noise in an estimate so that constrained trends will add little accuracy to FMR estimates.

HUD Question: Is double counting of CPI data a concern?

1. Two commenters address this issue. Both stated that they recognize this issue but under the current proposals either do not have a strong concern about the issue or feel that the issue is not significant.

HUD Response: HUD believes that when prices are increasing, the double counting of the CPI indices will not be a concern except possibly for budgetary reasons. However, when prices are falling and the FMRs could drop, this

would become an issue with tenants, and landlords. For these reasons HUD does not find double-counting the CPI data, which is already lagged when used for the FMRs, to be an effective forecast of trend.

HUD Question: Is it more important to base a trend on the most recent data possible, or on the most specific geography?

1. One commenter states that both issues are important, and it should not be necessary to choose one over the other. The commenter notes that there are good data sources available that allow for use of both recent and locally relevant data, such as the CPI and ACS. Another commenter gave slight preference to more specific geography, but within limits. Specifically, the commenter states that if using data for areas smaller than the largest metro areas and census regions requires using significantly older data and leads to significant lags in the release of the FMRs, then more local specificity would cease to be the priority.

2. A third commenter states that geography is more important because market conditions are more likely to show greater variance from region to region over a given time period than that reflected in local or regional market conditions over the same period.

HUD Response: HUD is already using the most current ACS and CPI data at the lowest level of geography. There is no way to use current data at the lowest level of geography without ensuring publication of the proposed FMRs regularly in mid- to late-August. The only more current data at the lowest geographic level that could be incorporated for a trend factor, would be the CPI data for the first-half of the year, which comes out late July. Waiting this late for calculation of FMRs would push the proposed FMR **Federal Register** notice to mid-August at the earliest. There would barely be time for a 30-day comment period and recalculation of final FMRs in time for the October 1 final FMR publication. There would still be double counting of the CPI data, which HUD considers problematic.

HUD Question: Is it better to use rent and utility CPI data in developing a trend factor or should other prices be included?

1. One commenter states that in addition to capturing changes in rent and utilities generally, it is also important to account for changes in heating fuel prices specifically because the impacts can vary significantly State by State, and even within a region. A second commenter states that it would

not in advance exclude from consideration additional specific data that would assist FMRs to better reflect the price a household must be able to pay in a specific location in order to be reasonably assured of finding a decent, modest and safe home. The commenter states, however, that generally rent and utility costs in the CPI are likely sufficient.

HUD Response: HUD believes that the rent and utility CPI data currently used is appropriate. The utility CPI data cannot be changed to provide a greater emphasis on heating fuel as appropriate weighting of this fuel sources is not possible.

HUD Question: Should HUD pursue legislative and regulatory changes to reduce or eliminate the need for trending?

1. One commenter supported HUD seeking the legislative changes as proposed in the FY 2012 HUD budget, trending to the midpoint of the fiscal year and using CPI rent and utility data to calculate the trend. According to the commenter, this alternative provides a good balance between the use of the most recent local data available and the need to publish the trend factor in advance. The use of local and regional CPI rent and utility data would provide for more accurate FMR calculations than the use of national CPI data, and the application of the factor through the midpoint of the fiscal year would provide balance in the final FMR calculation. Another commenter states that solutions other than trending in the calculation of FMR may be acceptable as long as the calculation includes some mechanism for considering current market conditions.

HUD Response: HUD would prefer to reduce the period of trending down from a 15-month period to a 6-month or 9-month period, to reduce the impact of this factor. To do so would require a legislative change that assumes the FMR represents a beginning of fiscal year rent, rather than a middle of fiscal year rent.

HUD Question: Is there a data source or aggregation of sources of data provided on a more current basis than the CPI that could be used in the FMR estimation process?

1. No commenter responded that it was aware of any data source or aggregation of sources of data provided on a more current basis than the CPI that could be used in the FMR estimation process.

HUD Response: HUD agrees, but the use of the most current CPI data at the lowest level of geography is the use of

the first half of the year data and, as discussed earlier, incorporating this data makes the publication of the proposed FMR so late as to not allow time for meaningful comments.

Given the divergence in comments, HUD has determined that additional study is required to select an appropriate methodology to employ for this program parameter. HUD will announce a new trending methodology in the FY 2013 proposed FMRs.

VI. Proposal To Formalize a Publication Date for Income Limits

In the comments filed regarding the trend factor, several commenters reminded HUD of the need for publication of FMRs by a certain date. One of the reasons submitted is because HUD uses FMRs in the calculation of income limits used in various federal, state and local housing programs. Currently, there is no statutorily required publication date for income limits. In recent years, HUD has attempted to incorporate the most recent vintage of ACS data into the income limits calculations; however, due to the increase in the number and scope of ACS data products, the publication date for income limits has become later each year.

In an attempt to be responsive to the concerns of the users of Income Limits, HUD is proposing to give the publication of area median family income estimates and income limits a more certain date. Currently, HUD is considering two possible timeframes for the publication of median family incomes and income limits. The first date would be October 1 at the same time that Final FMRs are published. The second date would be December 1. In either case, if HUD were to move the publication date, the FY 2012 Median Family Income estimates and the Income Limits would not benefit from any additional ACS data over what was included in the FY 2011 publication. The FY 2012 Median Family Income estimates and Income Limits, published on either October 1, 2011, or December 1, 2011, under this proposal, would be updated with the FY 2012 FMRs for the purposes of evaluating areas of relatively high or low income to housing cost relationships and would be further updated with CPI to the end of 2010 and trended to the mid-point of FY 2012 in a manner similar to what was done with the FY 2011 Median Family Income estimates and Income Limits. The FY 2013 Median Family Income estimates and Income Limits, published on October 1, 2012, or December 1, 2012, would be the first set of median family income estimates and income limits