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B-328587

November 29, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Development
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Department of Housing and Urban Development: Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Housing and Urban Development (HUD) entitled “Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs” (RIN: 2501-AD74). We received the rule on November 16, 2016. It was published in the *Federal Register* as a final rule on November 16, 2016. 81 Fed. Reg. 80,567.

The final rule applies the Small Area Fair Market Rents (Small Area FMRs) to the Housing Choice Voucher (HCV) program for certain metropolitan areas. This final rule provides for the use of Small Area FMRs, in place of the current 50th percentile rent, to address high levels of voucher concentration in certain communities. The use of Small Area FMRs is expected to give HCV tenants access to areas of high opportunity and lower poverty areas by providing a subsidy that is adequate to cover rents in those areas, thereby reducing the number of voucher families that reside in areas of high poverty concentration.

Enclosed is our assessment of HUD's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that HUD complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Ariel Pereira
Associate General Counsel for
Legislation and Regulations
Department of Housing and Urban Development

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ENTITLED
“ESTABLISHING A MORE EFFECTIVE FAIR MARKET
RENT SYSTEM; USING SMALL AREA FAIR MARKET RENTS
IN THE HOUSING CHOICE VOUCHER PROGRAM
INSTEAD OF THE CURRENT 50TH PERCENTILE FMRs”
(RIN: 2501-AD74)

(i) Cost-benefit analysis

The Department of Housing and Urban Development (HUD) discussed the costs and benefits of this final rule. The main benefit of the final rule identified by HUD is that, through setting rental subsidy amounts at a more local level, assisted households will be more able to afford homes in areas of high opportunity than under current policy. HUD expects such moves to benefit both individual households, for example, through access to better schools or safer neighborhoods, and areas as a whole through reducing concentrated neighborhood poverty. According to HUD, other benefits could arise through the reduction of overpayment of rent in areas where the neighborhood rent is below the metropolitan average. Early evidence from current Small Area Fair Market Rents (Small Area FMRs) locations suggests that there could be per-voucher cost decreases relative to 50th percentile rents, depending on the choices made by tenants. Evidence also suggests to HUD that families moved to better neighborhoods with higher rents, although not greatly in excess of the metropolitan FMR, which resulted in no overall program cost increases. Finally, the final rule eliminates the year-to-year volatility of some areas changing to and from 50th percentile FMRs.

Potential costs of the final rule identified by HUD include the administrative expenses associated with implementation on the part of public housing agencies (PHAs). Additionally, if there are barriers to households moving to areas of higher opportunity beyond housing costs, such as transportation expenses or social factors, assisted households might be worse off if they can no longer afford their current units in their neighborhoods. This may be particularly true for elderly families or families with a disabled member; however, HUD regulations allow PHAs wide latitude in setting payments standards for disabled tenants as “reasonable accommodations” of their disabilities. Finally, if the long-term impacts of the final rule cause per-voucher costs to rise, HUD expects fewer households would receive assistance without an overall increase in program funds.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

HUD determined that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

HUD determined that this final rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On June 2, 2015, HUD published an advance notice of proposed rulemaking. 80 Fed. Reg. 31,332. On June 16, 2016, HUD published a proposed rule. 81 Fed. Reg. 39,218. HUD received 113 comments on the proposed rule and responded to the significant issues raised by public commenters in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

In its submission to us, HUD indicated that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

HUD promulgated this final rule under the authority of sections 1437a, 1437c, 1437f, and 3535(d) of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

This rule was determined to be an economically significant regulatory action under the Order and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

HUD determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law under the Order.