

Rent Reasonableness and Fair Market Rent Under the Emergency Solutions Grants Program

ABOUT THIS RESOURCE

Providing rental assistance through the Emergency Solutions Grants (ESG) program requires understanding and adherence to both Fair Market Rents (FMRs) and rent reasonableness standards, to determine whether a specific unit can be assisted with short- or medium-term rental assistance. This resource provides an explanation of both concepts and describes how to determine and document compliance with each. In addition, it briefly describes some of the differences and similarities between rental assistance provided under the Homelessness Prevention and Rapid Re-Housing Program (HPRP) and ESG. ESG recipients and their subrecipients can use this resource to develop policies, procedures, and documentation requirements to comply with HUD rules.

OVERVIEW

The ESG program Interim Rule allows short- and medium-term rental assistance to be provided to eligible program participants only when the rent, including utilities (gross rent¹), for the housing unit:

1. Does not exceed the Fair Market Rent (FMR) established by HUD for each geographic area, as provided under 24 CFR 888 and 24 CFR 982.503; and
2. Complies with HUD's standard of rent reasonableness, as established under 24 CFR 982.507.²

This requirement is in the ESG program Interim Rule at 24 CFR 576.106(d).

HPRP & ESG: Key Difference

HPRP: Rent must meet rent reasonableness standards.

ESG: Rent must meet rent reasonableness standards and cannot exceed HUD's published FMRs for the area.

In some communities, the reasonable rent for a specific unit may be lower than the FMR that has been established for the community.

Bottom line: The rent for the unit assisted with ESG funds must not exceed the lesser of the FMR or the rent reasonableness standard.

¹ Gross rent is the sum of the rent paid to the owner plus, if the tenant pays separately for utilities, the monthly allowance for utilities established by the public housing authority for the area in which the housing is located. For purposes of calculating the FMR, utilities include electricity, gas, water and sewer, and trash removal services but not cable or satellite television service, or internet service. If the owner pays for all utilities, then gross rent equals the rent paid to the owner.

² The rent must be reasonable when compared to other units of similar location, type, size, and amenities within the community.

DETERMINING IF RENT IS ACCEPTABLE FOR ESG RENTAL ASSISTANCE

Whether a household is seeking to maintain its current housing or relocate to another unit to avoid homelessness (Homelessness Prevention), or exiting homelessness into new housing (Rapid Re-Housing), the process for determining acceptable rent amounts is the same:

- The recipient or subrecipient first compares the gross rent (see box below) for the current or new unit with current FMR limits, which are updated annually.
- If the unit's gross rent is at or below FMR, the recipient/subrecipient next uses current data to determine rent reasonableness (more information is provided below on how to determine and document this).

If the gross rent is at or below both the FMR **and** the rent reasonableness standard for a unit of comparable size, type, location, amenities, etc., ESG funds may be used to pay the rent amount for the unit.

If the gross rent for the unit exceeds either the rent reasonableness standard or FMR, ESG recipients are prohibited from using ESG funds for **any** portion of the rent, even if the household is willing and/or able to pay the difference. However, because the FMR and rent reasonableness requirements apply only to rental assistance, ESG funds may be used:

1. to pay for financial assistance and services to help the eligible program participant stay in the unit, or
2. to pay for financial assistance and services to locate and move to a different unit that meets the rent reasonableness standard and is at or below FMR and pay rental assistance in that unit.

Rent reasonableness and FMR requirements **do not apply** when a program participant receives only financial assistance or services under Housing Stabilization and Relocation Services. This includes rental application fees, security deposits, an initial payment of "last month's rent," utility payments/deposits, and/or moving costs, housing search and placement, housing stability case management, landlord-tenant mediation, legal services, and credit repair. (**Note:** "Last month's rent" may not exceed the rent charged for any other month; security deposits may not exceed 2 months' rent.)

Calculating the GROSS RENT AMOUNT

To calculate the gross rent of a unit that is being tested by the FMR standard:

$$\begin{array}{r} \text{Total contract rent amount of the unit} \\ + \\ \text{Any fees required for occupancy under the lease (excluding late fees and pet fees)} \\ + \\ \text{Monthly utility allowance* (excluding telephone) established by local PHA} \\ = \\ \text{Gross Rent Amount} \end{array}$$

***Note:** The monthly utility allowance is added only for those utilities that the tenant pays for separately (for more information on utility allowances established by the local public housing agency (PHA), see 24 CFR § 982.517). The utility allowance does not include telephone, cable or satellite television service, and internet service. If all utilities are included in the rent, there is no utility allowance.

WHAT IS THE FMR REQUIREMENT?

HUD establishes FMRs to determine payment standards or rent ceilings for HUD-funded programs that provide rental assistance, which it publishes annually for 530 metropolitan areas and 2,045 non-metropolitan county areas. Federal law requires that HUD publish final FMRs for use in any fiscal year on October 1—the first day of the fiscal year (FY). FMRs for each fiscal year can be found by visiting HUD’s website at www.huduser.org/portal/datasets/fmr.html and clicking on the current “Individual Area Final FY20__ FMR Documentation” link. This site allows recipients/subrecipients to search for FMRs by selecting their state and county from the provided list. The site also provides detailed information on how the FMR was calculated for each area.

Recipients/subrecipients must consult the most current FMR published for their geographic area and document FMR for all units for which ESG funds are used for rental assistance.

To calculate the gross rent for purposes of determining whether it meets the FMR, consider the entire housing cost: rent plus the cost of utilities that must, according to the lease, be the responsibility of the tenant. Utility costs may include gas, electric, water, sewer, and trash. However, telephone, cable or satellite television service, and internet service are not included in FMRs, and are not allowable costs under ESG. The FMR also does not include pet fees or late fees that the program participant may accrue for failing to pay the rent by the due date established in the lease.

1 HUD sets FMRs to ensure that a reasonable supply of modest but adequate rental housing is available to HUD program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many low-income families as possible.

Example:

A case manager is looking to rapidly re-house a mother and son, and has identified a 2-bedroom unit at a rent of \$1,200 per month, not including utilities (the tenant’s responsibility). The utility allowance established by the PHA is \$150. Therefore, the gross rent is \$1,350. A check of three similar units in the neighborhood reveals that the reasonable rent is \$1,400 for that area of the city. However, the FMR for the jurisdiction is \$1,300. This means the family cannot be assisted with ESG in this unit because the gross rent exceeds the FMR.

Note: Once a unit is determined to meet the FMR and rent reasonableness requirements, ESG funds may be used to pay for the actual utility costs. The utility allowance calculation is only used to determine whether the unit meets the FMR standard.

Determining and Documenting FMR

Recipients/subrecipients must ensure that the rent for units assisted under the ESG Program does not exceed current HUD-published FMRs for their particular geographic region.

Determining FMR standards is straight forward; no geographic area has more than one FMR standard. However, if a recipient/subrecipient covers multiple cities or counties, they must use the appropriate FMR for the geographic area in which the assisted rental unit is located. Recipients/subrecipients should print and place in case files a copy of the applicable FMR data to document the FMR for that participant’s unit size and geographic area.

WHAT IS THE RENT REASONABLENESS REQUIREMENT?

2

HUD's rent reasonableness standard is designed to ensure that rents being paid are reasonable in relation to rents being charged for comparable unassisted units in the same market. Methods of determining and documenting rent reasonableness are described in the section below. For units within the FMR limit, if a rent reasonableness determination supports a **lower** rent than the advertised rent, then ESG funds may not be used to rent the unit (unless the landlord is willing to lower the rent). However, as with FMR, ESG funds could be used to assist the program participant to move to a different unit that meets both the FMR and rent reasonableness standards. If the rent reasonableness determination supports the advertised rent (and is within the FMR limit), rental assistance with ESG funds may be provided for the unit, as long as all other program requirements are met.

Determining and Documenting Rent Reasonableness

Recipients are responsible for determining what documentation is required in order to ensure the rent reasonableness standard is met. Recipients and subrecipients should determine rent reasonableness by considering the location, quality, size, type, and age of the unit, and any amenities, maintenance, and utilities to be provided by the owner. Comparable rents can be checked by using a market study of rents charged for units of different sizes in different locations or by reviewing advertisements for comparable rental units. For example, a participant's case file might include the unit's rent and description, a printout of three comparable units' rents, and evidence that these comparison units shared the same features (location, size, amenities, quality, etc.). Another acceptable method of documentation is written verification signed by the property owner or management company, on letterhead, affirming that the rent for a unit assisted with ESG funds is comparable to current rents charged for similar unassisted units managed by the same owner.

Caution

Comparable rents vary over time with market changes, so it is important to ensure that the comparison you are using is up-to-date and appropriate for each prospective unit.

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Recipients must establish their own written policies and procedures for documenting comparable rents and ensure that they are followed when documenting rent reasonableness in the case file. A recipient may require all subrecipients to use a specific form or a particular data source. Use of a single form to collect data on rents for units of different sizes and locations will make the data collection process uniform. A sample "Rent Reasonableness Checklist and Certification" form is available at:

www.hud.gov/offices/cpd/affordablehousing/library/forms/rentreasonablechecklist.doc

Note: This sample form is used across different housing programs.

Before conducting its own study of rent levels in its community, a recipient/subrecipient should consult existing sources of rental housing data that can be used to establish comparable rents. The section below describes some different sources of information on rental units to help recipients and subrecipients meet rent reasonableness requirements. Each recipient must determine which approach is appropriate for its jurisdiction, given the size of its program, other housing programs it administers, local staff capacity, and other resources available within the community.

Rental Housing Data Sources

Public sources of data: There may be organizations within the recipient's jurisdiction that collect and aggregate data on the rental housing stock, such as a state or local Public Housing Agency (PHA) or the local Chamber of Commerce.

Real estate advertisements and contacts: Ads in newspapers or online are simple ways to identify comparable rents. The following are potential sources of information:

- Newspaper ads (including internet versions of newspaper ads);
- Weekly or monthly neighborhood or "shopper" newspapers with rental listings;
- "For Rent" signs in windows or on lawns;
- Bulletin boards in community locations, such as grocery stores, laundromats, churches, and social service offices;
- Real estate agents;
- Property management companies that handle rental property; and
- Rental Listing websites like:
www.apartmentguide.com
www.apartments.com
www.forrentmag.com
www.move.com/apartments/main.aspx

Tip: Real estate ads and contacts might not provide all the information the recipient requires to determine rent reasonableness. In such instances, a follow-up call to obtain the missing information may be required. Newspaper and internet listings often contain either the lowest rent or the range of rents when there is variation among units with the same number of bedrooms. The recipient should follow up to determine what causes the rents to vary (e.g., unit size, location within the development, number of bathrooms, amenities), and then document these factors.

Rental market study: A rental market study is an in-depth analysis of a particular rental market that is often prepared by independent organizations for specific communities. Commercial firms will frequently conduct these studies before developing rental housing in a particular location. They can provide a good source of data to use as the basis of a rent reasonableness policy. However, some rental market studies may be narrowly focused on a particular type of rental housing (such as housing for seniors or rental condominiums) and might be useful only for certain housing units assisted with ESG funds.

Tip: When using either a market study or a market survey, it is very important to understand what is and is not included in the rent reported. For example, surveys/studies may report rents with all, some, or no utilities included. When comparing unassisted market units with ESG-assisted units, it is important to consider whether utilities and other amenities are included in the rent.

Rental market survey: A rental market survey provides a comparison of various landlords and property management companies in the area. Some local governments conduct surveys to assist with planning activities. Additionally, local associations of rental owners and managers may survey their members periodically and publish the results. Many of these surveys report average rents and/or rent ranges by the number of bedrooms and submarket location. However, such surveys frequently do not contain the detailed information required for rent reasonableness comparisons, such as amenities (free parking, laundry, etc.) or additional fees that must be paid. Rental market surveys are designed to show the overall picture of the rental market and may not be useful in evaluating the rent for a particular unit type.

Rental database: For HPRP, some grantees found it useful to build their own rental database in order to perform more efficient searches for comparable rents. Building a rental database allows the majority of work to be completed on the front end, which increases the efficiency of making

rent reasonableness determinations and allows assistance to be provided more quickly. However, there are serious resource issues to consider for this option, including updating the data and maintaining the database, which can be labor-intensive and costly. If choosing this option, ESG recipients in close proximity to one another may choose to collaborate on a regional database.

Rural Housing Data Sources

While there may be fewer rental units in rural areas than in urban and suburban areas, it is possible to find comparable rents for different unit types located in these areas using various data sources, including:

- **U.S. Department of Agriculture's Rural Development Agency (USDA):** USDA provides direct and guaranteed loans for single and multi-family housing development in rural areas and for farm laborers. Contact information for Rural Development State and Local Offices or USDA Service Centers is available at www.rurdev.usda.gov/recd_map.html. Each Rural Development Office, if it has a Rural Housing component, should provide information on the types of rental housing available in communities throughout the state, and include unit sizes and rental rates.
- **PHAs:** If a rural community is also under the jurisdiction of a PHA, the PHA may be a source of comparable rent data.
- **Real estate agents:** Local real estate agents are not only knowledgeable about real estate prices but often are a source of information on rental housing in the area. They may be able to extrapolate rent estimates based on the general cost of housing in the area. To find real estate agents active in particular communities, recipients can consult the National Association of Realtors on the web at www.realtor.org. For demographic information on the housing stock, market trends, etc., recipients should access www.realtor.org/research.

COMPONENTS OF AN EFFECTIVE POLICY

For monitoring purposes, HUD will determine whether the recipient/subrecipient developed a written policy and followed that policy to determine and document that:

1. The rent was reasonable; **and**
2. The rent was within the established FMR limit.

The basis for the determination must be supported by the evidence documented in the case file. Therefore, adequate documentation will enable a supervisor or other entity charged with monitoring the program to readily identify the factors and process that resulted in the determination that each unit met HUD requirements.

Recipients'/subrecipients' policies and procedures must be transparent and consistently applied across their program, and result in decisions that comply with HUD requirements. At a minimum, an effective policy includes a methodology, documentation requirements, staffing assignments, and strategies for addressing special circumstances.

This means that policies and procedures should provide step-by-step guidance on making comparisons between the program participant's rent, the FMR, and the rent reasonableness standards for comparable units in that community. This includes the documentation to be included in each case file, such as forms and/or case notes from the staff making the

determination. For example, a recipient could create a policy where a provider must consider the rents of three comparable units and allow as “reasonable” only rents that fall within \$50 of the average of the three comparable rents. In this example, a rent could be paid that is slightly higher than some of the individual comparable units. That rent would still be considered “reasonable” under the recipient’s policy—but rent could only be paid if it is **also** at or below the FMR.

STAFF ROLES AND RESPONSIBILITIES

Recipients/subrecipients should have a procedure in place to ensure that compliance with rent reasonableness and FMR are documented prior to a check for rent being approved and/or prepared. The responsibility of determining and documenting each unit’s compliance with these standards may be assigned to one or more program staff, such as the case manager, clerical support staff, or a staff member who is assigned to conduct habitability inspections. One staff person may perform all the checks, or the tasks may be divided among more than one staff. For example, for rent reasonableness, one staff member could conduct a telephone survey of the property owner/landlords, while another searches rental databases for comparable properties.