



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6125-N-02]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2019; Revised

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Revised Fiscal Year (FY) 2019 Fair Market Rents (FMRs) and Discussion of Comments on FY 2019 FMRs.

SUMMARY: This notice updates the FY 2019 FMRs for ten areas based on new survey data: Boston-Cambridge-Quincy, MA-NH HUD Metropolitan FMR Area (HMFA); Burlington-South Burlington, VT Metropolitan Statistical Area (MSA), Coos County, OR; Curry County, OR; Douglas County, OR; Oakland-Fremont, CA HMFA; Portland-Vancouver-Hillsboro, OR-WA MSA; San Diego-Carlsbad, CA MSA; San Francisco, CA HMFA; and San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area. Further, HUD responds to comments received on the FY 2019 FMRs.

DATES: The revised FY 2019 FMRs for these 10 areas are effective on April 15, 2019.

FOR FURTHER INFORMATION CONTACT: Questions on how to conduct FMR surveys or concerning further methodological explanations may be addressed to Marie L. Lihn or Peter B. Kahn, Program Parameters and Research Division, Office of Economic Affairs, Office of Policy Development and Research, telephone 202-402-2409. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339 (toll-free).

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff.

For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800-245-2691 (toll-free) or access the information on the HUD USER website: http://www.huduser.gov/portal/datasets/fmr.html. FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile recent-mover rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2019 FMR documentation system at https://www.huduser.gov/portal/datasets/fmr.html#2019_query and 50th percentile rents for all FMR areas are published at http://www.huduser.gov/portal/datasets/50per.html.

SUPPLEMENTARY INFORMATION: On August 31, 2018 HUD published the FY 2019 FMRs, requesting comments on the FY 2019 FMRs, and outlining procedures for requesting a reevaluation of an area's FY 2019 FMRs (83 FR 44644). This notice revises FY 2019 FMRs for 10 areas based on data provided to HUD. Nine of these areas requested a reevaluation and one did not, but data for reevaluation was submitted by the January 11, 2019 due date. This notice also provides responses to the public comments HUD received on the previous notice referenced above. Data supporting a reevaluation request for the Akron, OH MSA were supplied to the Department by the due date; however, there was insufficient recent mover observations to implement the survey. The FY 2019 American Community Survey (ACS)-based FMRs in the Akron, OH MSA become effective with this notice.

I. Revised FY 2019 FMRs

The FMRs appearing in the following table supersede the use of the FY 2018 FMRs for the enumerated areas. The updated FY 2019 FMRs are based on surveys conducted by the area public housing agencies (PHAs) and reflect the estimated 40th or 50th percentile rent levels trended to April 1, 2019.

The FMRs for the affected area are revised as follows:

Table with 6 columns: 2019 Fair market rent area, 0 BR, 1 BR, 2 BR, 3 BR, 4 BR. Rows include Boston-Cambridge-Quincy, MA-NH HMFA; Burlington-South Burlington, VT MSA; Coos County, OR; Curry County, OR; Douglas County, OR; Oakland-Fremont, CA HMFA; Portland-Vancouver-Hillsboro, OR-WA MSA; San Diego-Carlsbad, CA MSA*; San Francisco, CA HMFA; San Jose-Sunnyvale-Santa Clara, CA.

* San Diego-Carlsbad, CA MSA is a 50th percentile FMR area. As part of the Small Area FMR Rulemaking (81 FR 80567), 50th percentile FMRs were abolished. FMRs for San Diego-Carlsbad, CA MSA will complete the three-year period of use under previous regulations and revert to 40th percentile rents in FY 2020.

The FY 2019 FMRs are amended and are available on the HUD USER website: http://www.huduser.gov/portal/datasets/fmr.html. The FY 2019 Small Area FMRs (SAFMRs) for the revised metropolitan areas have also been updated and may be found at https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.

II. Public Comments on FY 2019 FMRs

A total of 67 comments were received and posted on regulations.gov, https://

www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&D=HUD-2018-0071. Fifty-seven of these comments were requests for reevaluation or comments in support of requests for reevaluation of the FY 2019 FMRs in 13 FMR areas. HUD granted requests for reevaluation for 12 FMR areas, and rejected one area's request, by community partners in Lenawee County, MI. HUD could not approve this request because the request was not

made by the housing agency administering the voucher program in the county. HUD discussed these requests for reevaluation in a posting available at https://www.huduser.gov/portal/datasets/fmr.html#2019_data.

These 12 areas continued to use FY 2018 FMRs until the PHAs provided local survey rent data, which was due no later than January 11, 2018. Due to the lapse in Federal appropriations, HUD first assessed which areas delivered data on January 28, 2019. Ten

of these 12 areas have continued to use FY 2018 FMRs because they provided sufficient data. HUD published a list of the two FMR areas not providing data on January 30, 2019 stating that the FY 2019 FMRs become effective on January 30, 2019 (https://www.huduser.gov/portal/datasets/fmr.html#2019_data). This notice provides the reevaluated FY 2019 FMRs for 9 of these areas plus the one area that did not request a reevaluation but provided data by the reevaluation date of January 11, 2019 and the one area where the submitted information was unable to be implemented.

General Comments

Most of the comments not related to specific areas requesting a reevaluation discussed inaccuracies of the FMRs and a need for more current and local data. These comments and their responses are discussed in greater detail below. Before addressing specific issues, HUD would like to remind commenters that HUD receives no geographic information from regulations.gov for the location of the commenter. Therefore, HUD cannot respond to or take action on comments regarding the level of the FMR when there is no corresponding information about the FMR area in question.

Comment: FMRs in the town of Windham, CT are going down and this will impact Housing Choice Voucher (HCV) holders' ability to find units.

HUD Response: While HUD wants to be responsive to comments regarding the level of FMRs, HUD cannot reevaluate the FMRs in an area without data more current than what was originally used to calculate FMRs. Additionally, valid reevaluation requests must be submitted by or supported by public housing agencies servicing at least 50 percent of the voucher holders in the FMR area. Finally, Windham Town, CT is part of the Windham County, CT HUD Metro FMR Area, which consists of the following towns: Ashford town, CT; Brooklyn town, CT; Canterbury town, CT; Chaplin town, CT; Eastford town, CT; Hampton town, CT; Killingly town, CT; Plainfield town, CT; Pomfret town, CT; Putnam town, CT; Scotland town, CT; Sterling town, CT; Thompson town, CT; Windham town, CT; and Woodstock town, CT. Any data collected in support of a future reevaluation request would need to be representative of the rental units across the entire FMR area.

Comment: Baltimore City, MD requested a reevaluation to maintain their FMRs at the 50th percentile.

HUD Response: 50th percentile FMRs were abolished as part of the Small Area FMR Rulemaking (81 FR 80567) and

Baltimore's three-year use of 50th percentile FMRs ended with the FY 2018 FMRs. Public housing agencies operating in metropolitan areas that revert to 40th percentile FMRs from 50th percentile FMRs and where Small Area FMR are not required have several avenues to maintain current payment standards or maintain the use of 50th percentile rents. These options include:

1. The Housing Opportunities Through Modernization Act allows PHAs to maintain their current payment standard amounts (regardless of their percentage relative to the new FMRs) for in-place tenants. The Small Area FMR rule further provides that PHAs may select a payment standard between the current in-place payment standard down to 110 percent of the new FMR. This is characterized as a gradual reduction in the family's payment standard. For more information, please see PIH Notice 2018-01 (<https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-01.pdf>), item (4)(e).

2. HUD's regulations at 24 CFR 982.503(f) provides a mechanism for PHAs in this position to request approval to maintain payment standards based on 50th percentile rents.

3. HUD's regulations at 24 CFR 982.503(e), Success Rate Payment Standards, allows PHAs to set payment standards based on 50th percentile rents if they qualify based on HCV holders having limited success in finding suitable units.

4. The PHA may adopt exception payment standards of up to 110 percent of the applicable Small Area FMRs as described in 24 CFR 982.503(b)(iii).

Comment: One of the comments requesting a reevaluation of the FY 2019 FMRs in the Oakland-Fremont, CA HMFA also included several comments regarding the use of their December 2015 rent survey, an objection to the use of 5-year ACS data, an objection to the use of a national trend factor, and a comment that the "public housing cut off" rent is too low for one county within the metropolitan area.

HUD Response: Due to the nature of the questions posed regarding the need to conduct a new survey within the comment, HUD has already provided in-depth responses to the commenter; however, HUD is providing additional commentary here for the benefit of all FMR commenters.

HUD cannot continue to use the survey conducted in the area in December 2015 because data collected through the 2016 ACS are more recent than the survey. This is true even though the Department received the local survey in early 2016 and used the

information to revise the FY 2016 FMRs, and used the local survey as the basis of the FY 2017 and FY 2018 FMR calculations. Due to the rolling nature of the ACS, HUD has adopted the following policy concerning the longevity of local area surveys. Surveys with an "as-of" date of January through June ARE NOT considered to be more current than the same year ACS survey since at least 50 percent of the ACS responses are newer than the local area survey. Local area surveys with "as-of" dates in July through December ARE considered to be more current than the same year ACS since less than 50 percent of the ACS responses are more current than the locally conducted survey.

For the purposes of uniformity and transparency, HUD's FMR documentation systems shows the 5-year ACS data for each FMR area along with the calculation of a recent-mover factor for each area based on information available from the 1-year ACS data. In practice, for large areas with statistically reliable 2-bedroom recent-mover estimates from the 1-year ACS tabulations, the recent mover "factor" is an explanation artifact for conformity in HUD's online documentation systems. The 1-year recent mover data replaces the 5-year ACS data in the FMR calculation. That is, the FMR for the area is based solely on the 40th percentile 2-bedroom recent mover rent calculated from the 1-year ACS data and this is true for the Oakland area.

HUD has addressed the issue of local trend factors in prior FMR **Federal Register** notices. Beyond HUD's own research into this topic, HUD has employed third-party researchers to assist with this important component of the FMR calculation. Following the successful completion of this research, should local trend factors be viable, HUD is compelled to announce the new trend factor calculation methodology in a notice of FMR material changes and solicit public comments on such changes prior to implementing them. Due to the lapse in Federal appropriations at the end of 2018, HUD is not able to commit to this change being ready for a material change notice prior to the calculation of the FY 2020 FMRs.

Finally, HUD reiterates that the "public housing cut-off rent" used to eliminate the bottom end of the distribution of rental units from the ACS before the 40th percentile rent is calculated is a proxy because the ACS does not collect whether or not a respondent is receiving some form of housing assistance. HUD uses a

consistent method to calculate this distribution cut off for each HUD region and sees no reason to make a change to this method at this time.

Comment: Several commenters suggested that HUD should provide additional funding to PHAs who undertake local area surveys.

HUD Response: HUD reminds PHAs that paying for local area rent surveys is an eligible expense to be paid from ongoing administrative fees or their administrative fee reserve account.

Comment: HUD received several comments from the Lenawee, MI community regarding the level of their FMRs. The commenters noted that the FMRs were too low and one commenter requested information on how information is gathered to calculate FMRs.

HUD Response: The requests for reevaluation of the FY 2019 FMRs in Lenawee County, MI were not accompanied by supporting statements from PHAs representing at least 50 percent of the voucher holders in the area and HUD was unable to grant the request. As for information on how HUD calculates the FMRs, HUD provides comprehensive documentation on how FMRs are calculated for each area. For FY 2019, please visit https://www.huduser.gov/portal/datasets/fmr.html#2019_query and follow the prompts after selecting the “Click Here For FY 2019 FMRs” button.

Comment: HUD should use more timely data when calculating FMRs. HUD should request more money to reimburse surveys. HUD should continue to refine the FMR calculation methodology.

HUD Response: There are no other data on gross rents paid that are consistently collected on a nationwide basis, available to HUD, that are more current than the data we receive from the ACS dataset. Proprietary rental data cannot be used as the basis for the FMR calculations because they are not consistently available for all areas and frequently are not statistically representative of the rental markets they cover. Some of these sources focus on rents for major apartment projects only. Other sources include single family homes, which are at least 30 percent of the rental market in major metropolitan areas and a greater portion in rural areas, are typically compiled from internet-based ads, or the small subset of professionally managed single-family rental units. Online listings of rents are similar to newspaper ads which have been excluded as a source of rent data for FMRs since the mid-1980s due to a directive issued by HUD’s Inspector General.

As HUD has stated before, the Federal Government invests a substantial amount of resources in collecting socioeconomic data through the ACS. Furthermore, the Census Bureau has statutory advantages in compelling responses to the ACS and receives significantly higher response rates than HUD could achieve if it was to undertake its own survey program.

Comment: Annual “erratic fluctuations” in FMRs within the same area do not follow established housing market dynamics and represent serious flaws in the FMR calculation methodology.

HUD Response: HUD has implemented steps to attenuate the fluctuations found in the annually updated survey data; however, with the statutory directive to use the most recent data available, HUD is compelled to update the data behind each area’s FMR calculation when new data is released. Consequently, FMRs will change from year to year in accordance with changes in the underlying survey data. Furthermore, the commenter provides no references to academic literature that seeks to establish that it is impossible for rents to move both up and down over time. HUD emphasizes that the primary data source for FMRs is a survey (ACS) and while surveyors do their best to select unbiased random samples of the population they wish to study, sampling error still persists within survey statistics.

III. Environmental Impact

This Notice makes changes in FMRs for multiple FMR areas and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: March 8, 2019.

Todd M. Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2019-N169;
FXES1114020000-190-FF02ENEH00]

Notice of Availability: Draft Amendments to the Environmental Assessment and Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of an amended environmental assessment, under the National Environmental Policy Act, that evaluates the impacts of a 5-year extension of the Oil and Gas Industry Conservation Plan (ICP) for incidental take of the federally listed American burying beetle resulting from oil and gas industry activities. The ICP Planning Area consists of 45 counties in Oklahoma. Individual oil and gas companies would continue to apply for Endangered Species Act permits for incidental take and agree to comply with the terms and conditions of the ICP.

DATES: *Comments:* To ensure consideration, written comments must be received or postmarked on or before April 15, 2019. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

ADDRESSES: *Obtaining Documents:*

- *Internet:* You may obtain copies of the draft amendments to the environmental assessment (EA) and Industry Conservation Plan (ICP) on the U.S. Fish and Wildlife Service’s (Service) website at www.fws.gov/southwest/es/oklahoma/ABBICP.

- *U.S. Mail:* A limited number of CD-ROM and printed copies of the draft amendments to the EA and ICP are available, by request, from the Field Supervisor, by mail at the Oklahoma Ecological Services Field Office, 9014 E 21st St., Tulsa, OK 74129; by phone at 918-581-7458; or by fax at 918-581-7467. Please note that your request is in reference to the ABB ICP.

- *In-Person:* Copies of the draft amendments to the EA and ICP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.: