

Fair Market Rent and Rent Reasonableness Policy



I. Introduction

A. Overview

The Emergency Solutions Grant (ESG) Program is a federal program operated by the U.S. Department of Housing and Urban Development (HUD) to make grants to states, local governments, and territories for the purposes of funding activities that directly serve people experiencing homelessness, including people at risk of homelessness. The California Department of Housing and Community Development (CA HCD) is a direct recipient of ESG from HUD. CA HCD administers an annual allocation of ESG and an additional one-time allocation of ESG made available under the CARES Act.

For the purposes of this document, “annual ESG” refers to CA HCD’s annual allocation of ESG, “ESG-CV” refers to CA HCD’s one-time allocation of CARES Act ESG, and “ESG” refers to the program in general and to aspects of the program that apply to both annual ESG and ESG-CV.

This ESG Fair Market Rent and Rent Reasonableness Policy (the “Policy”) provides comprehensive guidance on those subjects to ESG projects that provide rental assistance.

B. Applicability

This Manual applies to ESG grants funded using:

- Annual ESG
- ESG-CV

II. Project Requirements

A. Overview

The ESG Program’s primary regulatory body is 24 CFR Part 576, the ESG Program Interim Rule.¹ The ESG Program Interim Rule specifies that short-term and medium-term rental assistance are eligible activities under the Homelessness Prevention (ESG-HP) and Rapid Re-Housing (ESG-RRH) project types. Requirements for short-term and medium-term rental assistance can be found in 24 CFR § 576.106.

24 CFR § 576.106(d)(1) specifies two requirements related to participant unit rent:

¹ <https://www.hudexchange.info/resource/1927/hearth-esg-program-and-consolidated-plan-conforming-amendments/>

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- (1) Rental assistance cannot be provided unless **gross rent does not exceed the Fair Market Rent;**
 - *Note:* the Fair Market Rent requirement is only applicable to annual ESG from FY 2021 going forward; it does not apply to (i) ESG-CV and (ii) annual ESG from FY 2020 and earlier when used to prevent, prepare, or respond to the COVID-19 pandemic
- (2) Rental assistance cannot be provided unless **the unit complies with HUD’s standard of Rent Reasonableness.**

This Policy addresses these requirements for ESG projects funded by CA HCD.

B. Gross Rent

Gross rent is equal to the sum of:

- The total monthly rent for the unit (i.e. the contract rent);
- Any fees required for occupancy under the lease, excluding late fees and pet fees; and
- *If the tenant pays separately for any utilities, excluding internet and telephone:* the monthly allowance for each tenant-paid utility as established by the public housing authority (PHA) for the area in which the housing is located.²

On the CA HCD ESG Program Rent Reasonableness and Fair Market Rent Certification, projects calculate gross rent for the participant unit and each comparable unit in “Part 1: Unit Details.”

C. Fair Market Rent

1. Background

Fair Market Rent (FMR) values are intended to represent the gross rent that must be paid in a given market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities.³ This Policy provides a procedure for subrecipients to ensure that FMR is assessed and documented prior to executing the lease for an assisted unit.

HUD publishes updated FMR values on an annual basis online here:

<https://www.huduser.gov/portal/datasets/fmr.html>

² 24 CFR § 576.106(d)(2)

³ 24 CFR § 888.111(b)

FMR values are published for each county and for many metropolitan FMR areas (MSAs) in California. The list of MSAs can be found in the link above.

1. Applicability

Before a participant unit can benefit from ESG-funded rental assistance, the ESG project subrecipient must affirmatively establish that the unit's gross rent is less than or equal than the applicable FMR value.

For units that are not located in an MSA, projects must use the FMR value for the county in which the unit is located.

For units that are located in an MSA, projects must use the FMR value for the MSA in which the unit is located.

Projects must use the most recently published FMR value for a given unit's area.

This requirement is only applicable to annual ESG from FY 2021 going forward; it does not apply to ESG-CV and annual ESG from FY 2020 and earlier.

D. Rent Reasonableness

1. Background

The Rent Reasonableness (RR) standard is designed to ensure that rents being paid for participant units are reasonable in relation to the rents being charged for comparable unassisted units in the same market. This Policy provides a procedure for subrecipients to ensure that RR is assessed and documented prior to executing the lease for an assisted unit. At minimum, the project must consider the location, quality, size, unit type, age of the contract unit, and any amenities, housing services, maintenance, and utilities to be provided by the owner.⁴

2. Applicability

Before a participant unit can benefit from ESG-funded rental assistance, the ESG project subrecipient must affirmatively establish that the unit meets the standard in Section II.D.3 of this Policy.

3. Standard

A unit's rent is considered reasonable if the unit's gross rent is not more than \$100 greater than the average gross rent of three comparable units.

⁴ 24 CFR § 982.507(b)

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To be considered comparable, a unit must meet all the following criteria:

- a. Bedrooms: comparable units must have the same number of bedrooms as the participant unit.
- b. Unit Type: comparable units must be of the same unit type; or, if comparable units of the same unit type cannot be identified within the applicable geography, they must instead be of a similar type;
 - i. Unit types include but are not limited to efficiencies/SROs, apartment buildings with 4 or fewer units, apartment buildings with 5 or more units, townhouses, and single-family homes;
 - ii. In general, units are considered similar for the purposes of this criterion if their accommodations are roughly the same; for example, all apartment units (regardless of the number of units in the building) might be grouped together, while single-family homes and townhouses might be grouped together.
- c. Census Tract or Neighborhood: comparable units must be drawn from geographic areas defined as follows:
 - i. *If the participant unit is located in an urban area or another area where there are significant differences in rent within census tract*: comparable units must be drawn from the same neighborhood as the participant unit; “neighborhood” may be defined by the service provider using boundaries it deems reasonable and appropriate;
 - ii. *Otherwise*: comparable units must be drawn from the same census tract as the participant unit;
- d. Quality: units should be assessed in terms of their general quality (e.g. good, fair, poor); comparable units must be of the same quality as the participant unit.
- e. Amenities: units should be assessed to determine whether they offer any other amenities that would substantially affect the experience of people living in the unit (e.g. off-street parking, in-unit laundry); comparable units should offer the same or similar amenities as the participant unit. “Similar” may be defined by the service provider using criteria it deems reasonable and appropriate.
- f. Accommodations: units should be assessed to determine whether they offer any specific disability accommodations (e.g. wheelchair ramps, shower bars); comparable units should offer the same or similar amenities as the participant unit. “Similar” may be defined by the service provider using criteria it deems reasonable and appropriate.
- g. Gross Rent: the participant unit’s gross rent cannot be more than \$100 greater than the average gross rent of three comparable units, which must be calculated as follows:
 - i. “Gross rent” is equal to the sum of the following three elements:
 - The contract rent;
 - Any recurring fees (excluding pet fees);

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- The amount owed to the participant based on those utilities not included in the rent (excluding telephone and internet), which must be calculated using the local public housing authority (PHA)'s utility allowance schedule;
- ii. The average gross rent of the three comparable units must be calculated by totaling the gross rent of all three units and dividing the total by three.

4. Sourcing Comparable Units

Comparable units can be sourced via any of the locations, places, or methods that rental units are otherwise sourced. Common sources include but are not limited to:

- Online sites featuring rental units like craigslist, rent.com, zillow.com, etc.;
- Print media featuring rental units including local newspapers, grocery magazines, and other local circulars;
- Bulletin boards in community spaces including public libraries, laundromats, and community centers;
- “For rent” signs and other forms of advertising displayed on or off the site, including billboards, temporary signs, yard signs, etc.;
- Written information from real estate agents, property management companies, and other public or private entities that handle rental properties and can attest in writing to a given unit’s qualities;
- Units that are being rented by current project participants.

The list above is intended to provide examples and guidance, not to be all-inclusive or restrictive; in general, any publicly available source of information about rental properties, or any privately source that handles rental properties and that will provide information about them in writing, can be used as a comparable unit.

Questions about whether a given unit can be used as a comparable unit should be directed to CA HCD staff before the unit is used as a comparable unit.

5. Frequency of Comparable Unit Sourcing

Projects are not required to identify three unique comparable units for each participant unit. Given the level of effort that RR assessments require, projects are encouraged to reuse comparable units across multiple RR assessments whenever possible, applicable, and reasonable within the constraints of this Policy.

Once identified by a project, a comparable unit may be used and reused by that project for 90 days. Projects are strongly encouraged to sign and date the backup documentation used for each comparable unit to indicate the beginning of the 90-day period of use. After 90 days, the

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comparable unit must be discarded; however, if the comparable unit is still available for rent, the project may generate new backup documentation for the unit using its current posting and begin a new 90-day period of use for that unit.

Projects may, at their discretion, generate and maintain a record of comparable units in a given location. (This is often referred to as a comparable unit database or rent reasonableness binder.) This record may be assembled as part of normal project operations independent of any specific unit's RR assessment. Note, however, that comparable units in such a record are still subject to the 90-day period of use limitation in this Policy. Projects that maintain such a record are strongly encouraged to task a specific staff person with maintaining the record and ensuring all units in the record are always within their 90-day periods of use.

6. Modifications and Waivers

Subrecipients may, at their discretion and with good cause, submit a request to CA HCD for a modification or waiver of one or more of the criteria in Section II.D.3 of this Policy.

Modifications/waivers can be requested for a unit or set of units, a geography, a project, etc.

Modification/waiver requests should be submitted by email to ESGRegulations@hcd.ca.gov.

“Good cause” may be defined by the subrecipient but must be reviewed and approved by CA HCD. In general, “good cause” must conclude that the criteria being modified or waived cannot be met as written due to factors beyond the subrecipient's control. (For example: if comparable units cannot be found within the participant unit's census tract/neighborhood despite good faith efforts to locate them, a subrecipient might request a broader geography based on geographic proximity, public transit access, or private transportation drive time.)

Subrecipients requesting a modification should propose the type and extent of modification.

The “Gross Rent” comparability criterion under Section II.D.3.g of this Policy cannot be modified or waived, with the exception that CA HCD may allow the participant unit's gross rent to be more than \$100 greater than the average gross rent of three comparable units.

CA HCD is the sole arbiter of whether a modification or waiver is approved, and CA HCD's decisions cannot be appealed. Modifications and waivers must be approved in writing by the appropriate CA HCD staff before they take effect. Modifications and waivers may be revoked at any time at CA HCD's discretion. Revocations must be made by CA HCD in writing and take effect immediately upon delivery to the subrecipient.

Waiver/modification units must include the following elements to be considered:

- Subrecipient organization name;

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- Information sufficient to identify the project or projects that the waiver/modification will apply to, preferably including both a descriptive name (e.g. “Acme Community Action Rapid Re-Housing Initiative”) and the project’s HMIS ID number
- Requestor name, title, signature, and contact information (phone and email address);
- Scope of request (e.g. a unit or set of units, a geography, the entire project, etc.);
- Justification of request, which must demonstrate that the request is for “good cause” (see above) and which must demonstrate that the circumstances prompting the waiver/modification are beyond the project’s control;
- Duration of request (e.g. for these units only, for three months, until the end of the contract period, etc.);
- Proposed type and extent of waiver or modification (e.g. allowing comparable units to be drawn from neighboring census tracts, raising the RR ceiling from \$100 above comparable average to \$200 above comparable average, etc.).

E. Documentation

Projects covered by this Policy are required to use the CA HCD ESG Program Rent Reasonableness and Fair Market Rent Certification form. Projects are required to maintain backup documentation of RR comparable units in the applicable client file or other space.

The most recently published version of this form can be found [here](#).

III. CA HCD Processes

A. Overview

This section defines CA HCD’s internal processes for implementing elements of this Policy. It is intended for CA HCD use and should not affect subrecipient policy or process development.

B. FMR and RR Certification Review

CA HCD staff should review FMR and RR certifications at the following times:

- Before reimbursing any rental assistance cost for a newly leased participant unit;
- Before reimbursing any rental assistance cost for an existing participant unit whose lease has been amended in such a way that changes the amount of money being paid for the unit by the project, the participant, or both;
- Before reimbursing any rental assistance cost for an existing participant unit that has been recertified according to project or program requirements;
- When monitoring client files (e.g. during the annual monitoring process), FMR and RR certifications should be reviewed in each client file selected for examination.

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CA HCD staff should examine the following elements when reviewing FMR and RR certifications:

- Is the certification complete and signed? Was the signatory an appropriate staff person? Was it signed on or before the lease date?
- Does the certification have backup documentation for the applicable FMR value? Is the FMR value used from the correct year?
- Does the certification have backup documentation for each comparable unit? Does the information on the certification match the information on the comparable unit backup documentation?
- Was the gross rent value for the participant unit and for each comparable unit calculated correctly? Was the average comparable gross rent calculated correctly?
- Is the participant unit's gross rent less than or equal to the FMR value? Is the participant unit's gross rent less than or equal to (the average comparable gross rent + \$100)?
- *If any waivers or modifications were approved for the FMR and RR certification: is a copy of the signed waiver/modification in the client file? Is it correctly applied throughout the certification?*

If the FMR and RR certification fails to meet one or more of the criteria above, CA HCD should require the subrecipient to redo the certification, using, if possible, contemporaneous information dating from the beginning of the lease. CA HCD should review the revised certification and either approve it or return it for additional corrections. Once CA HCD has approved a revised certification, CA HCD should review the subrecipient's history of payments under the affected lease to determine whether any entity is due a reimbursement.

CA HCD staff should consider the following guidelines regarding reimbursements:

- CA HCD should only require reimbursements for payments made during an active contract (or an inactive contract that closed within the last 30 days);
- When CA HCD determines that a subrecipient has underpaid a landlord, CA HCD should require the subrecipient to reimburse the landlord;
- When CA HCD determines that a subrecipient has overpaid a landlord, CA HCD should require the landlord to reimburse the subrecipient;
- Reimbursements between landlords and subrecipients can frequently be handled by adjusting the amount of the next payment from the subrecipient to the landlord.

C. Modification and Waiver Review

Upon receipt of a modification/waiver request, CA HCD staff should acknowledge receipt to the sender and indicate that the sender can expect a response within 5 business days.

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CA HCD staff should review modification/waiver requests within 5 business days of receipt.

CA HCD staff should consider the following guidelines when reviewing modification/waiver requests:

- Is the requestor's information complete, including their name, title, contact information, signature, and date?
- Does the request include all applicable information about the project(s) it will impact, including information as needed to identify the project(s) (e.g. their HMIS ID numbers)?
- Does the request include a justification of good cause? Does a review determine that it is, in fact, good cause?
- Does the request demonstrate that the request is intended to address circumstances beyond the subrecipient's control?
- Does the request include a scope of impact? Does the scope fit within the boundaries of existing contracts and grant agreements?
- Does the request include a duration of waiver/modification? Does the duration fit within the performance period of existing contracts and grant agreements?
- Does the request provide details about the proposed waiver/modification? Can CA HCD grant the request within the boundaries of existing statutes and regulations, including the ESG Program Interim Rule? If implemented, would the adjusted scope of activities fit within the scope of existing contracts and grant agreements?

If CA HCD staff determine that a modification/waiver request meets all of the above criteria, CA HCD should approve the request. Otherwise, CA HCD should deny the request and generate a written response to the subrecipient sufficient to explain the grounds on which the request was denied.

Once CA HCD has made a decision regarding a modification/waiver request, it should respond to the subrecipient with a letter including the following information:

- A statement that CA HCD has approved or denied the request;
- *If the request was approved:* details about the modification/waiver, including project(s) impacted, duration, and details about what is being modified or waived;
- *If the request was denied:* an explanation sufficient to explain the grounds on which the request was denied and a statement informing the subrecipient that modification/waiver decisions cannot be appealed;
- The CA HCD authorizing staff person's name, title, signature, and the date.

Appendix A: Changelog

Date Effective	Description
5.11.2022	Updated draft into new format