

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5962–N–03]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program Fiscal Year 2017; Revised

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

ACTION: Notice of Revised Fiscal Year (FY) 2017 Fair Market Rents (FMRs) and Discussion of Comments on FY 2017 FMRs.

SUMMARY: This notice updates the FY 2017 FMRs for Portland, ME HUD Metro FMR Area (HMFA) and Vallejo-Fairfield, CA Metropolitan Statistical Area (MSA), as requested by commenters. In addition to announcing these revised FY 2017 FMRs, this notice also includes HUD responses to the comments received regarding the FY 2017 FMRs.

DATES: *Effective Date:* The revised FY 2017 FMRs for Portland, ME, HMFA and Vallejo-Fairfield, CA, MSA are effective on May 1, 2017.

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, Economic and Market Analysis 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 Web site: <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 2017 FMR documentation system at https://www.huduser.gov/portal/datasets/fmr.html#2017_query and 50th percentile rents for all FMR areas are published at <http://www.huduser.gov/portal/datasets/50per.html>.

www.huduser.gov/portal/datasets/fmr.html#2017_query and 50th percentile rents for all FMR areas are published at <http://www.huduser.gov/portal/datasets/50per.html>.

SUPPLEMENTARY INFORMATION: On August 26, 2016, HUD published the FY 2017 FMRs, requesting comments on the FY 2017 FMRs, and outlined procedures for requesting a reevaluation of an area’s FY 2017 FMRs (81 FR 58952). This notice revises FY 2017 FMRs for two areas that requested reevaluation and provided data to HUD to allow for a reevaluation, and provides responses to the public comments HUD received on the previous notice referenced above.

I. Revised FY 2017 FMRs

The FMRs appearing in the following table supersede the use of the FY 2016 FMRs for Portland, ME HUD Metro FMR Area (HMFA) and Vallejo-Fairfield, CA Metropolitan Statistical Area (MSA). The updated FY 2017 FMRs are based on surveys conducted in December 2016 by the area public housing agencies (PHAs) and reflect the estimated 40th percentile rent levels trended to April 1, 2017.

The FMRs for the affected area are revised as follows:

2017 fair market rent area	FMR by number of bedrooms in unit				
	0 BR	1 BR	2 BR	3 BR	4 BR
Portland, ME, HMFA	911	1028	1301	1755	1906
Vallejo-Fairfield, CA MSA	830	1035	1294	1884	2280

The FMR Schedules are amended as shown in the Appendix to this notice and are available on the HUD USER Web site: <http://www.huduser.gov/portal/datasets/fmr.html>. The FMR Schedules will not be codified in 24 CFR part 888.

II. Public Comments on FY 2017 FMRs

A total of 29 comments were received and posted on [regulations.gov](http://www.regulations.gov), <https://www.regulations.gov/docket?D=HUD-2016-0093>. Fourteen of these comments were requests for reevaluation of the FY 2017 FMRs for 11 FMR areas. HUD approved requests for nine metropolitan areas and declined them for two metropolitan areas (where the requester(s) did not administer more than 50 percent of the housing choice voucher families in the metropolitan area, as required) in a posting on October 3, 2016 available at <https://www.huduser.gov/portal/datasets/fmr/fmr2017/Areas-where-FY2016-FMRs-Remain-in-Effect.pdf>. These nine areas were granted approval to continue to use FY 2016 FMRs until the

reevaluation of the FY 2017 FMRs has occurred. Each metropolitan area was given until January 6, 2017 to provide HUD with the data to reevaluate the FY 2017 FMRs. One area, the Dallas, TX HUD Metro FMR Area (HMFA), which uses Small Area FMRs under a court settlement, has already been reevaluated and its FY 2017 Small Area FMRs have been updated (81 FR 78177), effective December 7, 2016. This notice updates FY 2017 FMRs for two additional areas. The remaining six areas did not provide HUD data to complete a reevaluation, and their FY 2017 FMRs are unchanged from the amounts provided in the August 26, 2016 notice. In accordance with the reevaluation procedures outlined in the August 26, 2016 FY 2017 Fair Market Rent notice (81 FR 58952, Section V. Requests For FMR Reevaluations, item 4), HUD posted a listing of these six areas where data was not submitted and announced that the FY 2017 FMRs for these areas became effective on January 9, 2017 (<https://www.huduser.gov/portal/datasets/fmr/>

[fmr2017/Areas-Where-FY2017-FMRs-become-effective.pdf](https://www.huduser.gov/portal/datasets/fmr/fmr2017/Areas-Where-FY2017-FMRs-become-effective.pdf)).

Most of the other comments discussed inaccuracies of the FMRs and a need for more current data. Several of the comments addressed HUD’s specific request for public comment on “on what should be considered ‘material changes’ in FMR estimation methods for purposes of triggering public notice and comment under HOTMA.”¹ In addition, there was a request for a change in a geographic area definition for a metropolitan area in which parts of the area are not contiguous. HUD has summarized the comments where possible and provides responses to these comment groups in greater detail below.

General Comments

Comments: FMRs do not represent accurate on-the-ground rental market prices. The accuracy of FMRs is a function of the underlying data set and

¹ HOTMA is the Housing Opportunities Through Modernization Act of 2016 (Pub. L. 114–201, approved July 29, 2016).

the methodology used to convert the data set to the FMRs, and the source of the data is unchanged from last year.

HUD Response: The American Community Survey (ACS) continues to be the primary source of gross rent data used in the calculation of the FMRs as it is the only known statistically reliable data source that provides comprehensive information on gross rents paid collected in a consistent manner nationwide. The ACS data HUD acquires is adjusted for housing quality and calculated at the 40th percentile rent for the FMR areas. HUD does point out that the data used to calculate FY 2017 FMRs is one year more current than the data used to calculate FY 2016 FMRs. HUD uses the most current ACS data available when calculating the FMRs. As an example, consider the publication timeline for the FY 2017 FMRs. The FY 2017 FMRs were calculated in June and July of 2016 for publication in August 2016, but the 2015 ACS data was not released until September through December of 2016. Therefore, during calculation of FY 2017 FMRs, the 2014 ACS data was the most current available ACS data. HUD augments the most current available ACS data with the annual change in gross rents measured by the Bureau of Labor Statistics' Consumer Price Index (measured between 2014 and 2015 in the FY 2017 FMR example), and a forecasted trend factor to align the calculated FMRs with the Fiscal Year for which the FMRs are effective.

Comments: Inaccurate FMRs have strong negative impacts on PHAs' ability to serve Housing Choice Voucher (HCV) participants. Low-income families that rely on the HCV program will feel the greatest impact in areas where the published FMRs are too low relative to actual costs. These low FMRs cause cost burdens for voucher-assisted households to increase, sometimes to the point of forcing low-income families to seek housing in areas with greater concentrations of poverty and lower-quality housing stock.

HUD Response: HUD is aware of the impacts when FMRs are too high or too low and strives to limit inaccuracies and year-to-year fluctuations in FMRs. HUD continually reviews its methodology and expects to propose changes in a future **Federal Register** notice.

Comments: HUD's previous statements about making further changes that would be reflected in its FY 2017 FMRs, were not acted upon. There are erratic fluctuations in FMR values within the same bedroom size in the same county, in opposite directions year over year, which do not accurately reflect many local housing markets.

There are fluctuations in FMR values in opposite directions between different bedroom sizes within the same year and there are erratic fluctuations in opposite directions year over year that have had the effect of largely cancelling each other out over this three-year period, in a way that does not accurately reflect gross rent values in many rental housing markets. This commenter also expressed concern in the large variations in differences between the FY 2017 Unadjusted rents and the FY 2017 Final FMRs.

HUD Response: HUD's initial plan for Proposed FY 2017 FMRs included several changes to the FMR calculation methods to address these criticisms of FMRs; however, with the enactment of the Housing Opportunities Through Modernization Act (HOTMA) (Pub. L. 114–201, approved July 29, 2016) which changed the FMR publication process, there was insufficient time to publish a notice of proposed material change, review comments, and post FY 2017 FMRs with a 30-day delayed effective date (as is all now required), and still meet the mandated October 1, 2016 effective date for FY 2017 FMRs (which is unchanged). Therefore, HUD published FY 2017 FMRs with no methodology changes, and expects to propose them in a forthcoming notice.

HUD implemented the state non-metropolitan minimum FMR standard to ensure that voucher holders have access to suitable rental housing units where the rent paid is sufficient to cover the long-term operating and capital requirements for the dwelling. Areas where the state non-metropolitan minimum rent is applied have ACS-based unadjusted rents that are below a reasonable level for these long-term commitments.

State non-metropolitan minimum rents are calculated as the population weighted median 2 bedroom rent calculated from the data specific to each non-metropolitan county in a state. The Final 2 bedroom FMR for an area becomes the state non-metropolitan minimum if the rent calculated based on the county level data is below the minimum; therefore, depending on the distribution of county-level unadjusted rents, certain counties could have considerable differences between their unadjusted rent and their published FMR. Unadjusted rents are made available to PHAs solely for the purpose of setting flat rents for their public housing portfolios.

Comments: FMRs are deeply flawed and the changes HUD has taken regarding annual adjustment factors are still insufficient. Actions taken by the Senate Appropriations Committee are

an attempt to force HUD to make deeper and broader improvements to its FMRs. The Senate FY 2017 THUD-Appropriations bill (Pub. L. 114–223, approved on September 29, 2016) appropriates \$41.5 million to HUD to pay for local rental market surveys of areas affected by changing economic conditions and natural disasters.

HUD Response: The funds in the Senate appropriations bill referenced by the commenter are for the American Housing Survey, which focuses on housing quality and other demographic issues rather than rents. This is a longitudinal survey with limited local data and the funds cannot be redirected for rent surveys in areas affected by changing economic conditions and natural disasters. The HUD appropriations previously used to conduct rent surveys to adjust FMRs have not been made since 2012.

Comments: Ever since HUD used its discretionary authority to adopt each new OMB area for FMR purposes, starting in FY 2006, HUD's rent estimates have gone haywire. To calculate the FY 2016 FMRs, HUD incorporated OMB's latest metropolitan area definition from 2013. As a result, there are counties previously designated by HUD as non-metro that HUD subsequently designated as metropolitan and vice-versa. HUD's FMR areas and SAFMR areas artificially inflate rent values in non-metropolitan areas and artificially deflate FMR values in metropolitan areas.

HUD Response: In 2006, when HUD applied OMB's new metropolitan area definitions based on the 2000 Decennial Census to the FMRs, HUD was following longstanding past practice. HUD modified FMR areas in accordance with updated OMB area definitions after the 1980, and 1990 Decennial Censuses. HUD's incorporation of the 2010 Decennial Census-based area definitions into the FY 2016 FMRs continued HUD's longstanding past practices. The updated OMB area definitions' changes in area geography, and especially changes from non-metropolitan to metropolitan area designations, are important in providing consistency across all federal programs. HUD specifically considers the impact of area definition changes on Fair Market Rent levels and other program parameters when implementing metropolitan area definition changes, and specifically deviates from OMB definitions to prevent large changes when sufficient local data is available.

Comments: HUD should use more timely data when calculating FMRs. HUD should work to develop a method to incorporate more recent data into its

published FMRs rather than continue to rely on PHA-funded studies to correct inaccuracies in FMRs. The ACS five-year and one-year datasets do not possess adequate external validity for calculating current non-regulated rents for all FMR areas. Additionally, the ACS dataset fails to capture key data on housing quality to ensure that calculations are based on the relevant population. This omission greatly alters the FMR estimates and leads to underestimation of the current housing costs. PHAs are not well suited to conduct surveys and compile sophisticated statistical analyses. This is a function that would be better suited for HUD's Office of Policy Development and Research (PD&R).

HUD Response: There is no other data on gross rents paid that is consistently collected on a nationwide basis, available to HUD, and more timely than the ACS dataset. HUD recognizes the housing quality data limitations of the ACS dataset and uses a combination of ACS survey responses and a public housing "cut-off" rent calculated from HUD administrative data to identify and eliminate these low rent units from the distribution of gross rents paid before a 40th percentile rent is calculated. The rationale for using this "cut-off" rent is that units with gross rents below these amounts are either of insufficient quality to meet the housing quality standards for units occupied by voucher holders, or are representative of an assisted tenant's out of pocket expenses and not a true measure of the market gross rent for the unit. Eliminating these units from the distribution before the 40th percentile rent is calculated raises the 40th percentile rent for the area. As discussed earlier, HUD currently lacks funding and the mechanisms necessary to collect rent data by a more specialized survey method.

Comments: The effective date for new FMRs should be 60 days from publication, not 30 days. HUD has offered only a 30-day period for PHAs to submit a request for reevaluation of the FMR for their regions. HUD should provide at least 60 days for PHAs to make a reevaluation request. Further, PHAs should be able to choose to continue to use the prior year FMR or use the new FMR for which they requested a reevaluation. Otherwise, a PHA seeking reevaluation whose FMR has increased is, in effect, penalized for requesting reevaluation because it must continue to use the prior year's lower FMR.

HUD Response: HOTMA requires that FMRs become effective no less than 30 days following their publication. In order to provide additional time for

PHAs to implement newly effective FMRs, HUD's Small Area FMR rule (81 FMR 80567) provides that all PHAs have up to three months from the date when the new FMRs go into effect in which to update their payment standards if a change is necessary to fall within the basic range of the new FMRs. Regarding the timing of reevaluation requests, the FY 2017 FMRs were delayed due to the HOTMA-mandated changes in FMR publication requirements and procedures. Based on timing constraints, HUD provided the longest window possible for making the FY 2017 FMRs effective and for providing a request for FMR reevaluation. Finally, provisions within HOTMA govern the process for FMR reevaluation requests. Specifically, HOTMA states: "The Secretary shall establish a procedure for public housing agencies and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction *before* such rentals become effective." [emphasis added]. Therefore, HUD may not make the newly calculated FMRs effective when a valid reevaluation request is received. Practically speaking, allowing a PHA to use the higher of the previous year or current year FMR would also create significant issues for quality control and program audit activities.

Comments: HUD should allow interested stakeholders to comment on the utility component of FMRs. We recommend that HUD provide PHAs with the utility data it gathers from the annual FMR calculations so that PHAs may evaluate the percentage change in the utility component from year to year.

HUD Response: HUD receives ACS data on gross rents paid from the Census Bureau to determine FMRs. The utility component is embedded in this gross rent and not separately available. The inflation adjustments HUD applies to the ACS data includes indices for rent and utilities. While the rent and utility inflation indices can be found in the FMR documentation system, they only serve to inflate the gross rents HUD receives from the ACS, and are not separate estimates of the utility component of gross rent. Section 108 of HOTMA charges HUD with collecting data on utility consumption and costs in local areas to the extent that HUD can do so cost efficiently. HUD is reviewing what can be accomplished cost efficiently and will release these data when they become available.

Comments: HUD should take an expansive view of what constitutes a "material change" in FMR estimation

methods. It is unlikely that HUD can predict the impact of changes in FMR methodology for every FMR geography. The "material change" criteria should not be based on either the number of FMR areas impacted or a triggering threshold based on the number of areas whose FMRs would change by a certain percentage before HUD is required to get comments on a "material change". Only changes that impact how a PHA can spend money (since PHA payment standards are based on FMRs) should be required to be considered material.

HUD Response: HUD appreciates this comment and HUD is taking an expansive view on what constitutes a "material change" and intends to provide an opportunity for public comment on all FMR methodological changes in forthcoming proposed notices of material changes in FMR calculations. Moreover, HUD points out that most method changes do not occur in one direction and are not static. That is, FMRs in some areas will go up and some areas will go down as a result of calculation changes, and these changes may mean that an area that went up one year will go down the next year.

Comments: HUD should consider smoothing-out the sharp swings in rents from the year-to-year caused by year-to-year changes in the determination of the recent mover factor. Such large changes affect planning and management efforts.

HUD Response: HUD may assess the need to propose changes to the FMR estimation methodology related to data integrity in a forthcoming notice of Proposed Material Change that should reduce such large year-to-year swings that can arise from the one-year recent mover data.

Comments: The bonuses for three-bedroom, four-bedroom and higher bedroom-count units, ostensibly to help the largest and most difficult-to-house families find units, should not be used without qualification. HUD's policy signals to every developer that a greater profit is to be found in the production of high bedroom-count units. The per-room rent differential offered by HUD for a three-bedroom unit is five times as attractive (per room) as the one offered for a single-bedroom unit, and thus hinders our ability to respond to local housing market conditions.

HUD Response: The bonuses applied to the ratios used to calculate the FMRs for higher bedroom-count units have been an important means of serving the relatively small group of large-sized families dependent on vouchers. While HUD appreciate the comment, HUD does not believe the bonuses should be eliminated, even for certain areas.

Comments Specific to Puerto Rico

Comments: HUD should not use multiple non-contiguous geographical areas as an FMR Area nor apply a single FMR to non-adjacent geographical areas. HUD's use of non-contiguous county equivalents (municipios) in a metropolitan area does not conform to the adjacency standard governing the designation of metropolitan and nonmetropolitan areas.

HUD Response: The county removed from the Barranquitas Aibonito-Quebradillas FMR area was not removed because it is not a contiguous area, it was removed because OMB removed it from this metropolitan area. OMB kept the remaining non-contiguous county (municipio), Maunabo, in the metropolitan area, and did not follow the adjacency criteria for this metropolitan area. Both counties (municipios) have been in the metro area at least as far back as 2006. Functionally, removing Maunabo Municipio from the current FMR area will not change the effective FMR for the municipio as there is insufficient data to calculate a stand-alone FMR for the municipio and the state non-metropolitan minimum would still be used.

Comments: The use of the Consumer Expenditure Survey (CES) heat use index as a proxy to adjust the "Rent of primary residence" statistic to remove the influence of utilities has a depressing effect in a tropical area.

HUD Response: HUD's longstanding use of the CES heat use index helps HUD estimate the portion of gross rent attributable to shelter cost and the portion attributable to utility costs. The commenter suggests that HUD's methodology has the effect of lowering FMRs in tropical areas. However, given recent economic trends, increasing the influence of utility costs in the calculation of gross rents in Puerto Rico at this time would *further* depress rents, not raise them. More fundamentally, HUD's use of the heat use index to "remove" the influence of utilities from the "rent of primary residence component" of gross rents is necessary because the rent of primary residence index captures some utility costs for units where utilities are included in the rent payment. Therefore, HUD must determine how much utility costs are embedded in the rent of primary residence so as to not double count the influence of utility costs changes when constructing a gross rent inflation factor.

To summarize how the CES heat use index is used in the calculation of FMRs: FMRs are gross rent estimates. Gross rents include the cost of the

shelter plus the cost of the necessary utilities for the dwelling unit. In order to produce an FMR that comports with the statutory requirements of calculating the FMRs "based on the most recent available data trended so the rentals will be current for the year to which they apply," HUD uses data from the American Community Survey on gross rents paid, updated by the change in gross rents measured through the CPI and trended using a national forecast of expected growth in gross rents. In order to calculate a gross rent increase factor using CPI data, HUD must determine how to combine the CPI's measurement of the "rent of primary residence" and the "fuels and utilities" component of Housing. This step is complicated by the fact that some of the rents reported in the survey used to generate the CPI data for "rent of primary residence" already include utility costs. To cleanly separate the two components of "rents" and "utilities," it is necessary to factor out any utility costs reported as rents. HUD uses the CES heat use index to estimate this amount.

Several years ago, HUD began using CPI "rent" and "utilities" components measured solely for Puerto Rico to calculate Puerto Rico's gross rent increase factor. However, because no local measure is known to exist that could serve as the equivalent of the CES heat use index, HUD uses the South Census Region CES information as a proxy in Puerto Rico. For the relevant time period (2014 to 2015), the "rent of primary residence" statistic measured across all of Puerto Rico increased by 0.47 percent while the "fuels and utilities" component of housing declined by 14.75 percent. Given the large decrease in fuels and utilities measured in Puerto Rico, every combination of the two CPI components to obtain a measurement of the change in gross rents where the weight on the "rent of primary residence" component is 95 percent or less for Puerto Rico yields an overall negative CPI update factor (less than 1). Therefore, as stated above, increasing the influence of utility costs in the calculation of gross rents in Puerto Rico in 2017 would *further* depress rents, not raise them.

III. Environmental Impact

This Notice makes changes in FMRs for two FMR areas and does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 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 23, 2017.

Matthew E. Ammon,
General Deputy Assistant Secretary for Policy
Development & Research.

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