



Tehama County  
Continuum of Care

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# Fair Market Rent and Rent Reasonableness Policy

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# I. Introduction

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## 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.

Service Providers located within the geographic area covered by the Tehama County Continuum of Care (Tehama CoC) may receive ESG funding either directly from CA HCD or as a subgrantee of Tehama CoC, through its designated Collaborative Applicant/Administrative Entity (CA/AE).

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

## B. Applicability of this Policy

This policy applies to ESG-funded projects operating within Tehama CoC's geographic area, and may be applicable, in whole or in part, to operations of projects funded through other programs administered locally by Tehama CoC through its designated Collaborative Applicant/Administrative Entity (CA/AE).

## II. Project Requirements

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### A. Overview

The ESG Program's primary regulatory body is [24 CFR Part 576](#), the ESG Program Interim Rule.<sup>1</sup> The ESG Program Interim Rule specifies that short-term and medium-term rental assistance are eligible activities under the Homelessness Prevention (HP) and Rapid Rehousing (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) 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
- ii. Annual ESG from FY 2020 and earlier when used to prevent, prepare, or respond to the COVID-19 pandemic
- iii. Other funding programs administered by Tehama CoC through its designated Collaborative Applicant/Administrative Entity (CA/AE) unless otherwise specified.

- (2) Rental assistance cannot be provided unless the unit complies with HUD's standard of Rent Reasonableness.

### 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.<sup>2</sup>

### 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.<sup>3</sup> This

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

<sup>2</sup> 24 CFR § 576.106(d)(2)

<sup>3</sup> 24 CFR § 888.111(b)

Policy provides a procedure for projects 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>

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.<sup>4</sup>

## **2. Applicability**

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

Projects must use the most recently published FMR value for Tehama County.

*Note: This requirement is only applicable to annual ESG from FY 2021 going forward.*

## **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.

### **2. Applicability**

Before a participant unit can benefit from rental assistance, the project 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.

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

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<sup>4</sup> 24 CFR § 982.507(b)

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);
    - 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/AE 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 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.

## **E. Documentation**

Projects contracting directly with CA HCD annual ESG funds from FY 2021 or later are required to use the CA HCD [ESG Program Rent Reasonableness and Fair Market Rent](#)

[Certification](#) form for participants whose services are funded through annual ESG funds from FY 2021 or later.

Projects funded through any program administered by Tehama CoC through its designated CA/AE must document Rent Reasonableness using the following forms, available in Tehama CoC's Form Kits:

- When providing RRH assistance, use Form 2R from the [RRH Form Kit](#).
- When providing HP assistance, use Form 3R from the [HP Form Kit](#).

All projects should utilize the Housing Unit Identification Worksheet available in Tehama CoC's Form Kits:

- When providing RRH assistance, use Form 2R from the [RRH Form Kit](#).
- When providing HP assistance, use Form 3R from the [HP Form Kit](#).

### III. Administrative Entity Processes

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#### A. Overview

This section defines the internal processes to be followed by Tehama CoC's designated CA/AE for implementing elements of this Policy. It is intended for CA/AE use and should not affect project policy or process development.

#### B. FMR and RR Certification Review

CA/AE 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.
- CA/AE 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, The CA/AE should require the subrecipient to redo the certification, using, if possible, contemporaneous information dating from the beginning of the lease. The CA/AE should review the revised certification and either approve it or return it for additional corrections. Once the CA/AE has approved a revised certification, the CA/AE should review the subrecipient's history of payments under the affected lease to determine whether any entity is due a reimbursement.

CA/AE staff should consider the following guidelines regarding reimbursements:

- The CA/AE should only require reimbursements for payments made during an active contract (or an inactive contract that closed within the last 30 days);
- When the CA/AE determines that a subrecipient has underpaid a landlord, the CA/AE should require the subrecipient to reimburse the landlord;
- When the CA/AE determines that a subrecipient has overpaid a landlord, the CA/AE 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.