

# Payment Standards

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# 1 Chapter Overview

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In the Housing Choice Voucher (HCV) program, payment standards are used in the calculation of the housing assistance payment (HAP) that the Public Housing Agency (PHA) pays to the owner on behalf of the family leasing the unit. 24 C.F.R. 982.4 defines Payment Standard as the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

The payment standard for a family is the lower of:

- Payment standard for the family unit size indicated on the voucher; or
- Payment standard for the size of the unit leased by the family.

If the unit is located in an exception area, the PHA must<sup>1</sup> use the appropriate payment standard for that exception area.

The level at which the payment standard is set directly affects the amount of subsidy a family will receive, and, therefore, the amount of rent paid by program participants. If the family leases a unit with a gross rent at or below the payment standard for the family, the family's share of the rent plus an allowance for utilities will be equal to the family's total tenant payment (TTP) (see the Income Determination chapter). If the gross rent for the unit is higher than the payment standard, the family is responsible for the difference. In this case, the total family share will be higher than the family's TTP.

Payment standards should be balanced between an efficient use of HAP dollars and subsidizing families to be competitive in the open rental market. If the PHA's payment standards are too low:

- Families may pay more in rent;
- Families may have a hard time finding acceptable units or units in more desirable areas; housing choices will be narrowed and the PHA's efforts to affirmatively further fair housing will be undermined.

If the payment standard is too high, the PHA may not be housing as many families as it could with its current HAP budget.

Payment standards should be high enough to allow families a reasonable selection of decent, safe, and sanitary housing in a range of neighborhoods in the PHA's jurisdiction. To meet that objective and to support families wishing to move to areas with lower concentrations of low-income and minority households, a PHA may establish higher payment standard schedules for certain areas within its jurisdiction so that program families can rent units in more desirable areas.

The PHA's procedures for establishing and revising its payment standard schedule must<sup>3</sup> be set in its administrative plan.<sup>4</sup>

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<sup>1</sup> 24 CFR § 982.505(c)(1)

<sup>2</sup> 24 CFR § 982.508

<sup>3</sup> 24 CFR § 982.508

<sup>4</sup> 24 CFR § 982.54(d)(14)

## 2 Metropolitan Area FMRs and Small Area FMRs

The term Fair Market Rents (FMRs) refers to both metropolitan area and small area FMRs. Both types of FMR are calculated annually by HUD's Office of Policy Development and Research (PD&R) and made available through the HUD User Web site (<https://www.huduser.gov/portal/home.html>). FMRs are established based on the 40th percentile of rents charged for standard rental housing in the FMR area.

HUD delineates metropolitan area and small area FMRs differently, as described below:

- **Metropolitan area FMRs.** For the purpose of delineating metropolitan area FMRs, HUD uses the metropolitan areas established by the Office of Management and Budget (OMB) and, in some instances, subdivides OMB's defined metropolitan areas into smaller HUD Metropolitan Fair Market Rent Areas (HMFAs) along historical metropolitan boundaries to preserve continuity of FMR estimates.
- **Small area FMRs (SAFMRs).** HUD establishes small area FMRs (SAFMRs) at the Zip Code level. SAFMRs are intended to result in payment standards that align more closely with local rental costs, particularly in higher-cost areas. HUD adopted SAFMRs via a Final Rule published on November 16, 2016, for the express purpose of providing HCV-assisted families with access to "areas of high opportunity and lower poverty." In addition to the guidance provided in this chapter, HUD published a list of Frequently Asked Questions (FAQs) which can be found at: <https://www.hudexchange.info/resources/documents/SAFMR-FAQs.pdf>

### 2.1. Designated and Opt-In SAFMR PHAs

A designated SAFMR PHA is an agency that directly administers HCV assistance to a family that resides in a metropolitan area where the use of SAFMRs is mandatory. SAFMRs are required for use in metropolitan areas where:

- at least 2,500 vouchers are under lease;
- the number of voucher holders concentrated in low-income areas<sup>5</sup> (as a percentage of all renters in the metropolitan area) exceeds a specified threshold; and
- at least 20 percent of the standard quality rental stock within the metropolitan area is in small areas (ZIP codes) where the SAFMR exceeds 110 percent of the metropolitan area FMR.

Every 5 years, at the beginning of the federal fiscal year, HUD designates metropolitan areas where the use of SAFMRs is mandatory. The first such areas were designated for federal fiscal year 2018. A list of the metropolitan areas where the use of SAFMRs is mandatory as of fiscal year 2018 can be found in Appendix A of Notice PIH 2018-01.

An Opt-in SAFMR PHA refers to PHAs that are not required to use SAFMRs in a particular area within their jurisdiction but choose voluntarily to do so.

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<sup>5</sup> Defined at 24 CFR 888.113(c)(2) as a census tract in a metropolitan area where the poverty rate is 25 percent or more or any tract in a metropolitan area that is designated a Qualified Census Tract for purposes of the Low Income Housing Tax Credit program and in which 50 percent or more of the households earn incomes less than 60 percent of the area median income.

## 2.2 Administrative Plan Requirements for PHAs That Employ SAFMRs

A PHA that chooses to adopt SAFMRs must amend its administrative plan to state that it will employ SAFMRs in the operation of its HCV program. A PHA that is required to adopt SAFMRs need not amend its administrative plan solely for this purpose. However, both types of agencies must indicate in their administrative plan whether they will adopt any of the policies described below.

- Protection of in-place tenants. The adoption of SAFMRs may have the effect of pushing current payment standards outside of the basic range. For example, if the FMR is high relative to the SAFMR, the adoption of the SAFMR may result in the current payment standard amount exceeding 110 percent of the SAFMR. For families under HAP in the SAFMR area, a PHA will have to use the new, lower payment standard to calculate the family's Housing Assistance Payment (HAP) beginning on the effective date of the family's second annual reexamination following the effective date of the decrease in the payment standard, unless the PHA adopts one of the protections described below:
  - Hold harmless – no reduction in subsidy. For a family that was under HAP on the effective date of the decrease in the payment standard, a PHA may continue to use the existing higher payment standard for the family's subsidy calculation for as long as the family continues to receive voucher assistance in its same unit.
  - Gradual subsidy reduction. Again, for a family that was under HAP on the effective date of the decrease in the payment standard, a PHA may choose gradually to reduce the payment standard amount used to calculate the family's HAP, phasing in the reduction. Such phased-in reductions may proceed annually from the second regular reexamination until the payment standard amount for the family meets the normally applicable payment standard amount on the PHA's voucher payment schedule.
- Applicability to PBV program. All PHAs have discretion regarding whether to employ SAFMRs in their project-based voucher (PBV) program, if they operate such a program. For example, an agency that is required to use SAFMRs in its HCV program may continue to use metropolitan area FMRs in its PBV program. The same is true for an agency that chooses to adopt SAFMRs.

A PHA that chooses to apply SAFMRs to its PBV program must adopt such a policy in its administrative plan and must apply SAFMRs uniformly for all projects within its jurisdiction for which notice of owner selection under 24 CFR §983.51(d), regarding owner proposal selection procedures, was made after the effective dates of the agency's adoption of both SAFMRs and a revised administrative plan. If a PHA establishes such a policy, then it has the option to also establish a policy that allows the PHA to apply SAFMRs to current PBV projects, provided the owner is mutually willing to agree to do so. If the rent to owner will increase as a result of this mutual agreement, then the rent increase shall go into effect no earlier than the first anniversary of the HAP contract and must comply with the requirements of 24 CFR §983.302(b), regarding rent increases.

For any PBV project to which SAFMRs have been applied, an owner and PHA may not subsequently choose to apply the metropolitan area FMR, even if the PHA changes its policy so that SAFMRs will no longer apply to its PBV program.

In considering whether to adopt SAFMRs for its PBV program, HUD recommends that a PHA compare the HAP contract rents of current PBV-assisted projects (if any) within their jurisdiction with what the rents would be under a SAFMR regime. Consider the examples below:

ZIP Code	Metropolitan Area FMR	Maximum Rent to Owner	SAFMR	Maximum Rent to Owner
90010	\$1,545	\$1,700	\$2,130	\$2,343
90013	\$1,545	\$1,700	\$1,630	\$1,793
90014	\$1,545	\$1,700	\$1,810	\$1,991
90024	\$1,545	\$1,700	\$2,290	\$2,519
90025	\$1,545	\$1,700	\$2,000	\$2,200

If the adoption of SAFMRs would create a significant discrepancy in individual ZIP code areas between existing PBV-assisted projects and newly developed projects under an SAFMR regime, PHAs will want to consider the effect on neighborhoods and HCV applicants and program participants before taking a decision about whether to adopt SAFMRs for their PBV program. Consider the ZIP codes described above, for example. A family can reside in any of these ZIP codes at lower cost to the PHA under MAFMRs than SAFMRs. If the PHA has existing properties in these ZIP codes, then it may not make sense to adopt SAFMRs.

ZIP Code	Metropolitan Area FMR	Maximum Rent to Owner	SAFMR	Maximum Rent to Owner
90005	\$1,545	\$1,700	\$1,190	\$1,309
90006	\$1,545	\$1,700	\$1,170	\$1,287
90011	\$1,545	\$1,700	\$1,240	\$1,364
90029	\$1,545	\$1,700	\$1,230	\$1,353
90033	\$1,545	\$1,700	\$1,170	\$1,287

Alternatively, if a PHA adopts PBVs and places properties in any of the ZIP codes described above, the PHA may be called upon to justify why it is paying so much more for some projects than others. Despite the change in rules that provides an explanation for the difference, a PHA may face pressure to terminate (or at least not extend) the PBV HAP on pre-SAFMR properties, with potential consequences for tenants, lenders, and investors. If an owner has 30-year debt on the project and the appraised value has declined at the point of extension due to the adoption of SAFMRs, then the adoption of SAFMRs could create problems.

- **Exception payment standards.** Exception payment standards that were approved prior to the adoption of SAFMRs may remain in effect, subject to the conditions in the approval letter. In some cases, the amounts previously approved may now fall within the SAFMR basic range and will therefore no longer be exceptions. Any amounts that remain above the basic range, including amounts previously approved as a reasonable accommodation for a household that includes a person with disabilities, must be maintained unless, following the adoption of SAFMRs, an agency subsequently elects to reduce its payment standards or otherwise seeks to establish a higher payment standard, in which case another waiver must be requested and approved before the new, higher payment standard may be adopted.
- **Payment standard groupings.** PHAs may choose to establish separate payment standards for each ZIP code area but are not required to do so. In lieu of establishing a unique payment standard schedule for each ZIP code area within its jurisdiction, a PHA may wish to establish payment standard schedules for “grouped” ZIP code areas. So, for example, a PHA could establish a payment standard schedule that falls within the basic range for a group of ZIP code areas and identify that group of ZIP code areas as Group A, another as Group B, and so on.

ZIP Code	SAFMR	Basic Range	Payment Standard	Group
90012	\$1,490	\$1,341-1,639	\$1,440	A
90013	\$1,630	\$1,467-1,793	\$1,630	B
90014	\$1,810	\$1,629-1,991	\$1,630	B
90015	\$1,180	\$1,062-1,298	\$1,000	C
90016	\$1,340	\$1,206-1,474	\$1,440	A
90017	\$1,090	\$981-1,199	\$1,000	C

Adopting groups, as illustrated above, may help to minimize the administrative burden of managing multiple payment standard areas.

### 2.3. Portability and SAFMRs

The vouchers of families who port will be administered according to the policies of the receiving PHA (as the term is used for portability purposes). If the receiving PHA is operating under SAFMRs, then the family's voucher will be administered using SAFMRs. If the receiving PHA has not adopted SAFMRs, then the family's voucher will not be administered using SAFMRs (regardless of whether the initial PHA uses SAFMRs).

### 2.4. Special Housing Types and SAFMRs

If use of the SAFMR has been designated for a metropolitan area or a PHA has voluntarily adopted to use SAFMRs, the SAFMRs apply to all tenant-based vouchers, including special housing vouchers, with the exception of manufactured home space rentals under 24 CFR §§982.622 through 982.624. Manufactured home space rentals are exempt from SAFMRs, and payment standards for manufactured home space rentals continue to be based on metropolitan area FMRs.

All other special housing types are subject to the SAFMRs. For example, under the Single Room Occupancy (SRO) special housing type, the payment standard is 75 percent of the 0-bedroom payment standard amount on the PHA payment standard schedule. If the PHA revised the payment standard schedule as a result of the applicability of SAFMRs, the payment standard for SRO units would likewise be revised to reflect 75 percent of the applicable 0-bedroom payment standard amount.

Revisions to the payment standard as a result of the implementation of SAFMRs also apply to the voucher homeownership program at 24 CFR §§982.625 through 982.641. The PHA must use the same payment standard schedule and payment standard amounts for the homeownership option as for the rental voucher program. The same protections that the PHA may employ for families under HAP when the payment standard decreases would apply to families assisted under the voucher homeownership option. Furthermore, the payment standard for a voucher homeownership family is always the greater of the payment standard used at the commencement of homeownership assistance for occupancy of the home or current payment standard in effect at the most recent regular reexamination.

### 2.5 Optional Reporting

HUD's Office of Policy Development and Research (PD&R) has developed a mobile application that delivers the most current FMR and Income Limit information to a mobile user based on the GPS location of their mobile device (available at [https://www.huduser.gov/portal/pdr\\_mobile.html](https://www.huduser.gov/portal/pdr_mobile.html)). In order to provide additional information to voucher families searching for a unit, PD&R would like to include payment standards in the application. PHAs that are willing to provide their payment standard information to HUD may do so by contacting PD&R at [SAFMR@hud.gov](mailto:SAFMR@hud.gov).

### 2.6 Applicability of SAFMRs to Moving to Work (MTW) agencies

MTW PHAs have the ability to set alternative rent policies, outside of the standard regulations governing the use of FMRs in setting payment standards with approval from HUD. MTW PHAs administering the HCV program can exercise flexibility in regard to establishing rent in accordance with the terms of their respective MTW Agreement and approved Annual MTW Plan. If an MTW PHA has not exercised flexibility through their Annual MTW Plan, the Small Area FMR requirements set forth in this Final Rule will apply to the MTW PHA, and the MTW PHA will be required to use Small Area FMRs in place of metropolitan-wide FMRs if the PHA jurisdiction is located within a designated Small Area FMR metropolitan area. Any MTW PHA that does not operate in a metropolitan area where the use of SAFMRs is mandatory may choose to adopt SAFMRs, following the procedures outlined in Notice PIH 2018-01.

## 3 Establishing Payment Standards

A PHA is required<sup>6</sup> to establish payment standards for each unit size in an FMR area. Unit size is measured by number of bedrooms in a unit. For each unit size, the PHA may establish a single payment standard for the whole FMR area or establish a separate payment standard amount for each designated part of the FMR area. (For a PHA that employs SAFMRs, each Zip code will be considered a “designated part” of the FMR area.)

The payment standards may be within several ranges depending on facts about the rental market. Payment standards may be established:

- Within the “basic range,” which is between 90 percent to 110 percent of the 40th percentile FMR;
- Between 90 percent and 110 percent of the 50th percentile rent if the PHA has obtained HUD’s approval for “success rate” payment standards<sup>7</sup>; or
- As exception payment standards below 90 percent, or above 110 percent, of the 40th percentile FMR, with HUD’s approval.

In the SAFMR final rule, HUD amended 24 CFR §888.113(b), which governs the establishment of 40th percentile FMRs, to provide that the published FMR will not decrease by more than 10 percent from one year to the next. This means that, beginning with the 2018 FMRs, there will be not more than a 10 percent decline, year-to-year, in the metropolitan area FMR level and in the SAFMR level. In areas transitioning from MAFMRs to SAFMRs, from FY 2018 through FY 2020, HUD will compare the preliminary SAFMRs with the final MAFMRs from the prior year and establish the final SAFMRs at a level that is not less than 90 percent of the prior-year MAFMRs. This to protect tenants in areas where the adoption of SAFMRs is mandatory and PHAs choose against adopting either of the tenant protections described in 2.1.

### 3.1 Payment Standards within the Basic Range

Most PHAs will establish payment standards within the basic range; the other options for setting payment standards are made available as tools for PHAs with special market concerns. Within the basic range, the payment standard is set between 90 percent and 110 percent of the 40th percentile published FMR.

Whenever the FMR increases or decreases, the PHA must ensure that its payment standards remain within the basic range. The SAFMR final rule provides PHAs with 3 months from the effective date of the change in the FMR (see 24 CFR §982.503(b)(1)(ii)) to make any revisions needed to bring their payment standards within the basic range (previously the revisions had been required as of the effective date of publication of the final FMRs).

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<sup>6</sup> 24 CFR §982.503

<sup>7</sup> The SAFMR Final Rule eliminated the regulations governing the establishment of FMRs using 50th percentile rents. See paragraph 3.3., below, for an explanation of the options available to a PHA to transition out of using payment standards based on 50th percentile rents.

## 3.2 Rounding the Payment Standard

The normal rounding rules will generally apply when determining the payment standard amount from the FMR. However, while rounding the payment standards to a whole dollar amount, the PHA must ensure that the rounded figures are within the basic range. For example, assuming that the applicable FMR is \$798:

- 110% of \$798 is \$877.80. The PHA may not round the payment standard to \$878 as this exceeds 110% of FMR. The payment standard must be rounded down to \$877.
- 90% of \$798 is \$718.20. The PHA may not round the payment standard down to \$718 since this is less than 90% of FMR. The payment standard must be rounded up to \$719.

## 3.3 Payment Standards Based on the 50th Percentile Rent: Success Rate

Prior to publication of the SAFMR final rule, a PHA could request HUD approval to base its payment standards on the 50th percentile rent (rather than the 40th percentile rent) if the PHA could demonstrate that higher rent levels were needed to ensure that more voucher holders would be successful in finding decent affordable housing. The SAFMR final rule eliminated the regulations governing the establishment of FMRs using 50th percentile rents and established requirements for the transition of 50th percentile FMR areas.

A PHA that is operating in a metropolitan area in which 50th percentile FMRs are effective, and for which the 3-year period has not expired prior to January 17, 2017, will, for the purposes of the HCV program, transition out of the use of 50th percentile FMRs, as follows<sup>8</sup>:

- (a) A PHA that is operating in a metropolitan area that is designated for SAFMRs shall transition to the use of SAFMRs, as of the effective date of the area's SAFMR designation.
- (b) A PHA that is operating in an area that is not designated for SAFMRs may choose one of the following options:
  - (i) Adopt SAFMRs without regard to the expiration of the 3-year period.
  - (ii) Remain subject to 50th percentile FMRs until the expiration of the 3-year period, then revert to the use of 40th percentile FMRs.
  - (iii) Revert to the use of the 40th percentile MAFMRs at the end of the 3-year period and then establish exception payment standards for a ZIP code area of up to and including 110 percent of the relevant SAFMR area by notifying HUD, as described in paragraph (4)(d)(ii)(II) of this Notice.
  - (iv) If a PHA scored the maximum number of points on the SEMAP deconcentration bonus indicator in the prior year or in two of the last three years (24 CFR §982.503(f)), then, upon the expiration of the 3-year period, it may request HUD approval of payment standard amounts based on the 50th percentile rent in accordance with 24 CFR §982.503(f), governing payment standard protections for PHAs that meet deconcentration objectives. The request must be made to the local HUD field office during the period between the release of revised FMRs and the effective date of those FMRs.

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<sup>8</sup> PIH Notice 2018-01

### 3.4 Requesting HUD's Approval of Payment Standards Below 90% FMR

PHAs may request the approval of payment standards below 90 percent of the published FMR for any unit size from their HUD field offices. However, 24 C.F.R. § 982.503(d) states that HUD will not approve such payment standards if the family's share of rent exceeds 30 percent of monthly adjusted income for more than 40 percent of voucher participants. This information can be obtained from the Key Management Indicators (KMI) report in PIC sub data under rent burden. PHAs experiencing financial difficulties may request that HUD waive this requirement for good cause, such as the inability of a PHA to avoid terminating the HAP contracts of current participants without the proposed reduction in payment standards.

In determining whether to approve a PHA's waiver request to reduce its payment standard below 90 percent, HUD will review and take into consideration the PHA's current rent burden and the impact of the proposed change on the PHA's participants.

PHA waiver requests should, at a minimum, include the calculation used to arrive at the projected shortfall in funding and cost-savings measures the PHA has already taken or will take in the future. Waiver requests should include an analysis by the PHA on the impact the reduction in payment standards below the basic range will have on a family's opportunity to lease units throughout the PHA's jurisdiction.

In addition, as a condition of the waiver approval, HUD may require the PHA to raise payment standards and apply the new payment standards immediately at such time that the PHA receives additional funding.

### 3.5 Requesting HUD's Approval of Exception Payment Standards

A PHA may establish a payment standard amount that is higher than the basic range for designated parts of the FMR area (the "exception areas") and has two options for doing so:

1. With the approval of its local HUD field office, a PHA that has not adopted SAFMRs may establish an exception payment standard above 110 percent and up to and including 120 percent of the metropolitan area FMR<sup>9</sup>. The local HUD field office will determine whether the request is supported by an appropriate justification using either:
  - the median rent method
  - the 40th percentile
  - SAFMR method in accordance with 24 CFR §982.503(c)(2)(ii).

HUD will approve the request only<sup>10</sup> if the exception payment standard is needed to:

- help families find housing outside of high-poverty areas, or
- because voucher holders have trouble finding housing to lease under the program within the voucher term.

The total population of all HUD-approved exception areas must not include more than 50 percent of the population of the FMR area. The exception payment standard may be for all units in the exception areas, or for all units of a given bedroom size in these areas. Any PHA with jurisdiction in the exception areas may use the HUD-approved exception payment standards without requesting specific HUD approval.

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<sup>9</sup> 24 CFR §982.503(c)(2)

<sup>10</sup> 24 CFR §982.503(c)(4)

2. A PHA that has not adopted SAFMRs may establish a SAFMR-based exception payment standard<sup>11</sup> for a ZIP code area of up to and including 110 percent of the SAFMR determined by HUD for that ZIP code area.

Regardless of the level of the exception payment standard compared to the metropolitan area FMR, the PHA must simply send an email to [SAFMRs@hud.gov](mailto:SAFMRs@hud.gov) to notify its local HUD field office that it has adopted an exception payment standard based on the SAFMR.

The 50-percent limitation described above, governing the total population of HUD-approved exception areas, does not apply to such exception payment standard requests. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV and, if applicable, PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable (24 CFR §983.301(b)). Again, any PHA with jurisdiction in the ZIP code area may use the exception payment standard without requesting specific HUD approval.

HUD will issue a Federal Register notice proposing conditions and procedures under which a PHA using SAFMRs may request HUD approval to establish an exception payment standard that exceeds 110 percent of the SAFMR.

A PHA that adopts an exception payment standard area must<sup>12</sup> revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

Requests for Exception Payment Standards over 120 percent of the FMR may be approved by the Assistant Secretary for Public and Indian Housing at the request of the PHA. The PHA must submit this request to its local HUD field office. A request will only be approved after six months from the date of HUD's approval of an exception payment standard between 110 percent and 120 percent. The exceptions must<sup>13</sup>:

- Be necessary to prevent financial hardship for families;
- Be supported by statistically representative rental housing survey data to justify HUD's approval in accordance with the methodology described in 24 C.F.R. 888.113; and
- Be supported by an appropriate program justification (the exception payment standard is needed to help families find housing outside areas of high poverty concentrations or because voucher holders have trouble finding housing to lease under the program within the voucher term).

### 3.6 Establishing the Payment Standard Schedule

Like the FMR, the payment standard schedule is established by bedroom size category. The payment standard schedule applies to all voucher units administered by the PHA regardless of the source of funding (e.g., standard HCVs, Family Unification Program (FUP), Non-elderly disabled (NED) vouchers, HUD-VASH vouchers) or the date on which the vouchers were awarded by HUD.

The PHA may establish one or more separate payment standards within the basic range for designated parts of an FMR area. This may be appropriate where a PHA has determined that its general payment standards

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<sup>11</sup> 24 CFR §982.503(b)(1)(iii)

<sup>12</sup> PIH Notice 2018-01

<sup>13</sup> 24 CFR §982.503(c)(3)

are too low to allow families seeking housing in areas with low poverty and minority concentrations to lease in these areas.

## 4 Revising the Payment Standards

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Prior to the effective date of any new FMRs, the PHA must<sup>14</sup> review its payment standard schedule and amend it as needed to ensure that the payment standards remain within the basic range (90 percent to 110 percent of the new FMR). If the FMR increases, the PHA is required to be sure that the payment standards for each unit size are at least 90 percent of the new FMR. Similarly, if the FMR decreases, the PHA is required to be sure that the payment standards are not more than 110 percent of the new FMR.

A PHA has up to three months from the date when the new FMRs are published and go into effect in which to update its payment standards if a change is necessary to fall within the basic range of the new FMRs. For example, as noted earlier, if the new FMR went into effect on October 1, 2018, the PHA would need to update its payment standards if necessary to fall within the basic range of the new FMRs no later than January 1, 2019.

For reexaminations of income with an effective date prior to the effective date of the new payment standard schedule, the old payment standard schedule will be used.

For reexaminations of income that are effective on or after the effective date of the new payment standard schedule, the new payment standard will be used.

The payment standard employed for a newly issued voucher will depend on the effective date of the HAP contract. If the effective date of the HAP contract is before the effective date of the new payment standard schedule, then the old payment standard schedule is used. If the effective date of the HAP contract is on or after the effective date of the new payment standard schedule, then the new payment standard schedule is used.

In order to assure that families are informed about the effect of payment standard changes, HUD recommends that PHAs provide both the old and the new payment standard schedules to families who have been issued a voucher and whose search term will extend beyond the effective date of the new payment standard schedule.

### 4.1 Annual Review of Payment Standards

At least annually, the PHA must<sup>15</sup> review its payment standards in accordance with its policy to determine whether adjustments are needed for some or all unit sizes. The PHA must describe the process for establishing and revising voucher payment standards. Since the PHA uses FMRs to determine its payment standards, and FMRs are published annually by HUD. The PHA must<sup>7</sup> review its payment standards when the new FMRs are published to ensure the payment standards fall within the basic range of 90 percent to 110 percent of the new FMRs. PHA has three months from the publication of the FMRs to establish its new payment standards, if necessary for them to be within basic range. reviewing the adequacy of its payment standards, the PHA may consider the following items:

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<sup>14</sup> 24 CFR § 982.503(b)

<sup>15</sup> 24 CFR §982.54(d)(14)

1. Assisted Families' Rent Burdens. The PHA should review the percentage of income families with vouchers use to pay rent to determine the extent to which rent burdens exceed 30 percent of income due to the fact that gross rent levels are above the PHA's payment standards. This information can be obtained from the rent burden subsection of the Key Management Indicators report in IMS/PIC.
2. Availability of Suitable Vacant Units with Rents Below the Payment Standards. The PHA should review its rent reasonableness data, vacancy rate data, and other relevant information to determine whether there is an ample supply of vacant units with rents below the payment standards, particularly in areas with low concentrations of poor and minority families.
3. Size and Amenities of Units Selected. The PHA should review the size and amenities of units selected by assisted families before concluding that there is a need for a change in the payment standards. Payment standard increases should be made only when they are needed to reach units of adequate size and amenities in the rental market.
4. Time to Locate Housing. The PHA should review the average time required for voucher holders to find units. If the PHA determines that the amount of time required is excessive (i.e. 90 days or more), an increase in the payment standard may be needed.
5. Vouchers Expired without Leasing. PHA should also review the number of voucher holders whose vouchers expire without having leased a unit. While some barriers to success are to be expected, the fact that there are a substantial number of families unable to lease units with assistance under the HCV program suggests that the payment standards may be too low.
6. Large Numbers of Families Moving Out of the PHA's Jurisdiction. The PHA may review the number of families exercising the portability option to lease in other jurisdictions. While some exercise of portability is to be expected, and may in fact indicate that the PHA is meeting its objectives in expanding housing opportunities for participating families, an excessively high number of families moving out may indicate that the PHA's payment standards are too low.

## 4.2 Lowering the Payment Standard

The PHA's analysis may indicate that the payment standards are too high, in which case the PHA should lower its payment standard to an appropriate amount within the basic range. The lower payment standard will not apply to families who have already leased units under the higher standard until they move to a new unit or have a change in their family size or composition, or at the second annual reexamination after the PHA lowers its payment standard.

## 4.3 File Documentation

The PHA should retain documentation of its review of the payment standards schedule to support a determination to change or not to change the payment standards on the payment standard schedule.

## 4.4 Applying the Payment Standard

The payment standard is used to calculate the monthly HAP paid on behalf of a family under the HCV program. The HAP is determined by taking the lower of the:

- Payment standard minus the TTP; or
- Gross rent for the unit minus the TTP.

Under the HCV program, if the gross rent for the unit is lower than the payment standard, the family's share will be the full TTP. If the gross rent for the unit is higher than the payment standard, the family's share will be

the TTP plus the amount by which the gross rent exceeds the payment standard. However, at initial lease up, the family's share cannot exceed 40 percent of the family's adjusted gross income.

See Form HUD-50058 field entries below for when the gross rent is lower than the payment standard. The total family share equals the family's TTP.

Form HUD-50058 When Gross Rent < Payment Standard			
Family's TTP	\$220	Rent to Owner	\$730
Payment Standard	\$800	Utility Allowance	\$40
Form HUD-50058 Entries			
12j.	Payment Standards for the family	\$800	12j.
12k.	Rent to owner	\$730	12k.
12m.	Utility allowance, if any	\$40	12m.
12p.	Gross rent of unit 12k+12m (or Space Rent)	\$770	12p.
12q.	Lower of 12j or 12p	\$770	12q.
12r.	TTP: copy from 9j	\$220	12r.
12.s	Total HAP; 12q minus 12r	\$550	12.s
Rent Calculation (if prorated rent, skip to 12ab)			
12t.	Total family share: 12p minus 12s	\$220	12t.
12u.	HAP to owner: 12 k minus 12s	\$550	12u.
12v.	Tenant Rent to owner: 12k minus 12u	\$180	12v.
12w.	Utility reimbursement to family: 12 s minus 12 u, but do not exceed 12m		12w.

In the example below, the Form HUD-50058 shows that the gross rent is greater than the payment standard. The total family share equals the family's TTP plus the amount by which the gross rent exceeds the payment standard.

Form HUD-50058 When Gross Rent < Payment Standard			
Family's TTP	\$220	Rent to Owner	\$765
Payment Standard	\$800	Utility Allowance	\$75
Form HUD-50058 Entries			
12j.	Payment Standards for the family	\$800	12j.
12k.	Rent to owner	\$765	12k.
12m.	Utility allowance, if any	\$75	12m.
12p.	Gross rent of unit 12k+12m (or Space Rent)	\$840	12p.
12q.	Lower of 12j or 12p	\$800	12q.
12r.	TTP: copy from 9j	\$220	12r.
12s.	Total HAP: 12q minus 12r	\$580	12.s
Rent Calculation (if prorated rent, skip to 12ab)			
12t.	Total family share: 12p minus 12s	\$260	12t.
12u.	HAP to owner: 12 k minus 12s	\$580	12u.
12v.	Tenant Rent to owner: 12k minus 12u	\$185	12v.
12w.	Utility reimbursement to family: 12 s minus 12 u, but do not exceed 12m		12w.

If during the term of the HAP contract the owner changes the rent for a unit, the HAP will be recalculated using the lower of the payment standard or the gross rent for the unit minus the TTP. During the initial term of the lease, the owner may not raise the rent to owner. Also, PHAs are required to re-determine whether the rent is reasonable before any increase in the rent to owner (see the Rent Reasonableness chapter).

If during the term of the HAP contract the rent to owner changes, the PHA may only change the payment standard used in the recalculation of the HAP in accordance with Section 5.2 - When the Payment Standard Increases and Section 5.3 - When the Payment Standard Decreases.

## 5 Changes in Payment Standard Amounts

### 5.1 When the Payment Standard Increases<sup>16</sup>

The payment standard in place on the effective date of the HAP contract remains in place for the duration of the contract term unless the PHA increases or decreases its payment standards.

If a payment standard is increased, the higher payment standard is first used in calculating the HAP beginning at the effective date of the family's first regular (annual) reexamination on or after the effective date of the increase in the payment standard amount. Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination.

### 5.2 When the Payment Standard Decreases

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) amended the United States Housing Act of 1937 to provide that no PHA is required to reduce a family's payment standard based on a reduction in the FMR.

Prior to this change, if the amount on the PHA's payment standard schedule decreased during the term of the HAP contract, the PHA was required to use the lower payment standard to calculate the family's HAP beginning on the effective date of the family's second regular reexamination following the effective date of the decrease in payment standard.

The final rule amends the voucher program regulations at 24 CFR §982.505(c)(3) to reflect the change made by HOTMA, providing PHAs with three options for applying a decrease in the payment standard amount to families under HAP contract on the effective date of the decrease in the payment standard amount.

Specifically, a PHA may adopt one of the policies listed below if there is a decrease to the payment standard schedule during the term of a family's HAP contract:

- (i) Hold harmless – no reduction in subsidy. A PHA may continue to use the existing higher payment standard for the family's subsidy calculation for as long as the family continues to receive the voucher assistance in that unit.
- (ii) Gradual reduction in subsidy. A PHA may gradually reduce the payment standard amount used to calculate the family's subsidy, phasing in the reduction. The initial reduction in payment standard cannot take place before the effective date of the family's second regular reexamination following the effective date of the decrease in payment standard. Phased-in reductions may proceed annually from the second regular reexamination until the payment standard amount for the family meets the normally applicable payment standard amount on the PHA's voucher payment standard schedule.
- (iii) No change in policy. A PHA may continue to use the lower payment standard to calculate the family's HAP beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard.

A PHA's Administrative Plan must indicate how it will handle decreases in the payment standard amount for families under HAP contract. Whatever the policy, the PHA must apply it uniformly to all families. A PHA may establish different policies for designated areas within its jurisdiction (for example, for different ZIP code

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<sup>16</sup> 24 CFR §982.505(c)(4)

areas), but within each designated area, the policy must be applied uniformly to all families under HAP contract.

If a PHA chooses to reduce the payment standard for a family under HAP contract, the initial reduction in payment standard cannot take place before the effective date of the family's second regular reexamination following the effective date of the decrease in payment standard. Per 24 CFR §982.516(a), PHAs must conduct a reexamination of family income and composition at least annually. The requirement to conduct an annual reexamination is in effect even if the PHA implements a streamlined income determination for fixed-income families, as is currently permitted under 24 CFR §982.516(a). Even if the PHA conducts a full 7 income recertification only every three years, it will review the family's payment standard annually as part of the streamlined annual reexamination, and the decrease in payment standard will take effect in the second calendar year after the effective date of the payment standard reduction.

If the PHA lowers its payment standards, the payment standard applies immediately to all new admissions, moves, and families remaining in their units with a new HAP contract (e.g., when the owner offers or requires a new lease).

If a family's voucher size is reduced, any lowered payment standard will be applied at the first regular (annual) reexamination following the subsidy standard change. This rule applies whether the family's voucher size was reduced due to a change in family composition or due to the PHA changing its subsidy standards.<sup>17</sup>

A family that will be affected by a payment standard reduction must receive notice. A PHA must provide such notice in writing 12 months before the effective date of the reduced payment standard amount. This notice is required for any reduction in payment standard, even if the PHA chooses to reduce the payment standard gradually.

Tips for PHAs on language to include in any written notice to families who will experience a reduction in subsidy due to a decrease in the payment standard.

- Provide a simple, clear letter, mailed directly to the family. This approach is preferable to a general meeting or training, even if all families are invited.
- Provide the notice at least one year in advance of the effective date of the lower payment standard and change in the HAP calculation for the family. Even a second notice sent less than a year before the date of implementation of the lower payment standard can not make up for proper notice (i.e., notice sent at least one year in advance of the implementation date of the lower payment standard).
- In the letter, clearly define and explain the term "payment standard," and explain how a change in the payment standard is likely to affect the family's subsidy. Do not assume that the family understands what is meant by "payment standard" or the connection between a change in the payment standard and a change in their subsidy. Include a sample calculation to illustrate the likely effect of the change.

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<sup>17</sup> 24 CFR § 982.505(c)(3)

- Identify a point of contact for families who have questions or wish to seek new housing, given the change. Make clear whom families may contact if they have questions, as well as how to contact that person.

All materials provided to residents communicating a change in their subsidy must be presented in a manner that is accessible for those with hearing and/or vision impairment, in addition to those with limited English proficiency, as described below.

- **Effective Communication Requirements.** All notices and communications must be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities consistent with Section 504 of the Rehabilitation Act, Title II of the ADA, and implementing regulations. Recipients must provide appropriate auxiliary aids and services necessary to ensure effective communication, which includes ensuring that information is provided in appropriate accessible formats as needed (e.g., Braille, audio, large type, assistive listening devices, sign language interpreters, accessible websites, and other electronic communications). See 24 CFR §8.6; 28 CFR §35.160.
- **Limited English Proficiency (LEP) Requirements.** Recipients of HUD funds must take reasonable steps to ensure meaningful access to their programs and activities to LEP individuals. See HUD's published Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance), 72 Fed. Reg. 2732, for more information.

### 5.3 Higher Payment Standard as a Reasonable Accommodation<sup>18</sup>

A PHA may, without HUD approval, establish an exception payment standard of up to and including 120 percent of the published FMR as a reasonable accommodation for a family that includes a person with a disability.

Examples of circumstances that may qualify for an exception payment standard as a reasonable accommodation include, but are not limited to:

- Rental of a larger unit to accommodate special equipment or a live-in aide.
- Special features such as ADA complaint bathrooms.
- Proximity to medical or other services.

If a payment standard higher than 120 percent of the FMR for the unit size is necessary as a reasonable accommodation, the PHA must<sup>19</sup> request HUD Headquarters approval of an exception payment standard for the unit.

When HUD's approval is required, the PHA is required to provide the following documentation to HUD:

- Whether the family is an applicant or participant family;
- Number of household members including a live-in aide(s);

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<sup>18</sup> 24 CFR § 982.505(d)

<sup>19</sup> 24 CFR § 982.503(c)(3)

- Family unit size (voucher bedroom size) the family is issued under the PHA's subsidy standards or any exception to those standards granted through a reasonable accommodation request (e.g., as a reasonable accommodation, a single-person family may be issued a two-bedroom voucher due to a need to store medical equipment);
- The FMR for the smaller of the voucher bedroom size or actual unit size;
- When either the disability or the need for the requested accommodation is not known or readily apparent, a statement from a health care provider regarding the need for the reasonable accommodation and the features of the unit (which may include its location) which meet that person's needs;
- Contract rent and utility allowance for the accessible unit;
- A statement from the PHA that it has determined that the rent for the unit is reasonable, and that the unit has the feature/s required to meet the needs of the person with disabilities as noted in the statement from the health care provider where such a statement is necessary;
- The family's monthly adjusted income; and
- Proposed effective date of the new lease or actual effective date of the lease renewal.

PHAs have the regulatory flexibility to grant an exception to their established subsidy standards if the PHA determines that the exception is justified by age, sex, health, handicap, or relationship of family members or other personal circumstances<sup>20</sup>. Therefore, when the PHA submits a request for an exception payment standard above the 120 percent threshold, the bedroom size on the voucher issued by the PHA should be the same size as the unit size which requires the exception payment standard. For example, if a PHA issues the family a 2-bedroom voucher, the request for the exception standard must also be a 2-bedroom unit. Conversely, if the PHA issued the family a 2-bedroom voucher and the request for an exception payment standard as a reasonable accommodation is for a 3-bedroom voucher, the request will be denied because the PHA has the flexibility it needs under the current regulatory structure to meet the family's reasonable accommodation needs.

## 6 Glossary

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The following terms are used in this Chapter:

**Basic Range** means payment standards between 90 percent and 110 percent of the 40th percentile FMR.

**Exception Area** means a designated part of an FMR area.

**Exception Payment Standard** means payment standard below 90 percent or above 110 percent of the 40th FMR, with HUD's approval if necessary.

**Fair Market Rent (FMR)** is the rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately

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<sup>20</sup> 24 CFR § 982.402(b)(8)

owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

**Family Share** is the portion of rent and utilities paid by the family.

**Family Unit Size** means the appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Gross Rent** is the entire housing cost and is calculated by adding the rent to the owner and the utility allowance for the unit. Note: If all the utilities are included in the rent, the rent to the owner and the gross rent will be the same.

**Housing Assistance Payment** is the monthly assistance payment by a PHA and is calculated as the lower of: 1) the payment standard for the family minus the total tenant payment (TTP); or 2) the gross rent minus the TTP.

**Maximum Family Share** means, at initial occupancy (when the family initially moves into the unit or signs the first assisted lease for a unit), 40 percent of the family's adjusted monthly income (in cases when the gross rent of the unit exceeds the applicable payment standard for the family).

**Payment Standard** is the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Payment standard schedule** is a schedule that establishes payment standard amounts by unit size (number of bedrooms) for each FMR area in the PHA jurisdiction.

**Rent to Owner** is the total monthly rent payable to the owner under the lease for the unit. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Success Rate** refers to the percent of applicants with issued vouchers who successfully find and lease a unit that meets HCV program requirements before the voucher expires.

**Total Tenant Payment (TTP)** is the minimum family contribution to the gross rent and is calculated as the greater of: 1) 30 percent of monthly adjusted income; 2) 10 percent of monthly income; 3) the welfare rent (in as-paid states only); or 4) the PHA minimum rent.

**Utility Allowance** means, if the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.