



March 20, 2023

GENERAL NEWS

HUD Restores Discriminatory Effects Rule

In a [press release](#) last Friday, the Department of Housing and Urban Development ([HUD](#)) announced that it has submitted to the *Federal Register* for publication a [final rule](#) entitled *Reinstatement of HUD's Discriminatory Effects Standard*. The final rule rescinds the Department's [2020 disparate impact rule](#) and restores the [2013 discriminatory effects rule](#). Because the 2020 rule never took effect, since it was temporarily halted by a [preliminary injunction](#), the 2013 rule has been and is currently still in effect.

As stated in the press release, under the 2013 rule, the discriminatory effects framework was straightforward: a policy that had a discriminatory effect on a protected class was unlawful if it was not necessary to achieve a substantial, legitimate, nondiscriminatory interest or if a less discriminatory alternative could also serve that interest. The 2020 rule complicated that analysis by adding new pleading requirements, new proof requirements, and new defenses, all of which made it harder to establish that a policy violates the Fair Housing Act. HUD now returns to the 2013 rule's straightforward analysis.

The final rule also adopts one amendment made by the 2020 rule to HUD's general fair housing regulations at 24 CFR 100.70(d)(5). The amendment provides additional illustrations of prohibited activities under the Fair Housing Act in general, although it is not specific to discriminatory effects cases. Additionally, the final rule revises the Fair Housing Act regulations at 24 CFR part 100 by adding a new subpart G to standardize a three-step burden-shifting approach.

The [Fair Housing Act](#) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex (including sexual orientation and gender identity), disability, familial status, or national origin. This prohibition extends to practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate.

The final rule will go into effect 30 days after it is published in the *Federal Register*. For further information, please refer to the [final rule](#) and this [fact sheet](#).

PD&R Publishes Revised FMRs for Five Areas

In a *Federal Register* [notice](#) today, HUD's Office of Policy Development and Research ([PD&R](#)) announced revised fiscal year (FY) 2023 fair market rents ([FMRs](#)) for the following five areas:

- Grand Rapids-Wyoming, MI HUD Metro FMR Area
- Hawaii County, HI
- Hood River County, OR
- Seattle-Bellevue, WA HUD Metro FMR Area
- Wasco County, OR

The updated FY 2023 FMRs are based on surveys conducted by the area public housing agencies and reflect the estimated 40th percentile rent levels trended to FY 2023. The FY 2023 small area FMRs ([SAFMRs](#)) for metropolitan areas with revised FMRs have been updated accordingly. The effective date for the amended FMRs is April 19, 2023.

PH PROGRAM NEWS

PIH Posts Explanation of Partial March and April Obligations

HUD's Office of Public and Indian Housing ([PIH](#)) has [posted](#) a [document](#) explaining public housing operating fund obligations for partial March and April 2023. According to the document, at the beginning of the year, before operating subsidy forms are processed and current year eligibility determined, HUD normally estimates eligibility based upon the data used to prepopulate operating subsidy forms. Partial March and April obligations are based on the selected elements of final 2022 operating fund eligibility and 2023 HUD-52723 prepopulated data. PHAs are advised that once HUD can utilize HUD-52723 data for eligibility, funding for individual projects may fluctuate significantly.

All operating subsidy obligations are cumulative. As such, to the extent that excess amounts were cumulatively obligated to a project previously, its next obligation (and possibly future obligations depending upon the amount of the overfunding) will reflect a relative decrease. To the extent that insufficient amounts were cumulatively obligated to a project previously, its next obligation will reflect a relative increase.

For the partial March and April funding, the Department considered estimate eligibility and 2023 appropriation amount to set an interim proration level of 98.72%. The final proration will reflect the difference in the amount of the final approved PHA eligibility and the 2023 Appropriation Act. HUD plans to make this round of funding available through eLOCCS no later than March 20, 2023. The next round of funding is expected to be available in eLOCCS no later than May 1, 2023.



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