STATE OF MINNESOTA

IN SUPREME COURT

A20-1367

Court of Appeals

Gildea, C.J.
Concurring in Part, Dissenting in Part,
Thissen, J.

Linda Cobb Thompson, on behalf of herself and all others similarly situated,

Appellant,

vs.

Filed: August 24, 2022
Office of Appellate Courts

St. Anthony Leased Housing Associates II, LP, et al.,

Respondents.

Prentiss Cox, University of Minnesota Consumer Protection Clinic, Minneapolis, Minnesota; and

John Cann, Margaret Kaplan, James Poradek, Housing Justice Center, Saint Paul, Minnesota, for appellant.

Thomas H. Boyd, Peter G. Economou, Winthrop & Weinstine, P.A., Minneapolis, Minnesota, for respondents.

S Y L L A B U S

1. Because the tenant alleges that the landlord breached their lease agreement by charging rent in violation of the Minnesota Bond Allocation Act, Minn. Stat.

§ 474A.047 (2020), and that the landlord made misleading statements in violation of the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43–.48 (2020), and the Consumer Fraud Act, Minn. Stat. §§ 325F.68–.70 (2020), the tenant has standing to assert her common-law and statutory claims even though she cannot maintain a separate claim for violation of the Bond Allocation Act.

2. Because the "area fair market rent" limit in Minn. Stat. § 474A.047, subd. 1(a)(2), means the fair market rent figures published annually by the U.S. Department of Housing and Urban Development and the tenant alleged that the landlord charged more than the applicable fair market rent in violation of their lease, the district court erred in dismissing the tenant's complaint.

Reversed and remanded.

O P I N I O N

GILDEA, Chief Justice.

This action arises from the lease agreement between appellant Linda Cobb Thompson and respondents St. Anthony Leased Housing Associates II, Limited Partnership; St. Anthony Leased Housing Associates II, LLC; and Dominium Management Services, LLC (collectively, Dominium). Thompson leases and lives in one of Dominium's rent-restricted housing units. She alleges that Dominium violated the Minnesota Bond Allocation Act, Minn. Stat. §§ 474A.01–.21 (2020), which imposes rent limits on residential rental projects financed with tax-exempt municipal bonds. The district court dismissed Thompson's complaint, concluding that she had not alleged a violation of the Act. The court of appeals affirmed. Because we conclude that Thompson has alleged

a violation of the Act sufficient to support her common-law and statutory claims, we reverse and remand.

FACTS

In 2015, Dominium constructed the Legends at Silver Lake Village, a senior-living apartment complex in Saint Anthony.[1] Thompson is a tenant of the Legends. Dominium financed the Legends project in part with tax-exempt municipal bonds issued by the City of Saint Anthony. When a private developer receives municipal bond proceeds for a housing project, as Dominium did here, the developer must comply with the Minnesota Bond Allocation Act. *See* Minn. Stat. §§ 474A.01–.21. The Act restricts the maximum rent that a developer may charge for at least 20 percent of the project's housing units. Minn. Stat. § 474A.047, subd. 1(a)(2). Specifically, rent in those units may not exceed "the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development [(HUD)]." *Id.*

Dominium entered into an agreement with the City, promising to abide by the rent restrictions in Minn. Stat. § 474A.047 for 15 years, as required by the Bond Allocation Act. *See* Minn. Stat. § 474A.047, subd. 2. Dominium's lease agreement with tenants in the rent-restricted units, including Thompson, contained a provision that addressed future rent

[1] Thompson's complaint names as defendants St. Anthony Leased Housing Associates II, Limited Partnership; St. Anthony Leased Housing Associates II, LLC; and Dominium Management Services, LLC. These companies are closely related business entities that constructed, own, and manage the Legends.

increases, stating that any "rent increase will be made in accordance with all applicable state and local laws."

Thompson sued Dominium on behalf of a putative class of tenants for breach of contract, violations of the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43–.48 (2020), and the Consumer Fraud Act, Minn. Stat. §§ 325F.68–.70 (2020), and unjust enrichment. Thompson asserted that Dominium's rent exceeded the fair market rent figures that HUD sets and therefore violated Minn. Stat. § 474A.047. Because the rent allegedly violates the statute, Thompson claimed a breach of lease by Dominium. As alleged in the complaint, Dominium overcharged Thompson by a total of $4,120 for the period from June 2015 through January 2020.[2] She also alleged that Dominium made misleading statements regarding the rent increases in violation of the Uniform Deceptive Trade Practices Act and the Consumer Fraud Act.

Dominium moved to dismiss the complaint under Minnesota Rule of Civil Procedure 12.02(e) for failure to state a claim upon which relief can be granted. Dominium argued that Thompson does not have standing to enforce Minn. Stat. § 474A.047 and, even if she did, the rent that Dominium charged did not violate the Bond Allocation Act. Dominium claimed that the rent did not exceed the payment standard amount set by the

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[2] As an example, Thompson alleged that Dominium charged her $1,190 per month in gross rent in 2018. The fair market rent figure set by HUD for fiscal year 2018 for the Minneapolis-St. Paul-Bloomington, MN-WI metropolitan area—the area that includes Saint Anthony—was $1,089 for a two-bedroom unit, an overcharge of $101 per month. *The FY 2018 Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area FMRs for All Bedroom Sizes*, HUD User, https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2018_code/2018summary.odn?&year=2018&fmrtype=Final&selection_type=county&fips=2712399999 (last visited July 11, 2022) [opinion attachment].

local public housing agency—here, the Metropolitan Council's Housing and Redevelopment Authority (Metro HRA)—which Dominium contended is the applicable rent limit under section 474A.047.

The district court granted Dominium's motion to dismiss. The court first concluded that Thompson has standing to pursue her claims against Dominium based on the lease agreements in which Dominium promised to abide by applicable state and local laws related to rent increases. On the merits, however, the court concluded that, as a matter of law, Dominium did not violate the rent restrictions in Minn. Stat. § 474A.047. The court agreed with Dominium that the payment standard amounts set by local housing agencies meet the requirements of section 474A.047. Because Thompson did not allege that her rent exceeded the payment standard amount set by Metro HRA, the local housing agency here, and all her claims were premised on an alleged violation of section 474A.047, the court dismissed the complaint in its entirety.

Thompson appealed, and the court of appeals affirmed. *Thompson v. St. Anthony Leased Hous. Assocs. II, LP*, 961 N.W.2d 787, 789 (Minn. App. 2021). The court held that "area fair market rent" in Minn. Stat. § 474A.047 means the payment standard amounts set by local agencies. *Id.* at 794. Ultimately, the court held that because Thompson does not allege that Dominium charged more than Metro HRA's payment standard amount, Dominium did not violate the rent restrictions in section 474A.047. *Id.* at 795.

We granted Thompson's petition for further review that challenged the court of appeals's interpretation of "area fair market rent."[3]

ANALYSIS

This case comes to us on review of the district court's grant of Dominium's motion to dismiss for failure to state a claim. A party fails to state a claim under Rule 12.02(e) when the complaint does not "set[] forth a legally sufficient claim for relief." *Graphic Commc'ns Loc. 1B Health & Welfare Fund "A" v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014). We accept the facts stated in the complaint "as true and construe[] all reasonable inferences in favor of the nonmoving party." *Id.* We review a district court's dismissal for failure to state a claim de novo. *Id.*

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[3] The court of appeals also held that "exception fair market rents" in Minn. Stat. § 474A.047 means the exception payment standard amounts above 110 percent of fair market rent that are approved by HUD. *Thompson*, 961 N.W.2d at 793. Neither party challenged the court of appeals's interpretation of "exception fair market rents," so that issue is not before us here. And Thompson did not allege that an exception rent applied to the Legends or that Dominium's rent charges exceeded any applicable exception rent limit.

The dissent considers the definition of "exception fair market rents" to be "a fundamental part of the Section 47's definition of maximum rent." But an exception fair market rent is only part of the rent limit "if applicable." Minn. Stat. § 474A.047, subd. 1(a)(2). Neither party in this case argues that an exception fair market rent is "applicable" to the Legends. Though the dissent contends that our decision takes a "piecemeal approach" that "provides Minnesota lawyers and litigants incomplete guidance," we only "decide actual controversies." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 735 (Minn. 2014). We do not issue opinions "merely to establish precedent." *Schowalter v. State*, 822 N.W.2d 292, 298 (Minn. 2012) (quoting *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989)). If we interpreted "exception fair market rents" here, that analysis would largely be dicta. If Minnesota lawyers and litigants are faced with incomplete guidance on the meaning of "exception fair market rents" in Minn. Stat. § 474A.047, subd. 1(a)(2), it is up to the Legislature to provide that guidance, absent a dispute presented to us that requires resolution of that issue.

At issue is the meaning of "area fair market rent" in Minn. Stat. § 474A.047, subd. 1(a)(2). Thompson argues that Dominium's rent exceeded the rent restrictions in the statute because the rent exceeded the fair market rent figures that HUD sets. Dominium contends that the rent complied with the statute because the rent did not exceed the payment standard amount that the local public housing agency set. Before turning to the merits of the district court's dismissal, we first consider whether Thompson has standing.

I.

We review issues of standing de novo. *Webb Golden Valley, LLC v. State*, 865 N.W.2d 689, 693 (Minn. 2015). A person has standing if they are "the beneficiary of a legislative enactment granting standing" or if they have "suffered an injury-in-fact." *Id.* A party has suffered an injury-in-fact when there has been "a concrete and particularized invasion of a legally protected interest." *Id.* (quoting *Lorix v. Crompton Corp.*, 736 N.W.2d 619, 624 (Minn. 2007)). The district court concluded that Thompson had standing, but the court of appeals did not discuss the issue. We decide the standing question because "[s]tanding is a jurisdictional issue." *Id.*

Thompson's claims against Dominium—breach of contract, violation of consumer protection statutes, and unjust enrichment—are founded on the allegation that Dominium charged more than the maximum rent allowed under Minn. Stat. § 474A.047. Dominium argues that the statute governs the relationship between a party that receives bond proceeds (here, Dominium) and a bond issuer (the City of Saint Anthony in this case) and does not grant enforcement authority to affected tenants. Therefore, Dominium contends, Thompson has no legally protected interest in Dominium's compliance with

section 474A.047. The district court concluded that Dominium's lease with its tenants—specifically the provision that rent increases "will be made in accordance with all applicable state and local laws"—gave Thompson standing to enforce the rent restriction in the statute.

Dominium emphasizes that the Bond Allocation Act does not provide a private cause of action to enforce the rent restrictions and that bond issuers have the sole enforcement authority. We agree. In addition to imposing rent restrictions, Minn. Stat. § 474A.047 requires parties that receive bond proceeds to "enter into a 15-year agreement with the issuer" promising that their rent rates and the income levels of the project's tenants will be within section 474A.047 limits. Minn. Stat. § 474A.047, subd. 2. If a bond issuer determines that a project is not in compliance with the statute, the owners of the project must pay a penalty to the issuer, though an issuer can decide to "waive insubstantial violations." *Id.*, subd. 3. Because there is no indication that the Legislature intended for tenants to be able to sue their landlords for section 474A.047 violations but is instead focused on developers and issuers, we agree with Dominium that this statute is not "a legislative enactment granting standing." *See Webb Golden Valley, LLC*, 865 N.W.2d at 693.

But Thompson is not arguing that Minn. Stat. § 474A.047 gives her the right to enforce the statute's rent restriction. Thompson's claim that she was charged excessive rent is based on Dominium's lease agreement, which promised that rent increases would be made in compliance with state and local laws. It is the violation of the lease agreement,

Thompson claims, that caused her an injury-in-fact and gives her standing to sue for Dominium's alleged section 474A.047 violations as a breach of their contract.

Dominium responds that Thompson does not have an injury-in-fact because Dominium charged rents that complied with Minn. Stat. § 474A.047. But Dominium conflates Thompson's standing with the merits of her claims. The inquiry at this stage is whether Thompson has suffered an injury *if* Dominium's rent exceeded the statute's limits. Because Thompson has alleged such an injury, she has standing to pursue her claim that Dominium violated the lease. Specifically, Thompson alleges that she paid more rent than Dominium was allowed to charge under section 474A.047 and her lease. This claimed economic loss suffices as an injury-in-fact.[4] *Cf. Enright v. Lehmann*, 735 N.W.2d 326, 330 (Minn. 2007) (holding that garnishment of a debtor's joint bank account was an injury-in-fact even though the garnished funds were not deposited by the plaintiff but from the other person on the joint account).

[4] Dominium suggests that allowing Thompson to enforce section 474A.047 violations conflicts with the statutory remedy—that is, the penalty owed to issuers. *See* Minn. Stat. § 474A.047, subd. 3. But the statutory remedy governs only the agreement between the developer and the bond issuer. The statutory remedy does not purport to be the exclusive remedy for other parties that have contracted with the developer. Dominium also points out that the City has not found that Dominium's rent charges violated the rent restrictions in section 474A.047. But the City's failure to assess a penalty against Dominium for noncompliance with section 474A.047 does not govern whether Dominium violated the lease by charging rent that exceeded the statutory limit or whether Thompson may bring a claim against Dominium.

Additionally, Thompson alleges a claim under the Uniform Deceptive Trade Practices Act and the Consumer Fraud Act.[5] We have held that violations of statutes that do not themselves create private causes of action may be the subject of a Consumer Fraud Act claim. *See Graphic Commc'ns*, 850 N.W.2d at 693–94. In *Graphic Communications*, a group of health benefit funds alleged that pharmacies overcharged them for generic prescription drug purchases. *Id.* at 687. The funds asserted that the pharmacies violated the Consumer Fraud Act and the Pharmacy Practice Act, Minn. Stat. §§ 151.01–.40 (2020), which requires pharmacists to dispense generic rather than brand-name drugs unless specified and then pass the cost savings to the purchasers of the generic drugs. *Graphic Commc'ns*, 850 N.W.2d at 687–88. We held that the Pharmacy Practice Act did not create a private cause of action, so the health funds could not sue the pharmacies under that statute. *Id.* at 691–92. But we held that the funds were not barred from bringing a Consumer Fraud Act claim based on the underlying conduct that violated the Pharmacy Practice Act. *Id.* at 694.

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[5] Consumers may recover for violations of both the Consumer Fraud Act and the Uniform Deceptive Trade Practices Act. *See* Minn. Stat. §§ 8.31, subds. 1, 3a, 325D.45. Here, Thompson alleges that Dominium's rent increase letters were misleading to tenants because they misstated the applicable standard for calculating rent amounts and led tenants to believe that the rent increases complied with the law. Dominium raised the rent for the rent-restricted units at least three times during Thompson's tenancy, in 2016, 2018, and 2019. Tenants received a letter regarding the 2016 and 2018 increases, which stated that "the Fair Market Rent for Ramsey County has increased," and therefore the tenant was subject to a corresponding rent increase up to "the maximum allowable rent." The 2019 letter stated that a rent increase was "based on the area median gross income (AMGI) published by the Federal Department of Housing and Urban Development for [their] geographical area."

Like the Pharmacy Practice Act in *Graphic Communications*, Minn. Stat. § 474A.047 does not create a private cause of action. But that does not preclude Thompson from asserting that Dominium's rent charges (as alleged violations of section 474A.047) violate other statutory provisions or her lease agreement with Dominium.

In sum, Thompson has standing based on Dominium's lease agreement in which Dominium agreed to charge rent in accordance with limits prescribed by law.

II.

Turning to the merits of whether Thompson's complaint adequately states a claim, Thompson alleges that Dominium's rent exceeded the rent restrictions in Minn. Stat. § 474A.047. As relevant here, parties that receive municipal bond proceeds to construct housing are required to offer at least 20 percent of their units at a rental rate that does "not exceed the area fair market rent . . . as established by the federal Department of Housing and Urban Development [(HUD)]." Minn. Stat. § 474A.047, subd. 1(a)(2). The parties dispute the meaning of "area fair market rent . . . as established by [HUD]." Thompson contends that "area fair market rent" means the fair market rent figures that HUD publishes on an annual basis for use in a variety of affordable housing programs. Dominium counters that "area fair market rent" refers to payment standard amounts that local housing agencies set for use in the Housing Choice Voucher program.

This dispute presents an issue "of statutory interpretation that we review de novo." *Moore v. Robinson Env't*, 954 N.W.2d 277, 280 (Minn. 2021). We start by determining whether the statutory language is ambiguous, that is, "subject to more than one reasonable interpretation." *Id.* at 281. We construe technical words and phrases according to their

"special meaning" and other words and phrases "according to their common and approved usage." Minn. Stat. § 645.08(1) (2020). For a statute that is "plain and unambiguous," our inquiry ends there. *Moore*, 954 N.W.2d at 281.

To resolve whether Dominium's rent violates the rent restrictions in Minn. Stat. § 474A.047, we must interpret the term "area fair market rent" in Minn. Stat. § 474A.047, subd. 1(a)(2). The Bond Allocation Act does not define "area fair market rent." But Thompson contends that "area fair market rent" is a technical term that means the fair market rent figures that HUD sets every year for various regions throughout the country.

The context in which the phrase "area fair market rent" is used is important in determining whether the phrase has a technical meaning. *See State v. Rick*, 835 N.W.2d 478, 484 (Minn. 2013), *abrogated on other grounds by State v. Thonesavanh*, 904 N.W.2d 432, 440–41 (Minn. 2017). The context here makes clear that the Legislature tied "area fair market rent" to rent figures that HUD establishes—the statute is explicit that this is a rental rate "established by the federal Department of Housing and Urban Development." Minn. Stat. § 474A.047, subd. 1(a)(2). In addition, the Legislature twice references federal assistance programs in section 474A.047.[6] *See id.* ("The rental rates of units in a residential

[6] The dissent interprets the statute's reference to project-based assistance to mean that "the Legislature understood that rental rates that satisfied federal regulations for project-based assistance payment to tenants qualify as falling within 'area fair market rent or exception fair market rents.' " The statute, however, provides that "[t]he rental rates of units in a residential rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause." Minn. Stat. § 474A.047, subd. 1(a)(2). If, as the dissent argues, rents that satisfy federal project-based assistance programs satisfy the limit in Minn. Stat. § 474A.047, subd. 1(a)(2), the Legislature would not have needed to "deem" that those rents satisfy the limit. To hold that rents that comply

rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause."); *id.*, subd. 1(b) ("The proceeds from residential rental bonds may be used for a project for which project-based federal rental assistance payments are made only if [certain requirements are met]."). Given that the Legislature linked the rent restriction at issue to the rent figures that HUD sets and specifically mentioned federal assistance programs in the statute, we conclude that the Legislature intended to rely on the special meaning given to the term in federal housing assistance law. *See In re Restorff*, 932 N.W.2d 12, 20 (Minn. 2019) (noting that we can "look to an outside statute or rule . . . when a word is a technical term with a special meaning").

There is no question that the term "fair market rent" has well-defined special meaning in federal housing assistance law.[7] Specifically, federal regulations explain that HUD annually sets and publishes the "fair market rent" for each metropolitan area and nonmetropolitan county in the United States. 24 C.F.R. §§ 888.113, .115(a) (2021).[8]

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with federal project-based assistance programs always satisfy the limit in section 474A.047 without regard to the language that deems the limit satisfied would render that language superfluous, a conclusion that we are unable to adopt. *See Pfoser v. Harpstead*, 953 N.W.2d 507, 518 (Minn. 2021) (refusing to adopt an interpretation of a statute that would render one standard in the statute "meaningless"). Regardless, neither party alleges that Dominium received project-based assistance payments for the units at issue, and so we do not further construe this clause here.

[7] Ninety-nine sections of Title 24 of the Code of Federal Regulations (which relates to Housing and Urban Development) include the term "fair market rent" or "FMR."

[8] HUD regulations define "fair market rent" as "the rent, including the cost of utilities . . . , as established by HUD, . . . for units of varying sizes (by number of

The modifier "area" in the full phrase "area fair market rent" in Minn. Stat. § 474A.047 is necessarily part of the technical meaning. HUD sets fair market rent figures for each designated metropolitan area and those counties not included in a metropolitan area. Federal law directs the HUD Secretary to publish these "[f]air market rentals *for an area* . . . not less than annually" on HUD's website "and in any other manner specified by the Secretary." 42 U.S.C. § 1437f(c)(1)(B) (emphasis added); *see also, e.g.*, 24 C.F.R. § 888.113(d) ("FMR *areas* comprise metropolitan areas and nonmetropolitan counties . . . ." (emphasis added)); 24 C.F.R. § 888.111(b) (2021) ("Fair market rent means the rent, . . . as established by HUD, . . . that must be paid in the market *area* [for rental housing]." (emphasis added)).

HUD's fair market rent figures are used to determine benefits in several housing programs, including Housing Choice Voucher, Moderate Rehabilitation Single Room Occupancy, HOME Investment Partnerships, Emergency Solutions Grants, Continuum of Care, and Public Housing.[9] *See* Fair Market Rents for the Housing Choice Voucher

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bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities." 24 C.F.R. § 888.111(b) (2021). The fair market rent figures represent the 40th-percentile rent for standard quality rental housing in an area. 24 C.F.R. § 888.113(a) (2021).

[9] For example, the maximum rent amount provided by the HOME Investment Partnerships program is the applicable fair market rent figure set by HUD or an amount based on a family's income, whichever is less. 24 C.F.R. § 92.252(a) (2021). In the Emergency Solutions Grants program, the maximum rent provided is the applicable fair market rent figure set by HUD, if the rent also meets "HUD's standard of rent reasonableness." 24 C.F.R. § 576.106(d)(1) (2021). In 2001 when the "area fair market rent" and "exception fair market rents" provisions were added to Minn. Stat. § 474A.047, subd. 1(a)(2), the program limited certain lease payments paid to an organization for

Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2022, 86 Fed. Reg. 43,260, 43,261 (Aug. 6, 2021). Based on its widespread use in these federal programs, we conclude that the phrase "area fair market rent" has acquired a specialized meaning. The Legislature's use of this phrase in Minn. Stat. § 474A.047 and the connection that the statute makes between the phrase and HUD convinces us that the Legislature intended for that specialized meaning to apply to section 474A.047, and thus "area fair market rent" in Minn. Stat. § 474A.047, subd. 1(a)(2), means the fair market rent figures set by HUD.[10]

Dominium would have us conclude that "area fair market rent . . . as established by [HUD]" does not have the technical meaning of the "fair market rent figures set by HUD" but instead refers to a payment standard amount set by a local agency.[11] But that is an

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rehabilitation or conversion of a property to the *fair market rent* that applied before the rehabilitation or conversion, even though the program did not provide rental assistance at the time. 24 C.F.R. § 576.23(b)(4) (2001).

[10] Dominium argues that HUD's fair market rents are simply estimates and not "final, exact" rent values. But HUD's fair market rents are exact dollar amounts. For example, the fair market rent for the Minneapolis-St. Paul-Bloomington metropolitan area in fiscal year 2022 is $1,078 for a one-bedroom unit. *The FY 2022 Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area FMRs for All Bedroom Sizes*, HUD User, https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary.odn?Cbsasub=METRO33460M33460&year=2022&fmrtype=Final (last visited July 11, 2022) [opinion attachment].

[11] A payment standard amount is generally the maximum rent allowed under the Housing Choice Voucher program for a particular area. 24 C.F.R. § 982.505(b) (2021); *see also* 24 C.F.R. § 982.4 (2021) (defining "payment standard" as "[t]he maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)"). Payment standard amounts between 90 and 110 percent of HUD's fair market rent fall within the "basic range" and can be set by a

unreasonable reading of the statute. HUD has explained that "Fair Market Rents (FMRs) are used to determine payment standard amounts for the Housing Choice Voucher program" and other purposes. Off. of Pol'y Dev. & Rsch., U.S. Dep't of Hous. & Urb. Dev., *Fair Market Rents (40th Percentile Rents)*, HUD User, https://www.huduser.gov/portal/datasets/fmr.html (last visited July 11, 2022) [opinion attachment]. A payment standard is *based on* fair market rent. A payment standard is not itself fair market rent.[12]

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local agency without HUD approval. 24 C.F.R. § 982.503(b)(1)(i) (2021). If a local agency wants to set a payment standard lower than 90 percent or higher than 110 percent of HUD's fair market rent, it must get HUD approval. 24 C.F.R. § 982.503(b)(2) (2021). Under Housing Choice Voucher regulations, a HUD-approved payment standard outside the basic range is called an "exception payment standard amount." *Id.* The "payment standard" language was included in the HUD regulations at the time that Minn. Stat. § 474A.047 was amended in 2001. *See* 24 C.F.R. § 982.503(b)(1)(i) (2000). Dominium asks us to overlay this framework of payment standards in the basic range and exception payment standards onto section 474A.047 by asserting that the rent restrictions in section 474A.047 "reflect the Legislature's intent to incorporate and correspond with the HUD payment standards."

[12] In an effort to connect Minn. Stat. § 474A.047—which was amended in 2001—and the Housing Choice Voucher program, Dominium points us to HUD regulations in effect in 1999. Under those regulations, HUD was to publish fair market rents and could "approve an area exception rent" that was higher than the fair market rent to allow a greater subsidy for part of an area. 24 C.F.R. § 982.504(b) (1999). The two figures—HUD's fair market rent and HUD-approved rents higher than fair market rent—were referred to as the "FMR/exception rent limit" and represented the "fair market rent published by HUD Headquarters, or any exception rent." 24 C.F.R. § 982.4(b) (1999). Dominium argues that these regulations are instructive in interpreting section 474A.047 because neither "area fair market rent" nor "exception fair market rents" is defined in section 474A.047 and both terms "can be readily and appropriately determined by" looking to the regulations.

But Minn. Stat. § 474A.047 does not reference the Housing Choice Voucher regulations. Thompson does not allege that she is a participant in the voucher program, and Dominium does not identify any specific link between the Bond Allocation Act and the Housing Choice Voucher program that would make it logical to interpret section 474A.047 consistently with the voucher regulations when the fair market rent figures set by HUD have broader applicability beyond that single program. And even more

In addition, "area fair market rent" must be "established by the federal Department of Housing and Urban Development." Minn. Stat. § 474A.047, subd. 1(a)(2). Thompson argues that a payment standard amount set by a local agency is not "established by" HUD because HUD takes no specific action when a local agency sets a payment standard. Though HUD has delegated authority to local agencies to set a payment standard within 90 to 110 percent of fair market rent (the "basic range"), Thompson contends that section 474A.047 allows only one entity to establish area fair market rent, and that entity is HUD. Dominium counters that HUD indirectly establishes payment standard amounts when it sets fair market rent figures, which define the range within which local agencies are limited in setting the payment standard. We agree with Thompson.

HUD "establishes" the fair market rent figures for each area because HUD itself sets them. Federal regulations explicitly define "fair market rent" as "[t]he rent . . . *as*

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problematic for Dominium's argument, HUD regulations in effect in 2001 when the rent restrictions in section 474A.047 were amended did not reference the "FMR/exception rent limit" but instead used the current "payment standard" language. *See* 24 C.F.R. § 982.4 (2000) (omitting definitions for "exception rent" and "FMR/exception rent limit"); 24 C.F.R. § 982.504 (2000) (omitting references to "exception rent" and "FMR/exception rent limit" in the Housing Choice Voucher program regulation).

The dissent points to the "close textual family resemblance" between the FMR/exception rent limit and the basic and exception payment standard schemes to assert that the FMR concept is equivalent to the payment standard basic range and the exception rent is equivalent to the exception payment standard. The dissent claims "that the phrase 'exception fair market rent' has a historical pedigree in federal law." Then, the dissent interprets "area fair market rent" in Minn. Stat. § 474A.047, subd. 1(a)(2), to mean payment standard amount in the basic range. But the FMR/exception rent limit scheme was not the law when the "area fair market rent" and "exception fair market rents" provision was added to section 474A.047. And federal law used the term "exception rent," not "exception fair market rent." *See* 24 C.F.R. § 982.4 (1999) (amended in 2000 to remove references to "exception rent").

established by HUD." 24 C.F.R. § 982.4(b) (2021) (emphasis added). Thus, the requirement in Minn. Stat. § 474A.047 that an "area fair market rent" be "established by" HUD directly refers to the fair market rent figures set by HUD.

In contrast, HUD's only role in setting the payment standard under the Housing Choice Voucher program is setting the fair market rent for each area, which the local agency then uses as the baseline figure in setting the payment standard within the basic range of 90 to 110 percent of fair market rent. HUD has approved the use of payment standards in the basic range, *see* 24 C.F.R. § 982.503(b)(1)(i) (2021), but HUD does not select the precise payment standard for an area. According to HUD regulations, local agencies—not HUD—establish payment standards. *See id.* ("The *[local agency] may establish* the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to *establish* a payment standard amount in that range ('basic range')." (emphases added)). The court of appeals held that HUD "indirectly" establishes payment standards because it delegated authority to local agencies to set payment standards. *Thompson*, 961 N.W.2d at 794. But Minn. Stat. § 474A.047 references HUD alone and does not mention the involvement of local housing agencies in setting the values that govern rent restrictions under the Bond Allocation Act.[13] The technical meaning of "area fair market rent," coupled

[13] In arguing that HUD "establishes" payment standards because it has established the regulations that govern payment standards, the dissent overlooks the plain meaning of the word "established." Relevant dictionary definitions of "establish" include: "[t]o bring about; generate or effect," "[t]o cause to be recognized and accepted," and "[t]o introduce and put (a law, for example) into force." *The American Heritage Dictionary of the English*

with the specific and exclusive reference to HUD in section 474A.047, bolsters our conclusion that Dominium's interpretation of the statute that a payment standard amount set by a local agency is "area fair market rent" is not reasonable.[14]

Language 608 (5th ed. 2011). HUD itself brings about, generates, and effects the fair market rent values and publishes these figures online. But HUD does not "bring about," "generate," or "effect" the payment standard amounts. The dissent concludes that "established by HUD" does not mean "established by HUD" because "HUD does not determine and publish 'exception fair market rents' in the same way as it establishes and publishes 'fair market rents' for an area." Though not at issue in this case, assuming that "exception fair market rents" includes exception payment standard amounts, we acknowledge that HUD does not establish exception payment standard amounts in the same way that it establishes fair market rents. But importantly, exception payment standard amounts are still established by HUD. While HUD does not select the exception payment standard amount, it must approve the amount. 24 C.F.R. § 982.503(b)(2). An exception payment standard is not in effect unless HUD takes action to approve it. In this way, HUD brings the exception payment standard into existence, i.e., establishes it.

[14] Both the district court and the court of appeals adopted Dominium's interpretation based upon a perceived "gap" in the statute under the interpretation that we adopt. The district court concluded that interpreting "area fair market rent" in Minn. Stat. § 474A.047 to mean the fair market rent figures set by HUD would create a "Minnesota exception" to the rental amounts that a landlord could charge. According to the district court, a "gap" would result because a project owner could charge either (1) the fair market rent set by HUD for the area, or (2) an amount greater than 110 percent of fair market rent if it is approved by HUD as an exception, but the owner could not charge between 100 and 110 percent of fair market rent. The district court determined that "the Legislature did not intend to create this absurd result." The court of appeals similarly found that this "gap" made Thompson's interpretation of section 474A.047 less reasonable. *See Thompson*, 961 N.W.2d at 793.

The dissent claims that our interpretation "presumes that, in Section 47, the Legislature intended to create gaps in the rent amounts allowed" and that "[i]t really makes no sense for the Legislature to adopt such a regime." The dissent also notes that the district court judge in this case is a former legislator who worked on finance issues.

This "gap," whether intentionally or unintentionally created by the Legislature, neither makes Thompson's interpretation unreasonable nor Dominium's interpretation reasonable. *See Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) ("We cannot add words or meaning to a statute that were intentionally or inadvertently omitted."). We do not ignore the plain meaning of a statute "under the pretext of pursuing the spirit." Minn.

In sum, we hold that "area fair market rent" in Minn. Stat. § 474A.047, subd. 1(a)(2), means the fair market rent figures set by HUD.[15] There is no dispute in this case that if we interpret section 474A.047 to mean the rent that HUD sets under 24 C.F.R. § 888.113, then Thompson has stated a viable cause of action. This is so because she alleges that Dominium's rent exceeds the HUD-established rents. Because Thompson alleged that Dominium charged rent that exceeded the fair market rent figures set by HUD, and because for purposes of our review we accept her allegations as true, her complaint is sufficient to allege a violation of the statute and breach of lease. Therefore, we conclude

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Stat. § 645.16 (2020). And we have held "that a lone legislator is not competent to testify about the intent of a statute, even if she or he authored it." *In re Welfare of D.L.*, 486 N.W.2d 375, 381 (Minn. 1992).

We acknowledge that if "exception fair market rents" means exception payment standard amounts approved by HUD—a question that is not before us here—landlords may not charge more than fair market rent unless a higher amount has been specifically approved by HUD as an exception payment standard, even if a local agency has approved a payment standard amount up to 110 percent of fair market rent. Ultimately, if the payment standard amount is greater than fair market rent, the gap arises because a landlord subject to Minn. Stat. § 474A.047 is not allowed to charge an amount that is allowed for landlords participating in the Housing Choice Voucher program. But there is no indication that the Legislature intended the rent standard in section 474A.047 to be identical to the Housing Choice Voucher standard. Accordingly, the gap caused by interpreting section 474A.047 in light of the Housing Choice Voucher standards does not change our interpretation of "area fair market rent." Moreover, the gap argument presumes that a local agency is precluded from getting HUD's approval to set an amount that is within its authority, which may not be true.

[15] Dominium also argues that the payment standard amounts set by local agencies should be included in the rent restriction in section 474A.047 "in order to make affordable housing projects—like Legends—economically viable." But because the statute is not ambiguous, we need not address this policy argument. *See City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 758 (Minn. 2013) (stating that "policy arguments do not provide a basis for us to ignore the application of the plain language" of a statute). This argument is more properly directed to the Legislature, which sets the statutory rent restrictions.

that Thompson has stated a claim upon which relief can be granted and hold that the district court erred when the court dismissed her complaint.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for proceedings consistent with this opinion.

Reversed and remanded.

C O N C U R R E N C E & D I S S E N T

THISSEN, J. (concurring in part and dissenting in part).

Appellant Linda Cobb Thompson rents a unit in The Legends at Silver Lake in St. Anthony (the Legends). The Legends is owned by respondent St. Anthony Leased Housing Associates II, Limited Partnership; respondent St. Anthony Leased Housing Associates II, LLC, is the general partner of the limited partnership; and the Legends is managed and operated by the owner's authorized agent, Dominium Management Services (collectively, the Owner).

The central dispute is whether the Owner charged Thompson more than the "maximum rent" allowed under Minn. Stat. § 474A.047 (2020) (hereinafter Section 47). I concur with the court's conclusion that Thompson has standing to raise the question. But contrary to the court's decision, I conclude that the maximum rent that can be charged under Section 47 is either (1) the "area fair market rent," which is a rent amount set by the local public housing agency that is between 90 percent and 110 percent of fair market rent for the area determined and published by the federal Department of Housing and Urban Development (HUD), or (2) the "exception fair market rents," which is a rent amount outside of that range set by the local public housing agency and approved by HUD. The two alternative statutory options for setting maximum rent correspond to the payment standard amounts determined by the local public housing agency for purposes of the federal Housing Choice Voucher program.

A.

Section 47—which was enacted to establish the parameters for the conditions under which the government could use public bond proceeds to assist developers in building affordable housing units and not to mandate the terms of the contractual relationship between landlords and tenants[1]—defines the "maximum rent" that can be charged as follows: "the area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development." Minn. Stat. § 474A.047, subd. 1(a)(2). Thus, under Section 47, the "maximum rent" is an amount equal to something called "area fair market rent" or an amount equal to something called "exception fair market rents."[2] As the court points out, the Legislature did not define either of those phrases. The underlying dispute centers around what those phrases mean and how they work together to define the "maximum rent" allowed under Section 47.

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[1] Thompson asserts that her lease in all relevant years incorporated the limitation on maximum rent set forth in Section 47.

[2] As I argue below, Section 47 is ambiguous in several ways relevant to the precise issue before the court. In addition to those ambiguities, it is not clear from Section 47 how to choose when area fair market rent is the applicable maximum rent and when exception fair market rent is the applicable maximum rent. On the one hand, the statute is defining the *maximum* rent, which may suggest that the landlord may charge whichever of the two options is greater. *See* Minn. Stat. § 474A.047, subd. 1(a)(2). On the other hand, the phrase "if applicable" follows the phrase "exception fair market rents," which may mean that maximum rent under Section 47 is "exception fair market rents" unless no "exception fair market rents" apply to the unit. *Id.* If the latter construction is correct, then an exception fair market rent amount of less than HUD-published fair market rent would be the Section 47 cap on rent. All this suggests that the Legislature may wish to clarify the definition of maximum rent in Section 47.

As an initial matter, it is useful to define some terms. First, federal regulations define "fair market rent" as

> the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

24 C.F.R. § 888.111(b) (2001).[3] Fair market rent is a single dollar amount rather than a range of amounts. Second, federal regulations include the concept of a basic payment standard that a local public housing authority may adopt without HUD approval. That basic payment standard may range from 90 percent to 110 percent of fair market rent. 42 U.S.C. § 1437f(o)(1)(B); 24 C.F.R. § 982.503(b) (2001). Third, federal regulations also allow local public housing authorities to adopt an "exception payment standard amount"—rent below 90 percent or above 110 percent of fair market rent. But the local public housing authority may do so only with HUD approval. 42 U.S.C. § 1437f(o)(1)(D); 24 C.F.R. § 982.503(b)(2).

The Owner's position on how to determine what "maximum rent" may be charged has shifted over the course of the litigation. In the district court and at oral argument before the court of appeals, the Owner asserted that "area fair market rent" means the fair market rent amount published by HUD (the single amount) and that "exception fair market rents" means any rent other than the single HUD-published fair market rent that the local public

[3] I use 2001 federal statutes and regulations, when appropriate, because those were the statutes and regulations in place when the Legislature enacted the current definition of maximum rent in Section 47.

housing authority adopted as a payment standard. Those exception fair market rents could be the basic payment standard that the local public housing authority could adopt without HUD approval (from 90 percent to 110 percent of fair market rent) and "exception payment standard amounts" outside that basic range that must have HUD approval. *See* 24 C.F.R. § 982.503(b), (c). In its briefs to the court of appeals, however, the Owner argued that "area fair market rent" means a rent amount established by the local public housing authority within the basic range of 90 percent to 110 percent of fair market rent and that "exception fair market rents" means the "exception payment standard" amount above 110 percent of fair market rent or below 90 percent of fair market rent. Importantly, the Owner's differing positions are consistent on one point: under either approach, there are no gaps in the range of rent amounts that landlords are permitted to impose.

Thompson's position is that "area fair market rent" means a single number: the "fair market rent" published by HUD on an annual basis. *See* 24 C.F.R. § 888.115(a) (2021). Thompson claims that the rent the Owner charged her violated Section 47 and, thus, her lease because the rent was greater than the single fair market rent amount published by HUD. Notably, Thompson declined to take a firm position on what "exception fair market rents" means even though that phrase is a fundamental part of Section 47's definition of "maximum rent." In her brief, Thompson conditionally states that she "agrees that *if* exception [fair market rent] can be defined *at all* by the [Housing Choice Voucher]

regulations, the [Housing Choice Voucher] exception payment standard [identified by the court of appeals] is the only proper fit." (Emphasis added.)[4]

Thompson's reference to the exception payment standard refers to rents adopted by local public housing authorities and approved by HUD that are less than 90 percent of the fair market rent amount or greater than 110 percent of the fair market rent amount. In addition, as explained more fully below, Thompson also asserts that no rent is legal if the specific amount is not formally approved by HUD. Based on these assertions, unlike the Owner's positions, Thompson's position presumes that, in Section 47, the Legislature intended to create gaps in the rent amounts allowed both above and below the fair market rent amount: a landlord may charge rent that is either less than 90 percent of fair market rent (if approved by HUD), exactly HUD-published fair market rent, or greater than 110 percent of fair market rent (if approved by HUD). Stated another way, under Thompson's reading of Section 47, a landlord could *not* charge rents between 90 percent and exactly 100 percent of fair market rent or between exactly 100 percent and 110 percent of fair market rent. (Presumably, the rent the Owner charged Thompson is less than 110 percent of the fair market value determined and published by HUD.)

Both the district court and the court of appeals settled on the position taken by the Owner in its brief to the court of appeals: the "maximum rent" a landlord may charge a

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[4] Alternatively Thompson claims that we could look to the "small area fair market rent" concept, *see* 24 CFR § 888.113(c)(1), (d)(2) (2021), to understand what "exception fair market rents" means. But because that provision was not adopted until 2016, *see* Establishing a More Effective Fair Market Rent System, 81 Fed. Reg. 80,567, 80,580–81 (Nov. 16, 2016), it is hard to see how the 2001 Legislature could have been thinking about that provision when it enacted Section 47.

tenant under Section 47 is either (1) the "area fair market rent," defined as the amount established by the local public housing authority within the basic range of 90 percent to 110 percent of fair market rent; or (2) "exception fair market rents," defined as the "exception payment standard" amount above 110 percent of fair market rent or below 90 percent of fair market rent, an amount that must be approved by HUD. *Thompson v. St. Anthony Leased Hous. Assocs. II, LP*, 961 N.W.2d 787, 794 (Minn. App. 2021); *see* 24 C.F.R. § 982.503(b)(2), (c) (2021). For the reasons stated below, I agree with the conclusion reached by the district court and the court of appeals.

In contrast, the court adopts Thompson's position that "area fair market rent" means the fair market rent published by HUD and expressly declines to analyze the meaning of the phrase "exception fair market rents." This piecemeal approach, which plucks four words ("area fair market rent") out of a definitional phrase ("maximum rent"), is methodologically and practically problematic. *See generally* William N. Eskridge, Jr. & Victoria F. Nourse, *Textual Gerrymandering: The Eclipse of Republican Government in an Era of Statutory Populism*, 96 N.Y.U. L. Rev. 1718 (2021); Victoria Nourse, *Picking and Choosing Text: Lessons for Statutory Interpretation from the Philosophy of Language*, 69 Fla. L. Rev. 1409 (2017). The meaning of "area fair market rent" has no relevance aside from its relationship with defining "maximum rent." The real question before us is, what does "maximum rent" in Section 47 mean, not what does "area fair market rent" mean. A fundamental disagreement I have with the court is whether we can understand the meaning of "maximum rent" without considering all components of the statutory definition. My position is that one cannot meaningfully discern what "maximum rent" means without

considering how "area fair market rent" and "exception fair market rents" interact. Further, because "area fair market rent" and "exception fair market rents" are the two alternative measures in the definition of "maximum rent," we cannot understand what "area fair market rent" means without also having an understanding what "exception fair market rents" means. The two concepts inform each other's meaning. And because there is incomplete statutory interpretation, the court provides Minnesota lawyers and litigants incomplete guidance.

B.

I now turn to my analysis of the meaning of "maximum rent" in Section 47. First, I agree with the consensus of the parties, the district court, the court of appeals, and the court that this is not a case where the analysis turns on parsing the plain and ordinary meaning of the words of the statute. Because the Legislature did not define the phrases "area fair market rent" and "exception fair market rents," everyone agrees that it is appropriate to look to federal affordable housing law and regulations for guidance in interpreting the definition of "maximum rent" in Section 47. After all, Section 47 expressly refers to the federal Department of Housing and Urban Development. *See* Minn. Stat. § 474A.047; *see also* Act of May 29, 2001, ch. 214, § 24, 2001 Minn. Laws 973, 983–85 (codified as amended at Minn. Stat. § 474A.047) (eliminating state-imposed restrictions on the use of tax-exempt bonds for rental projects and replacing them with the current requirements conforming to income restrictions and rent limits established under federal housing law). But an analysis that focuses on federal housing law and regulations is complicated because neither the phrase "area fair market rent" nor the phrase "exception

fair market rents" existed in the federal regulations in 2001 when the current language of Section 47 was adopted.

As an initial matter, the Legislature did not use the federally defined term "fair market rent" set forth in 24 C.F.R. § 888.111(b) (2001), but instead used the phrase "*area* fair market rent." Of course, this difference could simply be legislative shorthand for the fact that HUD sets fair market rents for each "geographic area in which rental housing units are in competition." 24 C.F.R. § 888.113(a) (2001); *see* 24 C.F.R. § 888.111(b) (referencing "market area" in the definition of "fair market rent"). But we do not know that for sure. Indeed, the Legislature could have achieved the same result by using the precise term in the federal regulations—"fair market rent"—because the federal regulatory definition of "fair market rent" already includes an area-specific focus. *See* 24 C.F.R. § 888.111(b). If that is all that was meant, the Legislature did not need to use the modifier "area" in the phrase "area fair market rent." It could have just stated that (unless the concept of exception fair market rents is applicable) maximum rent is "fair market rent." Consequently, it is also reasonable to conclude that the Legislature intended the modifier "area" to do additional work—to focus attention on *how* the HUD-published "fair market rent" was actually applied in a given local area. *See State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017) (explaining that we favor "giving each word or phrase in a statute a distinct, not an identical, meaning"). Under this reading, the phrase "*area* fair market rent" refers to the rent a landlord may charge in a given local area determined by a local public housing agency using the payment standards methodology set forth in the federal regulations (which includes both basic payment standards and exception payment

standards); rents that may deviate from the single fair market rent established by HUD. In short, because there are these two reasonable alternative meanings, the statutory phrase "area fair market rent" is ambiguous.

Similarly, the other component of Section 47 "maximum rent"—the phrase "exception fair market rents"—did not exist in federal housing law and regulations in 2001. Nonetheless, the concept of exceptions to the fair market rent determined and published annually by HUD did exist and provide interpretive guidance. Indeed, both parties agree that we may look to other federal regulations—the Housing Choice Voucher program being the most obvious—to provide meaning to exception fair market rents.

For example, as referenced above, the federal government used fair market rent in implementing the Housing Choice Voucher program "to determine payment standard schedules." 24 C.F.R. § 888.111(a) (2001); *see* 42 U.S.C. § 1437f(c)(1) (2000) (requiring the HUD Secretary to establish "fair market rental . . . not less than annually"). The "payment standard" is the maximum rent for which the federal government will provide subsidies.[5] *See* 42 U.S.C. § 1437f(o)(1)(A), (o)(2) (2000). Thus, the payment standard is a stand-in for what the federal government considers to be the maximum affordable rent in an area.

[5] Under the voucher program, an income-qualified tenant and the federal government share the cost of affordable rent. The tenant pays a certain percentage of their income toward rent and the federal government (through the local public housing authority) pays the rest up to the lower of the actual rent or the payment standard. *See* 42 U.S.C. § 1437f(o)(1)(A), (o)(2) (2000). The payment standard sets the cap of what the federal government will subsidize.

Under federal law, local public housing agencies set the payment standards for the voucher program in their area. *See generally* 42 U.S.C. § 1437f(o)(1) (2000); 24 C.F.R. § 982.503(a) (2001). The public housing agency is authorized to set the payment standard, without express HUD approval, in a range from 90 percent of the "fair market rental" published by HUD to 110 percent of the "fair market rental" published by HUD. 42 U.S.C. § 1437f(o)(1)(B); 24 C.F.R. § 982.503(b) (2001) (stating that a public housing agency may establish a payment standard amount between 90 percent and 110 percent of the published fair market rent—known in the regulation as the "basic range"—without HUD approval). The payment standards set by local public housing agencies are subject to HUD oversight and modification when a "significant percentage" of tenants are "paying more than 30 percent of adjusted income for rent." 42 U.S.C. § 1437f(o)(1)(E). And a public housing agency must revise the payment standard amount each year after HUD publishes the fair market rent for the area, *but only when* the new fair market rent pushes the local payment standard outside the basic range. 24 C.F.R. § 982.503(b)(1)(i) (2021).

Federal law also authorizes an exception mechanism for circumstances where a local public housing agency wants to set a payment standard that is "less than 90 percent of the fair market rental or [that] exceeds 110 percent of the fair market rental" for the area. 42 U.S.C. § 1437f(o)(1)(D). HUD established a regulatory mechanism for establishing such an "exception payment standard amount" for rents outside the basic range. *See* 24 C.F.R. § 982.503(b)(2). The exception payment standard may be established for a

designated part of the entire market area known as an "exception area." 24 C.F.R. § 982.503(c) (2001).[6]

Finally, it is worth noting that the phrase "exception fair market rent" has a historical pedigree in federal law. Before the passage of the Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2518, federal regulations defined "exception rent" as follows:

> Exception Rent means in the certificate program, an initial rent (contract rent plus any utility allowance) in excess of the published FMR. In the certificate program, the exception rent is approved by HUD, and is used in determining the initial contract rent. In the voucher program, the HA [housing authority] may adopt a payment standard up to the exception rent limit approved by HUD for the HA certificate program.

24 C.F.R. § 982.4 (1997). The pre-1998 regulations also defined "[fair market rent]/exception rent limit":

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[6] The concept of regulatory flexibility and exceptions to fair market rent is also found in 42 U.S.C. § 1437f(c) (2000), which addressed the contents and purposes of contracts for assistance payments between a landlord and a public housing agency. The statute provided that such assistance contracts shall, among other things, establish a "maximum monthly rent." 42 U.S.C. § 1437f(c)(1). The provision further explains that "the maximum monthly rent shall not exceed by more than 10 per centum the fair market rental" for the market area established by HUD. *Id.*

There was also an exception to the rule capping maximum monthly rent at 110 percent of the HUD-published fair market rent:

> [T]he maximum monthly rent may exceed the fair market rental (A) by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a housing strategy as defined in section 12705 of this title, or (B) by such higher amount as may be requested by a tenant and approved by the public housing agency in accordance with paragraph (3)(B).

42 U.S.C. § 1437f(c)(1). The maximum monthly rent also must be reasonable. *Id*. Notably, unlike the voucher program, HUD-published fair market rent appears to be a floor for maximum rent in the context of assistance contracts.

> The Section 8 existing housing fair market rent published by HUD headquarters, or any exception rent. In the certificate program, the initial contract rent for a dwelling unit plus any utility allowance may not exceed the [fair market rent]/exception rent limit (for the dwelling unit or for the family unit size). In the voucher program, the HA may adopt a payment standard up to the [fair market rent]/exception rent limit.

Id. In short, before the 1998 federal legislation, the fair market rent determined and published by HUD under 24 C.F.R. § 888, Subpart A, was the maximum contract rent or payment standard unless HUD approved a higher contract rent or payment standard in a particular area. *See generally* Section 8 Certificate and Voucher Programs Conforming Rule, 63 Fed. Reg. 23,826, 23,831–34 (April 30, 1998).

These definitions were eliminated in response to a decision by the 1998 Congress to merge the certificate program and the voucher program, essentially eliminating the certificate program. *See* Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs, 64 Fed. Reg. 26,632, 26,640–41 (May 14, 1999) (Interim Rule); Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program, 64 Fed. Reg. 56,894, 56,894–96 (October 21, 1999) (Final Rule); *see generally* 24 C.F.R. § 982.502(a) (2000) (stating that certificate program will be phased out in favor of the voucher program). The same rule changes altered the rules and process for establishing a payment standard in the voucher program such that a local public housing agency could set the payment standard. It was precisely then that Congress mandated, and HUD moved to, the current system where local public housing agencies had discretion to set maximum rents and payment standards within the basic range of 90 percent to 100 percent of the Part 888 HUD-

determined fair market rent—the same rule discussed above that was in place when Section 47 was amended in 2001. *See* 64 Fed. Reg. 26,632, 26,648 (May 14, 1999) (Interim Rule amending 24 C.F.R. § 982.504(b)(1)(i)); 64 Fed. Reg. 56,894, 56,894–915 (October 21, 1999) (Final Rule); *see also* 42 U.S.C. 1437f(o)(1).

In other words, the concept of fair market rent/exception rent limit (under which the maximum rent/payment standard was 100 percent of fair market rent or a higher amount proposed by a local public housing authority and approved by HUD) textually evolved to the current payment standard rules (under which the maximum rent/payment standard is an amount in a range between 90 percent and 110 percent of fair market rent set by the local public housing agency or a higher or lower amount proposed by the public housing agency and approved by HUD). That close textual family resemblance is an important clue in our effort to understand what the Section 47 definition of "maximum rent" ("area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development") means. Indeed, it is particularly relevant because the language of Section 47 tracks closely with the pre-1998 defined terms of "fair market rent" and "[fair market rent]/exception rent limit."

These details concerning federal statutes and regulations reveal two important insights that help in discerning the meaning of Section 47's phrase "area fair market rent or exception fair market rents for existing housing, if applicable, as established by the federal Department of Housing and Urban Development." First, it is difficult to make the case that the phrases "area fair market rent" and "exception fair market rents"—which all parties agree are undefined and require reference to federal affordable housing law—are

"clear and free from *all* ambiguity." Minn. Stat. § 645.16 (2020) (emphasis added). Accordingly, I conclude that the statute is ambiguous. Second, the structure of the federal regulations is consistent. In no case—either under the previous fair market rent/exception rent limit rule or under the current rule that gives local public housing agencies discretion to set maximum rent in a range up to 110 percent of fair market rent (and requires HUD approval if the local housing authority wishes to depart from the range)—is there a gap between the rent that may be charged under the basic rule and the rent that may be charged under the exception rule.[7]

C.

In addition to the disagreement over the meaning of the phrases "area fair market rent" and "exception fair market rents," there is also a disagreement over the meaning of the phrase "as established by the federal Department of Housing and Urban Development." Minn. Stat. § 474A.047, subd. 1(a)(2). Everyone, however, seems to agree that the phrase qualifies both the phrases "area fair market rent" and "exception fair market rents."

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[7] Notably, the fair market rent determined and published by HUD definitively defines maximum rent without any exception mechanism under some federal regulations. For instance, the HOME program, under Part 888, provided that fair market rent is the maximum rent limit; no *market-based* rent exception mechanisms exist. 24 C.F.R. § 92.252(a)(1) (2001). The HOME program regulations provide that a rent below fair market rent may be required, but those lower rents are based on the tenant's income and not on comparable rents in the area (like fair market rent and exception fair market rents). 24 C.F.R. § 92.252(a)(2), (b). The HOME program seems less relevant to this discussion because Section 47 adopted a structure of maximum rents that includes a rental-market-based exception mechanism based on comparable rents; the structure absent from the HOME program. In 2001, when Section 47 was enacted, the Emergency Solutions Grants program, referenced by the court, did not include rules related to non-crisis rental assistance or refer to rent limits or fair market rent. 24 C.F.R. § 576 (2001).

One understanding of the phrase "as established by the federal Department of Housing and Urban Development" is that HUD "establishes" a rent amount when it determines and publishes a rent amount for each housing market area. *See* 24 C.F.R. § 888.111(b) (stating that "[f]air market rent means the rent . . . *as established by HUD, pursuant to* [*24 C.F.R. § 888.113*] . . . that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities" (emphasis added)); 24 C.F.R. § 888.113 (2001) (setting forth the methodology HUD uses to establish fair market rents).

That is not the only interpretation, however. Another reasonable reading of the phrase "as established by the federal Department of Housing and Urban Development" is one that looks to how the concepts of "area fair market rent" and "exception fair market rents" are used in federal housing regulations. After all, those concepts were established (as that word is commonly understood and defined in the dictionaries on which the court relies) by HUD. This broader approach is reasonable for several reasons.

First, HUD itself recognizes that fair market rents for an area are "*estimates* of rent plus the cost of utilities, except telephone," 24 C.F.R. § 888.113(a) (emphasis added), and are determined by HUD to be "*used* in the Section 8 Housing Choice Voucher Program . . . , Section 8 project-based assistance programs and other programs requiring their use," 24 C.F.R. § 888.111(a) (emphasis added). HUD regulations further elaborate: "In the voucher program, the [fair market rents] are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the [fair market rent]s are used to determine the maximum initial rent." *Id.* Accordingly, as illustrated by the

discussion of federal law and regulations set forth above, the fair market rent published by HUD is not in every case an end in itself but rather is just a step toward an end. It is one element of a broader regulatory regime *established* by HUD. Moreover, as discussed earlier, that observation is true in other regulations where fair market rent is paired with a mechanism for creating an exception to fair market rent.

Second, and perhaps more telling, the Section 47 phrase "as established by the federal Department of Housing and Urban Development" applies not only to the words "area fair market rent" but also to the words "exception fair market rents." But HUD does not determine and publish "exception fair market rents" in the same way as it establishes and publishes "fair market rents" for an area. Rather, exception fair market rents originate through the work of local public housing authorities under rules set forth by HUD in the federal regulations. Thus, at least in the context of exception fair market rents, the meaning of "established" adopted by the court—a specific rent amount determined and published annually by HUD—is unintelligible.

In the context of exception fair market rents, "established" by HUD must mean something like "developed in accordance with the rules and process set forth in the federal regulations developed and issued by HUD." And if that is the meaning of "established" for exception fair market rents, it is hard to understand why the meaning of the exact same words in the exact same statute should be different when applied to area fair market rents. *See Wilbur v. State Farm Mut. Auto. Ins. Co.*, 892 N.W.2d 521, 524 (Minn. 2017) (explaining that we favor interpreting the same word in the same context consistently). This broader process-based understanding of "established" can readily fit with the phrase "area

fair market rent," especially when one understands the Legislature's use of the adjective "area" to qualify the federally defined phrase "fair market rent" as conveying the intent to focus on fair market rent as adopted by the local public housing authority for the particular area using the payment standards methodology. *Supra* at D7–D8. The payment standards methodology is a set of rules and a process set forth in the federal regulations and issued by HUD.

Thompson offers yet another reasonable meaning of "established by the federal Department of Housing and Urban Development." She asserts that a rent amount is "established" by HUD when it is *approved* by HUD. More fully developed, under this interpretation, "area fair market rent" is established when HUD approves (gives formal or official sanction) of annual fair market rent amounts by determining and publishing fair market rents under 24 C.F.R. §§ 888.113 and .115 (2001). Unlike the first definition of "established" adopted by the court solely with reference to "area fair market rent" where the focus is on a determination and publication by HUD of a particular rent amount, Thompson's understanding also encompasses "exception fair market rents." Under this interpretation, "exception fair market rents" are established when HUD approves an exception to fair market rent proposed by a local public housing agency. But because rents in the basic range need not be approved by HUD, rents within the basic range are not "established" by HUD. One may wonder why the Legislature used the word "established" in Section 47 when it meant "approved," but the interpretation remains reasonable. *See Merriam Webster's Collegiate Dictionary* 397 (10th ed. 1996) (defining "establish" as "to institute . . . by enactment or agreement" or to "bring about").

Therefore, the phrase "established by [HUD]" may refer to a specific single rent amount determined and published by HUD, it may refer to a rent amount determined by the local public housing authority in accordance with regulations issued by HUD, or it may refer exclusively to a rent amount approved by HUD (either the fair market rent determined and published by HUD or a rent below 90 percent of fair market rent or above 110 percent of fair market rent and requires express HUD approval). I conclude that the first meaning is unreasonable because, as discussed above, it is unintelligible when applied to "exception fair market rents." But the other two meanings of "established by [HUD]" are reasonable. Consequently, the meaning of "established by [HUD]" is also ambiguous.

D.

To summarize the analysis so far: the meaning of "area fair market rent," "exception fair market rents," and "established by [HUD]" are all ambiguous and lead to two reasonable alternative interpretations of "maximum rent" in Section 47:

(1) Fair market rent determined and published by HUD under 24 C.F.R. § 888.115 or a rent higher or lower than the range of 90 percent to 110 percent of fair market rent proposed by the public housing authority and approved by HUD in accordance with 24 C.F.R. § 982.503(b)(2) and (c). Stated more simply, under Section 47, "maximum rent" could mean a rent amount that is exactly the fair market rent determined and published by HUD, or a rental amount above 110 percent of fair market rent (or perhaps below 90 percent of fair market rent) set by the local public housing agency and approved by HUD; or

(2) The maximum affordable rent amount for the area approved under federal regulations by the local public housing authority (rent in a range between 90 percent and 110 percent of fair market rent—equivalent to the concept of basic payment standard), 24 C.F.R. § 982.503(b)(1), or a rent higher or lower than the range of 90 percent to 110 percent of fair market rent proposed by the public housing authority and approved by HUD in accordance with 24 C.F.R. § 982.503(b)(2) and (c) (equivalent to the exception payment standard). Stated another way, under this interpretation, the "maximum rent" under Section 47 is a rent amount that is between 90 percent and 110 percent of fair market rent as set by the local public housing agency or a rent amount outside of that range set by the local public housing agency and approved by HUD.[8]

In determining which of these two alternative interpretations best reflects the Legislature's intent, it is worth noting at this point another textual clue that is helpful in sussing out the meaning of the Section 47 definition of "maximum rent." Section 474A.047, subdivision 1(a)(2), also provides that "[t]he rental rates of units in a residential rental project for which project-based federal assistance payments are made are deemed to be within the rent limitations of this clause." In other words, the Legislature understood

[8] A third interpretation of "maximum rent" is fair market rent or exception fair market rent defined consistent with the pre-1998 version of the federal statute, which used language that most closely mirrors the language adopted by the Legislature in Section 47. But although this interpretation has the benefit of mirroring most closely the actual language of Section 47, this option is unreasonable because, as of 2001 when Section 47 was enacted, there was no mechanism in the federal regulation for HUD to approve rents that are between 90 percent and 110 percent of fair market rental. This interpretation of Section 47 is thus not a practical reading of the statute. Nonetheless, as discussed above, the historical evolution remains an important clue to our understanding of "maximum rent" in Section 47.

that rental rates that satisfied federal regulations for project-based assistance payment to tenants qualify as falling within "area fair market rent or exception fair market rents . . . if applicable, as established by [HUD]." *Id.*

Returning to the HUD regulatory definition of "fair market rent" in 24 C.F.R. § 888.111(a), we see that it provides that "[i]n the Section 8 project-based assistance programs, the [fair market rent]s *are used* to determine the maximum initial rent." The maximum monthly rent under the assistance payments contract "shall not exceed by more than 10 [percent] the fair market rental established by [HUD]." 42 U.S.C. § 1437f(c)(1)(A). The rental rate must also be "reasonable in comparison with other units in the market area that are exempt from local rent control." *Id*.

The last sentence in section 474A.047, subdivision 1(a)(2), thus provides important context. First, it tells us that the Legislature did not intend a HUD-published fair market rent to be the final and definitive cap on Section 47 rents. Rather, it decided to incorporate the ways in which fair market rent was used to determine affordable rents in a particular area. Notably, the HUD regulatory definition of "fair market rent" in 24 C.F.R. § 888.111(a) also provides that "[i]n the voucher program, the [fair market rent]s are used to determine payment standard schedules"; a structure that mirrors the regulatory language for project-based assistance. Second, the last sentence of section 474A.047, subdivision 1(a)(2), also tells us that the Legislature was focused on the use of fair market rents in tenant-based assistance programs. Third, since federal law gives local public housing agencies the discretion to set rents that differ from the HUD-published fair market rent in the context of project-based assistance, the Legislature understood when enacting Section

47 that rents set within the discretion of a local public housing agency without the approval of HUD fall within the concept of Section 47 maximum rent. Finally, the Legislature did not understand that maximum rent could *not* be set between 100 percent and 110 percent of fair market value (Thompson's explicit and the court's implicit position) since that range of rent amounts is expressly included as a permissible maximum initial rent for Section 8 project-based assistance programs. In short, the last sentence of the Section 47 maximum rent provision is a strong textual clue supporting the second option identified above: the maximum rent that can be charged under Section 47 is a rent amount that is between 90 percent and 110 percent of fair market rent as set by the local public housing agency or a rental amount outside of that range set by the local public housing agency and approved by HUD.

One additional clue supports this conclusion that the second option is what the Legislature intended. As discussed above, no version of federal law and regulations conceived of a regime where there is a gap in the amount of rent that could be charged. But option one set forth above—which the court adopts and under which rent can be exactly fair market rent or a rent that is below 90 percent of fair market rent or above 110 percent of fair market rent—creates precisely that regime.[9] It really makes no sense for the

[9] Like Louis Renault's shock that gambling was going on in his establishment in *Casablanca*, the court denies that it is authorizing a regime where there is a gap in the amount of rent that could be charged. But by not offering any reading of the "exception fair market rents" in the Section 47 definition of maximum rent, the court is creating a gap. Assuming the court's understanding of "area fair market rent" is correct, no one has offered an interpretation of "exception fair market rents" that would not create a gap. And because interpreting a single part of the definition of maximum rent without considering the whole

Legislature to adopt such a regime; no good justification is offered for it. This is particularly compelling when one considers the fact that Section 47 was enacted to regulate the terms under which affordable housing developers can use certain state mechanisms to help finance affordable housing developments, not regulate leases between landlords and tenants. Providing *more* flexibility rather than less seems consistent with that overall purpose.

"The legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1) (2020). As the district court judge (who also happens to be a former legislator and public finance chair) stated regarding the interpretation ultimately adopted here by the court:

> [This] reading of Section 47 would create an unintended 'Minnesota exception' to the maximum rents chargeable for affordable housing . . . . For that reason, the Court finds that in drafting Section 47, . . . the Legislature intended to define the rent limit for Section 47 . . . as a rent limit consistent with HUD regulations [for the Tenant-Based Assistance program].

I agree.[10]

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definition is incomplete statutory interpretation, the existence of this unjustified gap is an important consideration that cannot be justified on the ground that the plain language means we cannot question whether the Legislature wanted to enact such an odd result.

Moreover, by limiting its holding in this case to the four words "area fair market rent" while largely ignoring the rest of the Section 47 definition of maximum rent, the court is leaving Minnesota law in *precisely* this situation. The court of appeals' holding about the meaning of "exception fair market rents" as those outside the range of 90 percent to 110 percent of HUD-published fair market rent remains the law in Minnesota.

[10] Thompson claims that her interpretation of the statute is good public policy because it brings transparency and accountability to the meaning of maximum rent in Section 47. HUD-published fair market rent is easily found by tenants and, as a result, tenants can more readily protect their rights. I do not find this argument persuasive. First, Section 47 has

In summary, I conclude that maximum rent under Section 47 is a rent amount that is between 90 percent and 110 percent of fair market rent as set by the local public housing agency or a rental amount outside of that range set by the local public housing agency and approved by HUD.

I respectfully dissent.

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nothing directly to do with leases between landlords and tenants. It regulates the terms under which developers can access public funds administered by the state or local governments. *See generally* Minn. Stat. ch. 474A (2020). Those entities are sophisticated and so the need for transparency is not as urgent. And one of my gravest concerns about the court's interpretation of Section 47 is that not only will it be the law as between landlords and tenants, but also it will govern the terms of the relationship among developers who received public funds as part of a larger financing structure to build affordable housing and the government agencies who approved those loans and the other financial partners involved in the development deal. The unintended consequences of the court's interpretation have the potential to disrupt settled expectations regarding numerous affordable housing projects across the state. Second, the point of the 2001 amendment was to eliminate program requirements unique to Minnesota and replace them with known federal conditions. Thompson's argument may cut against such uniformity. Third, while consideration of these competing policy concerns is not forbidden as a tool for trying to understand what is meant by an unclear statute, in this case, humility cautions that as judges we should not venture too far into the policy arena. The complexities of how to best foster the financing and development of more affordable housing units in Minnesota are beyond my capacity as a judge. Minnesotans are far better served by leaving such complicated policy debates to the Legislature.

FY 2018 FAIR MARKET RENT DOCUMENTATION SYSTEM

The FY 2018 FMRs for All Bedroom Sizes

Final FY 2018 FMRs By Unit Bedrooms					
Year	**Efficiency**	**One-Bedroom**	**Two-Bedroom**	**Three-Bedroom**	**Four-Bedroom**
FY 2018 FMR	$711	$864	$1,089	$1,547	$1,812
FY 2017 FMR	$699	$862	$1,086	$1,538	$1,799

Ramsey County, Minnesota is part of the Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area, which consists of the following counties: Anoka County, MN; Carver County, MN; Chisago County, MN; Dakota County, MN; Hennepin County, MN; Isanti County, MN; Ramsey County, MN; Scott County, MN; Sherburne County, MN; Washington County, MN; Wright County, MN; Pierce County, WI; and St. Croix County, WI. All information here applies to the entirety of the Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area.

Fair Market Rent Calculation Methodology

Show/Hide Methodology Narrative

Fair Market Rents for metropolitan areas and non-metropolitan FMR areas are developed as follows:

1. 2011-2015 5-year American Community Survey (ACS) estimates of 2-bedroom adjusted standard quality gross rents calculated for each FMR area are used as the new basis for FY2018 provided the estimate is statistically reliable. For FY2018, the test for reliability is whether the margin of error for the estimate is less than 50% of the estimate itself and whether the ACS estimate is based on at least 100 survey cases. HUD does not receive the exact number of survey cases, but rather a categorical variable known as the count indicator indicating a range of cases. An estimate based on at least 100 cases corresponds to a count indicator of 4 or higher.

   If an area does not have a reliable 2011-2015 5-year, HUD checks whether the area has had at least minimally reliable estimate in any of the past 3 years, or estimates that meet the 50% margin of error test described above. If so, the FY2018 base rent is the average of the inflated ACS estimates.

   If an area has not had a minimally reliable estimate in the past 3 years, the estimate State for the area's corresponding metropolitan area (if applicable) or State non-metropolitan area is used as the basis for FY2018.

2. HUD calculates a recent mover adjustment factor by comparing a 2015 1-year 40th percentile recent mover 2-bedrooom rent to the 2011-2015 5-year 40th percentile adjusted standard quality gross rent. If either the recent mover and non-recent mover rent estimates are not reliable, HUD uses the recent mover adjustment for a larger geography. For metropolitan areas, the order of geographies examined is: FMR Area, Entire Metropolitan Area (for Metropolitan Sub-Areas), State Metropolitan Portion, Entire State, and Entire US; for non-metropolitan areas, the order of geographies examined is: FMR Area, State Non-Metropolitan Portion, Entire State, and Entire US. The recent mover adjustment factor is floored at one.

3. HUD calculates the appropriate recent mover adjustment factor between the 5-year data and the 1-year data and applies this to the 5-year base rent estimate.

4. Rents are calculated as of 2016 using the relevant (regional or local) change in gross rent Consumer Price Index (CPI) from annual 2015 to annual 2016.

5. All estimates are then inflated from 2016 to FY2018 using a trend factor based on the forecast of gross rent changes through FY2018.

6. FY2018 FMRs are then compared to a State minimum rent, and any area whose preliminary FMR falls below this value is raised to the level of the State minimum.

7. FY2018 FMRs may not be less than 90% of FY2017 FMRs.

The results of the Fair Market Rent Step-by-Step Process

1. The following are the 2015 American Community Survey 5-year 2-Bedroom Adjusted Standard Quality Gross Rent estimate and margin of error for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area.

Area	ACS_{2015} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent	ACS_{2015} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$946	$5	$5 / $946=0.005	6	0.005 < .5 6 ≥ 4 Use ACS_{2015} 5-Year Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area 2-

	Bedroom Adjusted Standard Quality Gross Rent

Since the ACS_{2015} Margin of Error Ratio is less than .5, the ACS_{2015} Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area value is used for the estimate of 2-Bedroom Adjusted Standard Quality Gross Rent:

Area	FY2018 Base Rent
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$946

2. A recent mover adjustment factor is applied based on the smallest area of geography which contains Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area and has an ACS_{2015} 1-year Adjusted Standard Quality Recent-Mover estimate with a Margin of Error Ratio that is less than .5.

Area	ACS_{2015} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent	ACS_{2015} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area – 2 Bedroom	$994	$22	0.022	6	0.022 < .5 6 ≥ 4 Use ACS_{2015} 1-Year Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area 2-Bedroom Adjusted Standard Quality Recent-Mover Gross Rent

The smallest area of geography which contains Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area and has an ACS_{2015} 1-year Adjusted Standard Quality Recent-Mover estimate with a Margin of Error Ratio that is less than .5 and with a sufficient number of sample cases is Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area.

3. The calculation of the relevant Recent-Mover Adjustment Factor for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is as follows:

ACS_{2015} 5-Year Area	ACS_{2015} 5-Year 40th Percentile Adjusted Standard Quality Gross Rent	ACS_{2015} 1-Year 40th Percentile Adjusted Standard Quality Recent-Mover Gross Rent
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area – 2 Bedroom	$946	$994

Area	Ratio	Recent-Mover Adjustment Factor
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$994 / $946 =1.051	1.051 ≥ 1.0 Use calculated Recent-Mover Adjustment Factor of 1.051

4. The calculation of the relevant CPI Update Factors for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is as follows: HUD updates the 2015 intermediate rent with the ratio of the annual 2016 local or regional CPI to the annual 2015 local or regional CPI to establish rents as of 2016.

	Update Factor	Type
CPI Update Factor	1.0349	Local CPI

5. The calculation of the Trend Factor is as follows: HUD forecasts the change in national gross rents from 2016 to 2018. This makes Fair Market Rents "as of" FY2018.

National Trend Factor
1.0589

6. The FY 2018 2-Bedroom Fair Market Rent for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is calculated as follows:

Area	ACS_{2015} 5-Year Estimate	Recent-Mover Adjustment Factor	Annual 2015 to 2016 CPI Adjustment	Trending 1.0589 to FY2018	FY 2018 2-Bedroom FMR
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$946	1.051	1.0349	1.0589	$946 * 1.051 * 1.0349 * 1.0589=$1,089

7. In keeping with HUD policy, the preliminary FY 2018 FMR is checked to ensure that is does not fall below the state minimum.

Since Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is a multistate area, the highest state minimum of the states comprising Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is used:

State	FY 2018 State Minimum
Minnesota	$697
Wisconsin	$689

The relevant state minimum is that of Minnesota at $697.

Area	Preliminary FY2018 2-Bedroom FMR	FY 2018 Minnesota State Minimum	Final FY2018 2-Bedroom FMR
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,089	$697	$1,089 ≥ $697 Use Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area FMR of $1,089

8. Bedroom ratios are applied to calculate FMRs for unit sizes other than two bedrooms.

   Click on the links in the table to see how the bedroom ratios are calculated.

FY 2018 FMRs By Unit Bedrooms					
	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY 2018 FMR	$711	$864	$1,089	$1,547	$1,812

9. The FY2018 FMR must not be below 90% of the FY2017 FMR.

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY2017 FMR	$699	$862	$1,086	$1,538	$1,799
FY2017 floor	$629	$776	$977	$1,384	$1,619
FY 2018 FMR	$711	$864	$1,089	$1,547	$1,812
Use FY2017 floor for FY2018?	No	No	No	No	No

Final FY2018 Rents for All Bedroom Sizes for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

The following table shows the Final FY 2018 FMRs by bedroom sizes.

Final FY 2018 FMRs By Unit Bedrooms					
	Efficiency	**One-Bedroom**	**Two-Bedroom**	**Three-Bedroom**	**Four-Bedroom**
Final FY 2018 FMR	$711	$864	$1,089	$1,547	$1,812

The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four bedroom FMR, for each extra bedroom. For example, the FMR for a five bedroom unit is 1.15 times the four bedroom FMR, and the FMR for a six bedroom unit is 1.30 times the four bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero bedroom (efficiency) FMR.

Permanent link to this page: http://www.huduser.gov/portal/datasets/fmr/fmrs/FY2018_code/2018summary.odn?&year=2018&fmrtype=Final&selection_type=county&fips=2712399999

Other HUD Metro FMR Areas in the Same MSA

Select another Final FY 2018 HUD Metro FMR Area that is a part of the Minneapolis-St. Paul-Bloomington, MN-WI MSA:

Le Sueur County, MN HUD Metro FMR Area | Select Metropolitan FMR Area

Select a different area

Press below to select a different county within the same state (same primary state for metropolitan areas):

Adams County, WI
Ashland County, WI
Barron County, WI
Bayfield County, WI
Brown County, WI

Select a new county

Press below to select a different state:

Select a new state

Select a Final FY 2018 Metropolitan FMR Area:

Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

Select Metropolitan FMR Area

FY 2022 FAIR MARKET RENT DOCUMENTATION SYSTEM

The FY 2022 Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area FMRs for All Bedroom Sizes

Final FY 2022 & Final FY 2021 FMRs By Unit Bedrooms					
Year	**Efficiency**	**One-Bedroom**	**Two-Bedroom**	**Three-Bedroom**	**Four-Bedroom**
FY 2022 FMR	$932	$1,078	$1,329	$1,841	$2,145
FY 2021 FMR	$898	$1,054	$1,308	$1,838	$2,156

Fair Market Rent Calculation Methodology

Show/Hide Methodology Narrative

Fair Market Rents for metropolitan areas and non-metropolitan FMR areas are developed as follows:

1. 2015-2019 5-year American Community Survey (ACS) estimates of 2-bedroom adjusted standard quality gross rents calculated for each FMR area are used as the new basis for FY2022 provided the estimate is statistically reliable. For FY2022, the test for reliability is whether the margin of error for the estimate is less than 50% of the estimate itself and whether the ACS estimate is based on at least 100 survey cases. HUD does not receive the exact number of survey cases, but rather a categorical variable known as the count indicator indicating a range of cases. An estimate based on at least 100 cases corresponds to a count indicator of 4 or higher.

   If an area does not have a reliable 2015-2019 5-year, HUD checks whether the area has had at least minimally reliable estimate in any of the past 3 years, or estimates that meet the 50% margin of error test described above. If so, the FY2022 base rent is the average of the inflated ACS estimates.

   If an area has not had a minimally reliable estimate in the past 3 years, the estimate State for the area's corresponding metropolitan area (if applicable) or State non-metropolitan area is used as the basis for FY2022.

2. HUD calculates a recent mover adjustment factor by comparing a 2019 1-year 40th percentile recent mover 2-bedrooom rent to the 2015-2019 5-year 40th percentile adjusted standard quality gross rent. If either the recent mover and non-recent mover rent estimates are not reliable, HUD uses the recent mover adjustment for a larger geography. For metropolitan areas, the order of geographies examined is: FMR Area, Entire Metropolitan Area (for Metropolitan Sub-Areas), State Metropolitan Portion, Entire State, and Entire US; for non-metropolitan areas, the order of geographies

examined is: FMR Area, State Non-Metropolitan Portion, Entire State, and Entire US. The recent mover adjustment factor is floored at one.

3. HUD calculates the appropriate recent mover adjustment factor between the 5-year data and the 1-year data.

4. In order to calculate rents that are "as of" 2020, HUD calculates the relevant (regional or local) change in gross rent Consumer Price Index (CPI) from annual 2019 to annual 2020.

5. To further inflate rents from 2020 to FY2022, HUD uses a "trend factor" based on the forecast of gross rent changes through FY2022.

6. HUD multiplies the base rent by the recent mover factor, the gross rent CPI, and the trend factor to produce a rent that is "as of" the current fiscal year.

7. FY2022 FMRs are then compared to a State minimum rent, and any area whose preliminary FMR falls below this value is raised to the level of the State minimum.

8. HUD calculates "bedroom ratios" and multiplies these by the two-bedroom rent to produce preliminary FMRs for unit sizes other than two bedrooms.

9. FY2022 FMRs may not be less than 90% of FY2021 FMRs. Therefore, HUD applies "floors" based on the prior year's FMRs.

The results of the Fair Market Rent Step-by-Step Process

1. The following are the 2019 American Community Survey 5-year 2-Bedroom Adjusted Standard Quality Gross Rent estimate and margin of error for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area.

Area	ACS_{2019} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent	ACS_{2019} 5-Year 2-Bedroom Adjusted Standard Quality Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,094	$6	$6 / $1,094=0.005	6	0.005 < .5 6 ≥ 4 Use ACS_{2019} 5-Year Minneapolis-St. Paul-Bloomington,

					MN-WI HUD Metro FMR Area 2-Bedroom Adjusted Standard Quality Gross Rent

Since the ACS_{2019} Margin of Error Ratio is less than .5, the ACS_{2019} Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area value is used for the estimate of 2-Bedroom Adjusted Standard Quality Gross Rent:

Area	FY2022 Base Rent
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,094

2. A recent mover adjustment factor is applied based on the smallest area of geography which contains Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area and has an ACS_{2019} 1-year Adjusted Standard Quality Recent-Mover estimate with a Margin of Error Ratio that is less than .5.

Area	ACS_{2019} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent	ACS_{2019} 1-Year Adjusted Standard Quality Recent-Mover Gross Rent Margin of Error	Ratio	Sample Size Category	Result
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area – 2 Bedroom	$1,241	$36	0.029	6	0.029 < .5 6 ≥ 4 Use ACS_{2019} 1-Year Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area 2-Bedroom Adjusted Standard Quality Recent-Mover Gross Rent

The smallest area of geography which contains Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area and has an ACS_{2019} 1-year Adjusted Standard Quality Recent-Mover estimate with a Margin of Error Ratio that is less than .5 and with a sufficient number of sample cases is Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area.

3. The calculation of the relevant Recent-Mover Adjustment Factor for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is as follows:

ACS_{2019} 5-Year Area	ACS_{2019} 5-Year 40th Percentile Adjusted Standard Quality Gross Rent	ACS_{2019} 1-Year 40th Percentile Adjusted Standard Quality Recent-Mover Gross Rent
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area – 2 Bedroom	$1,094	$1,241

Area	Ratio	Recent-Mover Adjustment Factor
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,241 / $1,094 =1.134	1.1344 ≥ 1.0 Use calculated Recent-Mover Adjustment Factor of 1.1344

4. The calculation of the relevant CPI Update Factors for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is as follows: HUD updates the 2019 intermediate rent with the ratio of the annual 2020 local or regional CPI to the annual 2019 local or regional CPI to establish rents as of 2020.

	Update Factor	Type
CPI Update Factor	1.0416	Local CPI

5. The calculation of the Trend Factor is as follows: HUD forecasts the change in national gross rents from 2020 to 2022 for each CPI area and Census Region. This makes Fair Market Rents "as of" FY2022.

Trend Factor	Trend Factor Type
1.0279	Local

6. The FY 2022 2-Bedroom Fair Market Rent for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is calculated as follows:

Area	ACS_{2019} 5-Year Estimate	Recent-Mover Adjustment Factor	Annual 2019 to 2020 CPI Adjustment	Trending 1.0279 to FY2022	FY 2022 2-Bedroom FMR
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,094	1.13437	1.04158	1.02791	$1,094 * 1.13437 * 1.04158 * 1.02791=$1,329

7. In keeping with HUD policy, the preliminary FY 2022 FMR is checked to ensure that is does not fall below the state minimum.

   Since Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is a multistate area, the highest state minimum of the states comprising Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area is used:

State	FY 2022 State Minimum
Minnesota	$757
Wisconsin	$757

   The relevant state minimum is that of Minnesota / Wisconsin at $757.

Area	Preliminary FY2022 2-Bedroom FMR	FY 2022 Minnesota / Wisconsin State Minimum	Final FY2022 2-Bedroom FMR
Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area	$1,329	$757	$1,329 ≥ $757 Use Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area FMR of $1,329

8. Bedroom ratios are applied to calculate FMRs for unit sizes other than two bedrooms.

   Click on the links in the table to see how the bedroom ratios are calculated.

FY 2022 FMRs By Unit Bedrooms					
	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY 2022 FMR	$932	$1,078	$1,329	$1,841	$2,145

9. The FY2022 FMR must not be below 90% of the FY2021 FMR.

	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
FY2021 FMR	$898	$1,054	$1,308	$1,838	$2,156
FY2021 floor	$809	$949	$1,178	$1,655	$1,941
FY 2022 FMR	$932	$1,078	$1,329	$1,841	$2,145
Use FY2021 floor for	No	No	No	No	No

FY2022?	

Final FY2022 Rents for All Bedroom Sizes for Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

The following table shows the Final FY 2022 FMRs by bedroom sizes.

Final FY 2022 FMRs By Unit Bedrooms					
	Efficiency	**One-Bedroom**	**Two-Bedroom**	**Three-Bedroom**	**Four-Bedroom**
Final FY 2022 FMR	$932	$1,078	$1,329	$1,841	$2,145

The FMRs for unit sizes larger than four bedrooms are calculated by adding 15 percent to the four bedroom FMR, for each extra bedroom. For example, the FMR for a five bedroom unit is 1.15 times the four bedroom FMR, and the FMR for a six bedroom unit is 1.30 times the four bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero bedroom (efficiency) FMR.

Permanent link to this page:
http://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/2022summary.odn?&year=2022&fmrtype=Final&cbsasub=METRO33460M33460

Other HUD Metro FMR Areas in the Same MSA

Select another Final FY 2022 HUD Metro FMR Area that is a part of the Minneapolis-St. Paul-Bloomington, MN-WI:

Le Sueur County, MN HUD Metro FMR Area | Select Metropolitan FMR Area

Select a different area

Press below to select a different county within the same state (same primary state for metropolitan areas):

Aitkin County, MN
Anoka County, MN
Becker County, MN
Beltrami County, MN
Benton County, MN

Select a new county

Press below to select a different state:

Select a new state

Select a Final FY 2022 Metropolitan FMR Area:

Minneapolis-St. Paul-Bloomington, MN-WI HUD Metro FMR Area

Select Metropolitan FMR Area

FAIR MARKET RENTS (40TH PERCENTILE RENTS)

HUD's Office of Policy Development and Research (PD&R) is pleased to announce that Fair Market Rents and Income Limits data are now available via an application programming interface (API). With this API, developers can easily access and customize Fair Market Rents and Income Limits data for use in existing applications or to create new applications. To create an account and get an access token, please visit the API page here: https://www.huduser.gov/portal/dataset/fmr-api.html.

Fair Market Rents (FMRs) are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy program (Mod Rehab), rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. The U.S. Department of Housing and Urban Development (HUD) annually estimates FMRs for Office of Management and Budget (OMB) defined metropolitan areas, some HUD defined subdivisions of OMB metropolitan areas and each nonmetropolitan county. 42 USC 1437f requires FMRs be posted at least 30 days before they are effective and that they are effective at the start of the federal fiscal year (generally October 1). Fair Market Rents, as defined in 24 CFR 888.113 are estimates of 40th percentile gross rents for standard quality units within a metropolitan area or nonmetropolitan county.

Fair Market Rents: Overview (*.pptx, 1.63MB), (*.pdf, 1.23MB)

Year | History | Survey Information

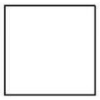
Query Tool | Documents | Data

FY 2022 Fair Market Rent Documentation System

This system provides complete documentation of the development of the FY 2022 Fair Market Rents (FMRs) for any area of the country selected by the user. After selecting the desired geography, the user is provided a page containing a summary of how the FY 2022 FMRs were developed and updated starting with the formation of the FMR Areas from the metropolitan Core-Based Statistical Areas (CBSAs) as established by the Office of Management and Budget, the newly available 2019 American Community Survey (ACS) 1 year data and the newly available 2015-2019 5 year data, and updating to FY 2022 including information from local survey data. The tables on the summary page include links to complete detail on how the data were developed.

Click Here For FY2022 FMRs

ERAP FMR Lookup



PD&R Edge

Connect with HUD User

Note: Guidance documents, except when based on statutory or regulatory authority or law, do not have the force and effect of law and are not meant to bind the public in any way. Guidance documents are intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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