

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4435-N-01]

Notice of Certain Operating Cost Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice establishes factors used in rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPHA).

EFFECTIVE DATE: May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Giaquinto, Office of Multifamily Housing Business Products, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2526; (This is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION

I. Operating Cost Adjustment Factors (OCAFs)

Various statutes provide for rents under section 8 project-based assistance contracts to be determined using OCAFs. The legislation requiring HUD to establish OCAFs for LIHPHA projects and projects with contract renewals under section 524 of MAHRA is similar in wording and intent, and HUD has developed factors that will be applied to both programs. The methodology used is an improvement over that used to date to provide LIHPHA factors in that it covers a wider range of operating costs and provides more localized data.

An analysis of operating cost data for FHA-insured projects showed that their expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis. No data were available for the Western Pacific Islands, and data for

Hawaii was used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the State level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated State-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (e.g., the most current local wage data are for 1996). The data sources for the nine cost indicators selected used were as follows:

Labor Costs—Bureau of Labor Statistics (BLS) Employment Cost Index.

Employee Benefit Costs—BLS Employment Cost Index.

Property Taxes—BLS Consumer Price Index, All Items index.

Goods, Supplies, Equipment—BLS Producer Price Index, Consumer Goods Less Food and Energy.

Insurance—BLS Consumer Price Index, residential insurance index.

Fuel Oil—U.S. Department of Energy, average State prices for #2 residential fuel oil (U.S. average change was used for the States with too little fuel oil consumption to have values).

Electricity—U.S. Department of Energy, "Electric Power Monthly" reports.

Natural Gas—U.S. Department of Energy, "Natural Gas Monthly" average annual change (monthly data are available, but are so erratic that annual averages offer a more reliable measure).

Water and Sewer—BLS Consumer Price Index Detailed Report.

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant State-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from March 1997 to March 1998, the wage increase component of the Virginia OCAF for FY 1999 would be 2.0 percent ($4\% \times 50\%$). This 2.0 percent then be added to the increases for the other eight expense categories to calculate the FY 1999 OCAF for Virginia. These types of calculations were made for each State for each of the nine cost components, and are included as the Appendix to this notice.

OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service. Except for renewals under section 524(a)(2) of MAHRA: rents will not be permitted to exceed comparable market rent and HUD reserves the right to require owners to provide a rent comparability study before approving future rent increases. This method is to be applied to projects covered by LIHPHA, MAHRA and Section 8 contract renewals.

II. LIHPHA Rent Adjustment Procedures

A. OCAF Contract Rent Increases

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPHA") (see, in particular, section 222(a)(2)(G)(i) of LIHPHA, 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs. The Secretary has determined to use the Operating Cost Adjustment Factor (OCAF) as the annual factor. HAP renewals for LIHPHA will follow the standard OCAF application methodology outlined above.

B. Budget-Based Method of Calculating Contract Rent Increases

If an owner believes that the contract rents approved by the Secretary pursuant to the OCAF are not adequate, an owner may request that its contract rent increase be calculated using the budget-based method pursuant to Section 222(a)(2)(G)(ii) of LIHPHA. Owners shall: (1) submit documentation to HUD pursuant to the procedures in Chapter 7 of HUD Handbook 4350.1, Insured Project Servicing Handbook, and (2) demonstrate that an increase in contract rents above that provided by the OCAF is necessary to reflect extraordinary necessary expenses of owning and maintaining the housing. If the Secretary determines that the project rents pursuant to the OCAF are insufficient to cover project operating expenses, the Secretary may increase contract rents in excess of the amount determined pursuant to the OCAF to reflect extraordinary necessary expenses of owning and maintaining the project.

Rents will not be permitted to exceed comparable market rent. Any contract rent increase resulting from using the budget-based method shall be effective for the year approved.

III. MAHRA OCAF Procedure

The Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105-65 (approved October 27, 1997), 42 U.S.C. 1437f note (MAHRA), created the Mark-to-Market Program to reduce the cost of Federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain exception projects. Section 524(a)(2) of MAHRA authorizes renewals for these exception projects at rent levels that are the lesser of existing rents adjusted by an OCAF or a level that provides income sufficient to support a budget-based rent.

A. Projects Eligible for OCAF

Renewals under section 524(a)(2) of MAHRA can be selected only at the request of the owner for the following classes of "exception projects":

(1) A project for which the primary financing or mortgage insurance was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and was not insured under the National Housing Act, 12 U.S.C. 1702 *et seq.*, (NHA);

(2) A project for which the primary financing was provided by a unit of State government or a unit of general local government (or an agency or instrumentality of either) and the financing involved mortgage insurance under the NHA, such that the implementation of a Restructuring Plan under MAHRA is in conflict with applicable law or agreements governing such financing;

(3) A project for the elderly financed under section 202 of the Housing Act of 1959 or section 515 of the Housing Act of 1949;

(4) A project that has an expiring contract section 8 moderate rehabilitation contract for single room occupancy dwellings; or

(5) A project that does not qualify as an eligible project under section 512(2) of MAHRA (i.e., because rents do not exceed comparable market rents or because there is no HUD-insured or HUD-held mortgage).

B. Method for Applying OCAF

Projects subject to MAHRA that are eligible for OCAFs may request contract rents based on published HUD OCAFs. The factors apply to approved total contract rents less debt service.

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice pertains to Operating Cost Adjustment Factors (OCAFs), to be used for rent increases under LIHPRHA, and does not substantially alter the established roles of the Department, the States, and local governments.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: May 18, 1999.

Andrew Cuomo,
Secretary.

APPENDIX—FY 1999 OPERATING COST ADJUSTMENT FACTORS (OCAF) FOR RENT ADJUSTMENTS AT SECTION 8 AND LIHPRHA CONTRACT RENEWAL

State	Total (percent)
Alabama	3.1
Alaska	2.0
Arizona	2.3
Arkansas	3.1
California	2.8
Colorado	3.1
Connecticut	2.1
Delaware	3.6
Dist. of Columbia	2.6
Florida	3.1
Georgia	3.1
Hawaii	3.3
Idaho	2.3
Illinois	3.1
Indiana	3.2
Iowa	3.1
Kansas	2.9
Kentucky	3.3
Louisiana	2.8
Maine	2.5
Maryland	2.8
Massachusetts	3.0
Michigan	2.7
Minnesota	2.7
Mississippi	2.9
Missouri	3.0
Montana	3.2
Nebraska	3.3
Nevada	2.6
New Hampshire	3.3
New Jersey	2.9
New Mexico	3.9
New York	2.5
N. Carolina	2.8
N. Dakota	2.7
Ohio	3.2
Oklahoma	3.2
Oregon	2.3
Pennsylvania	3.1
Rhode Island	3.3
S. Carolina	2.8
S. Dakota	2.9
Tennessee	2.8
Texas	2.7
Utah	3.1
Vermont	2.7
Virginia	3.2
Washington	2.6
W. Virginia	2.3
Wisconsin	2.6
Wyoming	3.2
Pacific Islands	3.1
Puerto Rico	2.9
Virgin Islands	2.4
U.S. Average	2.8

[FR Doc. 99-13076 Filed 5-21-99; 8:45 am]

BILLING CODE 4210-32-P