

Resident Homeownership Act of 1990 (LIHPHA) Projects assisted with Section 8 Housing Assistance Payments.

**SUMMARY:** This notice establishes annual factors used in calculating rent adjustments under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPHA).

**EFFECTIVE DATE:** February 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Regina Aleksiewicz, Housing Project Manager, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Multifamily Housing, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-3000; extension 2600 (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)**

Section 514(e)(2) of the FY 1998 HUD Appropriations Act, requires HUD to establish guidelines for rent adjustments based on OCAF. 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. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted.

Additionally, section 524 of the Act gives HUD broad discretion in setting OCAFs—referring simply to “operating cost factors established by the Secretary.” The sole exception to this grant of authority is a specific requirement that application of an OCAF shall not result in a negative rent adjustment. 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.

An analysis of cost data for FHA-insured projects showed that their operating 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. 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.

States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore 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 were as follows:

*Labor Costs*—6/01 to 6/02 Bureau of Labor Statistics (BLS), “Employment Cost Index, Private Sector Wages and Salaries Component at the National Level.”

*Employment Benefit Costs*—6/01 to 6/02 Bureau of Labor Statistics (BLS) Employment Cost Index, Employee Benefits at the National Level.

*Property Taxes*—6/01 to 6/02 BLS Consumer Price Index, All Items Index.

*Goods, Supplies, Equipment*—6/01 to 6/02 BLS Producer Price Index, Finished Goods Less Food and Energy.

*Insurance*—6/01 to 6/02 BLS Consumer Price Index, Tenant and Household Residential Insurance Index.

*Fuel Oil*—Energy Information Agency, 2000 to 2001 annual average state prices for #2 distillate residential fuel oil (U.S. average change was used for states with too little fuel oil consumption to have values).

*Electricity*—Energy Information Agency, 2000 to 2001 annual average residential electric prices per Kilowatt-hour.

*Natural Gas*—Energy Information Agency, 2000 to 2001 annual average Natural Gas prices.

*Water and Sewer*—6/01 to 6/02 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 June 2001 to June 2002, the wage increase component of the Virginia OCAF for 2003 would be 2.0 percent ( $4\% \times 50\%$ ). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the 2002 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.

**II. MAHRA and LIHPHA OCAF Procedures**

The Multifamily Assisted Housing Reform and Affordability Act of 1997 (title V of Pub. L. 105-65, approved October 7, 1997; 42 U.S.C. 1437f note (MAHRA)) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, 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 projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (McKinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities; or (3) comparable market rents for the market area.

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. 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