

## RECOVERY ACT INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT AWARDS—Continued

Name of applicant	Amount funded	Activity funded	Project description
Los Coyotes Band of Cahuilla and Cupeno Indians, Diane McHenry, Grant Writer, P.O. Box 189, Warner Springs, Ca 92806, (760) 432-666.	235,925	Housing Rehabilitation .....	Rehabilitate 13 homes for low- and moderate-income tribal members.
Ohkay Owingeh Housing Authority, Tomasita Duran, Executive Director, P.O. Box 1059, Ohkay Owingeh, NM 87566, (505) 852-0189.	600,000	Housing Rehabilitation .....	Rehabilitate 14 homes that are occupied by low- and moderate-income families located outside of the Pueblo's historic area.
Quechan Tribally Designated Housing Entity, Robert Letendre, Executive Director, 1860 West Sapphire Lane, Winterhaven CA 92283, (760) 572-0243.	600,000	Housing Rehabilitation .....	Rehabilitate 10 homeownership housing units in an old subdivision.
Total for Southwest Region .....	2,635,925		
Grand total .....	10,000,000		

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5362-N-01]

**Notice of Certain Operating Cost Adjustment Factors for 2010**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice establishes, for 2010, operating cost adjustment factors (OCAFs). OCAFs are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

**DATES:** *Effective Date:* February 11, 2010.

**FOR FURTHER INFORMATION CONTACT:** Charles Capone, Director, Office of Evaluation, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202-402-3237 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****I. OCAFs**

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals or adjustments 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 renewal rents are established or adjusted.

LIHPRHA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRHA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMIR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use.

Additionally, MAHRA gives HUD broad discretion in setting OCAFs—referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to “an operating cost adjustment factor established by the Secretary.” The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF “shall not result in a negative adjustment.” Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses exclusive of debt service.

HUD calculates the average, per unit, change in operating costs (excluding debt service and bad debt expense), by state, for all projects submitting consecutive valid financial statement reports with fiscal year end dates between July 31, 2007 and July 31, 2009. The projects comprise all multifamily properties excluding nursing homes and hospitals. Furthermore, data for projects with unusually high or low expenses due to unusual circumstances were deleted from the analysis. These changes in actual operating costs experienced by properties within HUD’s

portfolio have become the FY 2010 OCAFs.

OCAFs continue to be published at the state level. States are the lowest level of geographical aggregation at which there are enough projects to permit statistically reliable analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas. Finally, due to limited data, Puerto Rico data was used to generate OCAFs for the Virgin Islands.

The Department continues to reexamine the methodology for computing the operating cost adjustment factors so that they more closely mirror actual operating expenses. Future OCAF releases will likely include methodology improvements.

**II. MAHRA and LIHPRHA OCAF Procedures**

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD’s administration of such assistance, and 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 projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance 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.

LIHPHA (see, in particular, section 222(a)(2)(G)(i), 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 HUD 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.

### III. Findings and Certifications

#### *Environmental Impact*

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Catalog of Federal Domestic Assistance Number*

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

Dated: October 15, 2009.

**David H. Stevens,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

### Appendix

#### OPERATING COST ADJUSTMENT FACTORS FOR 2010 [U.S. Average: 4.7%]

Alabama .....	4.5
Alaska .....	11.0
Arizona .....	4.3
Arkansas .....	5.3
California .....	4.3
Colorado .....	3.0
Connecticut .....	8.2
Delaware .....	5.7
District of Columbia .....	5.2
Florida .....	1.8
Georgia .....	5.7
Hawaii .....	7.5
Idaho .....	4.5
Illinois .....	4.6
Indiana .....	4.1
Iowa .....	6.0
Kansas .....	3.9
Kentucky .....	5.8
Louisiana .....	3.7
Maine .....	6.3

#### OPERATING COST ADJUSTMENT FACTORS FOR 2010—Continued [U.S. Average: 4.7%]

Maryland .....	5.0
Massachusetts .....	5.6
Michigan .....	3.8
Minnesota .....	5.3
Mississippi .....	4.7
Missouri .....	3.9
Montana .....	3.2
Nebraska .....	2.3
Nevada .....	5.1
New Hampshire .....	5.7
New Jersey .....	5.5
New Mexico .....	6.4
New York .....	5.4
North Carolina .....	4.1
North Dakota .....	6.6
Ohio .....	5.4
Oklahoma .....	4.7
Oregon .....	3.2
Pacific Islands .....	7.5
Pennsylvania .....	4.1
Puerto Rico .....	4.6
Rhode Island .....	5.2
South Carolina .....	4.1
South Dakota .....	3.5
Tennessee .....	3.6
Texas .....	5.5
Utah .....	5.1
Vermont .....	4.1
Virgin Islands .....	4.6
Virginia .....	5.1
Washington .....	3.9
West Virginia .....	2.2
Wisconsin .....	7.1
Wyoming .....	7.1

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### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5355-N-01]

#### Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009: Reallocations

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** On May 5, 2009, HUD posted on its Web site its "Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009." The Notice advised the public of statutory and regulatory waivers granted to grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act), which made \$1 billion in Community Development Block Grant (CDBG) funds available to states and local governments to carry out, on an

expedited basis, eligible activities under the CDBG program. The May 5, 2009, Notice also indicated that HUD would establish and publish in the **Federal Register** criteria for reallocating and awarding CDBG-R funds that are not awarded to any eligible jurisdiction. Only one jurisdiction did not apply to receive its Recovery Act allocation. Today's Notice announces the process HUD will use to reallocate this assistance.

#### **FOR FURTHER INFORMATION CONTACT:**

Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7286, Washington, DC 20410; telephone number 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Interested parties may also visit the CDBG-R Web page on HUD's Recovery Act Web site, <http://www.hud.gov/recovery/>, for updated information and resources.

#### **SUPPLEMENTARY INFORMATION:**

#### **Authority To Provide Alternative Requirements and Grant Regulatory Waivers**

Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-005, approved February 17, 2009) appropriates \$1 billion to carry out the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, *et seq.*) on an expedited basis. These funds will be distributed to grantees that received CDBG funding in Fiscal Year (FY) 2008, in accordance with the provisions of 42 U.S.C. 5306. The grant program under Title XII is commonly referred to as the CDBG-R program. When referring to a provision of the appropriations statute itself, this notice will refer to the Recovery Act; when referring to the grants, grantees, assisted activities, and implementation rules, this notice will use the term CDBG-R.

Under the authority of the Recovery Act, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds