

UTILITY ALLOWANCE POLICY

Date: July 9, 2015 (revised 7/22—blue; revised 9/2—burnt orange)

To: Owners and Management Agents/Section 8 Program

From: Oregon Housing & Community Services
Housing Stabilization Division
HUD Contract Administration

In June 2011, then Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante issued a memorandum to Multifamily Hub and Program Center Directors and Contract Administrators providing clarifications to existing statutes, regulations, and policies regarding utility allowances in Multifamily Housing properties. The memorandum, which remains in force, clarified the following:

- Owners of multifamily housing properties that receive subsidy assistance, and for which HUD provides a utility allowance, are required to adjust their properties' utility allowances every year at the time of the annual and special adjustments of contract rents.
- Utility adjustments must be supported by a utility analysis.
- Adjustments to the utility allowance must be made regardless of whether the utility analysis shows an increase or a decrease.
- Rent adjustments must be held until the owner submits the utility analysis and all other required submissions. Once submitted, the rent adjustment will be retroactively implemented.
- Owner certifications in lieu of a utility analysis are not permitted.
- As required by 24 CFR 245.405(a) and 245.410, a minimum of 30-days' notice must be provided to tenants for any utility allowance decrease.
- Tenants have the right to participate in and comment on a proposed decrease in the utility allowance.
- A decrease in a tenant's utility allowance does not constitute a change in total tenant payment.
- Multiple utility allowance adjustments are permitted throughout the contract year.
- A utility allowance must be increased mid-year when changes in utility rates result in an increase of 10 percent or more to the utility allowance from the most recently approved utility allowance.

What the Galante Memorandum did not do was identify a specific methodology to be used when completing a utility allowance analysis. HUD Notice H-2015-04, issued June 22, 2015, builds on the June 2011 memorandum by providing the methodology.

Subject: HUD [Notice H-2015-04](#) – Methodology for Completing a Multifamily Housing Utility Analysis (*Applicable Only to Properties with Tenant-Paid Utilities*)

In accordance with HUD Notice H-2015-04, multifamily property owners must establish a baseline utility allowance for each of their bedroom sizes once every third year using the baseline utility analysis methodology outlined therein. For the two years following the establishment of a baseline utility allowance the O/A may adjust the UA using a factor-based utility analysis.

Effective Date: The utility analysis methodology being implemented by HUD Notice H-2015-04 is required for all Properties with contract anniversary dates after December 31, 2015. Properties with a contract anniversary date prior to December 31, 2015 may use either the existing methodology or the methodology outlined in HUD Notice H-2015-04. **If the existing methodology is used, a baseline utility analysis, as described in the Notice, must be used at the next contract anniversary date to establish the baseline utility allowance(s).

HUD has stipulated that **RD 515 Projects with Section 8 Assistance will use the new methodology when completing the UA analysis for their Section 8 units. After December 31, 2015 RD approved UA's will not be accepted.

HUD requirements for the Utility Allowance Analysis:

Owners must determine a baseline utility allowance, for each unit size in the project, using the actual monthly tenant utility costs—obtained from the utility company or provided by the tenant. **A Baseline Utility Allowance must be completed every three (3) years.** To complete the Baseline Utility Allowance analysis an O/A will obtain twelve (12) months of utility cost data from the utility company or each household. The baseline utility allowance analysis will include the following:

- ❖ The sample for each unit size at the property must be determined using HUD’s methodology (**Section 8 units only). A HUD provided sample format for utility allowance submissions ([Attachment A](#)), which includes built-in formulas to average utility costs for each unit size, is available below, and should be used to calculate the sample needed for each unit size and the average as calculated from the analysis.
- ❖ It is an owner’s responsibility to provide an analysis that follows the protocol outlined in the notice as closely as possible, recognizing that the “perfect” sample may not always be available. It is HUD’s or the CA’s responsibility, as appropriate, to make sure that the analysis justifies the resulting U/As, with whatever compromises in the sampling were necessary to achieve that analysis. The CA, in consultation with HUD, may require the owner to complete another baseline the following year.

○ ****New minimum sample guidelines:**

Number of Units*	Minimum Sample
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25
150-191	26
192-259	27
260-388	28
389 and above	29

*Per bedroom size. If the property consists of multiple non-identical buildings (the buildings are not substantially similar), then the sampling must be performed for each

bedroom size for each building on the site. ***The O/A should refer to the current Rent Schedule to determine if there are several units of the same size listed separately; e.g., 2-br townhouse and 2-br flat (single floor) units, or large 1-br units and small 1-br units, etc. If they are listed separately on the Rent Schedule the analysis should include an average for each specific unit type—an average for the townhouse units and an average for the single floor units.*

❖ **Requirements for Calculating the Utility Allowance Includes the Following:**

- Only Section 8 units will be used to complete the Analysis. To the greatest extent possible the Section 8 data used in the analysis for each unit has to be from the same time period.
- When calculating a tenant's average monthly cost include the highest and lowest utility cost. **Do not** remove them from the calculation.
- While a 12 month occupancy is preferable, units may be included in the sample if they have a minimum of 10 months occupancy by the same household—units vacant for more than two (2) months should not be used. Even if 100% sampling is required, O/A's must exclude units that have not been occupied for at least 10 months. **Do not enter any value for the months that are vacant (do not enter \$0)**. If there is only 10 months of data, the average must be calculated on only those ten months. OHCS's spreadsheet should automatically calculate the 10/11 month average.
- Households receiving an increased UA as a reasonable accommodation or receiving a flat utility rate as part of a low-income rate assistance utility program must be excluded from the analysis. ****Generally, we will expect flat rate units to be excluded unless these units are not the minority of units. If most residents pay a flat rate, including them in the sampling will give you a sample more representative of the whole. If this is done, document your reason for doing so to help the CA/HUD determine if your approach was reasonable. And if you include these units, calculate the average based on the flat rate, not on the usage.**
- Supporting documentation which includes the monthly utility cost obtained from the utility company must accompany the analysis. If the O/A uses a third-party vendor to complete the Analysis then the third-party vendor must provide a copy of the data used to complete their Analysis.
- **Adjustments will be implemented even when increasing or decreasing by only one dollar. When rounding the resulting U/A to the nearest dollar, round up at .50 and down at .49.**

Reporting requirements for owners:

- ❖ Upon completion of the utility analysis the O/A must submit it to the Contract Administrator for review and approval. The submitted analysis should include:
 - The Excel spreadsheet offered by HUD (or other tabulation software that reflects the methodology detailed in the HUD Notice H-2015-04), used to calculate the average monthly utility cost for each unit size.
 - A copy of the summary data provided by the utility company or the tenant through an online collection system, and used to calculate the monthly averages. **If the O/A obtained the utility bills from the tenant, the O/A may submit a spreadsheet summarizing the average of the monthly bills. The actual utility bills will not need to**

be submitted to the CA but will need to be retained in the tenant files for the term of tenancy plus 3 years and will be subject to CA review.

- There may be cases where a combination of the above will need to be performed.
- Submissions that do not meet the reporting requirements may be returned.

Factor-Based Utility Analysis:

For the two years following a baseline utility analysis, the utility allowance amounts for each bedroom size and each utility at the property can be adjusted by a state-specific increase factor—the Utility Allowance Factor (UAF)—in lieu of a baseline utility analysis. The UAF, published by the U.S. Energy Information Administration, is provided by HUD and is available on the HUDUser website at: <http://www.huduser.org/portal/datasets/muaf.html>. The UAF is a component of the OCAF and so it will typically be published yearly when the OCAF is published.

**After completing a Factor-based utility analysis the O/A should compare the adjustment to their paid utilities over the previous 12 months. If, in the O/A's determination, the results indicate a significant disparity between the two, the O/A should complete a baseline analysis to help insure the allowance(s) provided are accurate.

Utility Allowance Changes Outside of the Contract Rent Adjustment Schedule:

Owners are required to submit documentation and a request for an increase in utility allowances when changes in utility rates result in a cumulative increase in utility allowances of 10 percent or more from the most recently approved utility allowance. When the owner requests an increase in utility allowances, the owner must submit either of the following as evidence of the rate change:

- Utility bills from the month prior to the utility rate change and the first month after the utility rate change; or
- Verification of the increase from the utility provider.

Note that a 10 percent or greater increase in any one utility component may not necessarily result in a corresponding 10 percent or greater increase in the utility allowance. Only when a utility rate change results in a cumulative utility allowance increase of 10 percent or more must the owner request the increase. *This adjustment does not reset the triennial cycle and, if required, a baseline must be completed at the next contract rent adjustment. If the owner can use a factor-based utility analysis at the time of contract rent adjustment, the utility for which the rate was raised will not be adjusted by the UAF for that utility; however, all other utilities will be adjusted by the UAF.*

Utility Allowance Decreases:

- ❖ Whenever an adjustment to the utility allowance results in a decrease, an owner must comply with the tenant notification procedures outlined in HUD Handbook 4350.1, Chapter 7, Paragraph 7-5 (24 CFR Part 245.405(a) and 245.410).
 - This notice must be made at least 30 days prior to submitting the request for a utility allowance decrease to HUD for approval and must provide the tenants with the right to

participate in and comment on the proposed decrease in utility allowances. Note that a decrease in the tenant's utility allowance does not constitute a change in the amount a tenant is statutorily required to pay as rent (known as the "total tenant payment"). The decrease does, however, increase the amount a tenant will be paying monthly (or "tenant rent"). It is important to educate tenants on the difference between total tenant payment and tenant rent especially when a utility analysis will result in a decrease of utility allowances.

❖ **Phase-in of certain decreases during the initial application of this methodology.**

A utility allowance decrease resulting from the **initial application of this methodology** that exceeds 15 percent (15%) of the most recent utility allowance, **and** that decrease is equal to or greater than \$10, **must be phased-in**. If initial application of the new methodology causes a decrease greater than 15 percent **and** \$10 or more, the O/A will implement a 15 percent decrease from the most recent utility allowance for the baseline year and then implement the remainder of the calculated decrease in the following year. ***The UAF would be applied in the second year after subtracting out any phased reduction.* For an example of the phase-in process see the Notice H-2015-04, Paragraph V., section B.

Alternate Methods:

- ❖ **Allowances for New Construction and Substantial Rehabilitation.**
 - Properties undergoing new construction or substantial rehabilitation may establish initial utility allowances for new or rehabilitated units based on analysis completed at underwriting through an energy consumption model; including an HFA-approved utility allowance calculator (see Notice for further details). ***However, once the owner can obtain 12 months of household utility cost data, the owner must then follow the methodology in Notice H-2015-04 and establish a baseline analysis.*

Reviewing Policy:

O/A and CA/HUD Calculation Discrepancies

- ❖ Though the new methodology should remove most instances of calculation discrepancies the CA/HUD will still be required to review and approve the utility analysis. If there are any concerns with the submitted analysis the Contract Administrator will communicate those concerns with the owner/agent in writing.
- ❖ The CA/HUD will set the utility allowance based on the supporting documentation and its review, unless the O/A provides sufficient additional information as to why the amount(s) should be set differently.

Requirements for Tenant Households:

- ❖ **Tenant Utility Release Form.** An owner may require a tenant to sign a release for utility data in certain circumstances. For example, a utility company may require a tenant release as a condition of providing utility data. If a tenant release is necessary, the O/A will request and the tenant household is required to sign a release under 24 CFR 5.659 and the *HUD Model*

Lease for Subsidized Projects. For HUD programs, the release, [Attachment B](#), remains applicable for the household's term of tenancy; however, there may be utility providers that require a tenant's signed release form more frequently.

- ❖ Households are required to provide utility data and documentation if requested. In accordance with the regulation at 24 CFR 5.659 and the *HUD Model Lease for Subsidized Projects*, households must provide utility documentation as requested by the O/A and the request does not have to correspond with a household's recertification. Tenants must also disclose if they are paying a flat rate as part of a low-income rate assistance program.
 - ❖ Disclosure of Utility Assistance Households are required to disclose whether they are receiving utility assistance from sources other than HUD. O/As must ask this question at Move-in and at a tenant's annual recertification of income and family composition. *With the exception of HHS' LIHEAP program that assists low-income people with utility payments, all other assistance payments are a source of income and are included in the determination of annual income and the calculation of total tenant payment.* See 24 CFR 5.609(a) and HUD Handbook 4350.3 paragraph 5-6.G.1. Households receiving utility assistance from sources other than HUD continue to receive the baseline HUD utility allowance as determined by the most recent utility analysis. Assistance that must be reported includes cash or other assistance from utility providers or other entities. Failure to disclose this income will be considered a lease violation in accordance with annual recertification requirements.
 - ❖ Failure to comply with the requirements above is a lease violation and may result in termination of tenancy. If an owner pursues termination of tenancy, the termination must be carried out in accordance with Chapter 8 of HUD Handbook 4350.3, REV-1.
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