



Oregon

Governor Kate Brown

Housing and Community Services

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To: LIHTC Owners and Agents

From: Jennifer Marchand, Multifamily Program Compliance Technical Advisor

RE: Utility Allowance Calculation Information

Background:

Owners of properties financed with Low Income Housing Tax Credits (LIHTC) must limit rents and incomes to no more than the Area Median Gross Income (AMGI) annually published by HUD as approved by OHCS on a property specific basis. An allowance for the cost of any utility, other than telephone, cable television, or Internet, paid directly by the tenant and not through the owner of the building is included in the computation of gross rent. It is important that the owner/agent obtain current and proper utility allowance information in order to calculate compliant rents according to IRS and OHCS compliance requirements. When working with utility allowances, owners/agents must only count the utilities for which the household is responsible for paying. If the owner pays all of the utilities, then the utility allowance is zero. A separate estimate is computed for each utility on a building by building basis. Different methods can be used to calculate each utility. The maximum rent paid by the tenant must be reduced by the utility allowance.

Communication regarding current Utility Allowance calculation methods:

OHCS has continued to receive increased interest from owners/agents regarding utility allowance calculation methods. The IRS has specific guidance regarding utility allowance calculation methods and each calculated LIHTC property utility allowance must meet one of the IRS methods of calculation made final and published by the IRS effective July 29, 2008. Per regulation OHCS cannot allow and/or approve additional methods of utility allowance calculations beyond what the IRS has approved. However, OHCS does have the right to limit or restrict the methods that the IRS has specified as being approved methods. At this time the only IRS method that OHCS will not allow is the State Agency right to provide allowances. Currently OHCS does not utilize a method to calculate and provide property specific utility allowances to owners.

The IRS has approved the following options for an owner/agent to obtain utility allowance information depending on the type of building and other factors:



1. Rural Housing Service Properties (Rural Development or RD) - Buildings receiving assistance from RHS must use the allowances provided by RHS for all rent restricted units in the building.

2. HUD Regulated Properties (project/building/unit based rental assistance) - Buildings that receive HUD rental assistance that contain a unit/units that are required to have rents and utility allowances reviewed annually by HUD must use the HUD provided utility allowance for all rent restricted (this includes LIHTC) units in that building (regardless of the number of HUD assisted units in the building). If buildings are restricted by both RHS and HUD, the RHS numbers must be used for those buildings.

3. Tenants Receiving HUD Rental Assistance (tenant based) - Units housing tenants receiving HUD tenant based rental assistance (HCV) must use the applicable PHA utility allowance established for the Section 8 existing housing program.

4. Public Housing Authority (PHA) Utility Allowance- This is the most common utility estimate method used by LIHTC properties that are not regulated by RHS or HUD. Most PHA allowances are published by the Housing Authority for each County on at least an annual basis. If multiple local PHA's serve one area, owners must choose the PHA that serves the property location. Each PHA is required to review and update utility allowance information on an annual basis and publish new calculations if there has been a ten percent or more (either higher or lower) change since the utility schedule was last revised. When submitting proof of the documented PHA UA to OHCS you should circle and total the items in the utility allowance(s) that apply to the units and calculation for the property.

5. Utility Company Estimates- If the Utility Company is willing, the Owner/Agent may obtain a Utility company Estimate in writing from the local utility provider for the property. This method requires written documentation from the utility company stating that the specific rates indicated are "estimates for this specific property". For this method the utility company provides the estimated cost of the utility for units of similar size and construction for the geographic area that the property is located in. In deregulated areas the IRS regulation requires that the written local estimate must include all component deregulated charges for providing the utility service. A utility company estimate must come from a provider that actually offers utility services to the building. A copy of the utility company estimate and backup documentation must be provided and retained by the owner of the building. The estimate must be documented on the utility company's letterhead. Utility Companies typically base their estimate on actual consumption and require signed authorizations of release of information from each tenant living at the property.

6. Agency Estimates- At this time OHCS does not offer the service of providing agency utility allowance estimates to Owners.

7. HUD Utility Schedule Model- A building owner may calculate a utility estimate using the HUD Utility Schedule Model (HUSM) Revised Model Posted on 8/23/16 that can be found on the hudser.gov page at <http://www.huduser.org/portal/resources/utilmodel.html>.

The Office of Policy Development and Research (PD&R) developed the HUD Utility Schedule Model to provide a consistent basis for calculating utility schedules. The current HUSM is a web application that uses correlations and regression techniques to calculate allowances for end-uses, as specified on form HUD-52667 (Allowances for Tenant-Furnished Utilities and Other Services). This version of the model is primarily based on the 2009 Residential Energy Consumption Survey (RECS) dataset that is published by the Energy Information Administration (EIA) of the Department of Energy (DOE). Owners using this model must maintain and provide documentation providing the source and content of all factors entered into the model spreadsheet. Rates input must not be older than the rates in place 60 days prior to the date the utility allowance will change.

8. Energy Consumption Model- A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data. Utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period. Owners using this modeling method must maintain and provide documentation providing the source and content of all factors considered when computing the utility allowance calculation. The utility consumption estimates must be calculated by a properly licensed engineer or other qualified professional. The qualified professional and the building owner must not be related. Energy Modeling Consultants that are not licensed engineers utilized by Owners/Agents must be pre-approved by OHCS. The list of OHCS qualified and approved calculators can be found on the OHCS website at: <https://www.oregon.gov/ohcs/compliance-monitoring/Documents/memos/Approved-UA-Calculators.pdf> Requests from energy consulting firms and utility consumption analysts are considered for approval by OHCS on an individual basis. To qualify for the OHCS referral/approved consultant list for such services the energy professional must submit a current resume demonstrating education and experience, an LIHTC energy modeling sample, and proof of licensing to work in the State of Oregon (more information may be requested upon review). Upon request those with successful submissions will be placed on the Approved list of Energy Modeling Consultants (found on the OHCS website at the link above) from which organizations seeking UA calculators may select. Licensed Engineers do not have to be pre-approved by OHCS however they must be properly licensed to work in Oregon and must be able to demonstrate that they are familiar with modeling LIHTC building UA modeling and calculations. Further, regardless of the type of the qualified professional/licensed engineer, the Agency may approve or disapprove of the energy consumption model proposed and/or require information before permitting its use.

Sub-Metering and RUBS:

Per IRS Notice 2009-44 Sub-Metered Utilities are acceptable to be used when calculating a utility allowance as long as the individual unit is metered and the utility costs paid by the tenant are based on actual consumption. A submetering system typically includes a master meter owned

or controlled by a utility company, with overall utility consumption billed to a building owner. A building owner in turn uses residential unit-based meters to measure utility consumption and bill each unit based on actual consumption. Consequently, tenants are in effect paying for their actual utility consumption to the utility company.

If submetering is used with energy directly acquired from a renewable source without the intervention of a utility company, a building owner's energy charges to tenants must not exceed rates the utility company would charge tenants. The IRS has stated that utility costs paid by a tenant and based on actual consumption are to be treated as paid directly by the tenant. Utility rates charged to the tenant in a sub-metered unit must be limited to the utility company rates incurred by the manager or owner. Sewage fees based on the tenants actual water consumption determined with a sub-metering system yet listed on combined water and sewage bill are treated as being paid directly by the tenant and can also be included when determining the utility allowance. If an owner charges an administrative fee, the fee is not considered gross rent unless the aggregate amount of monthly fees for all of a unit's utilities under submetering exceeds the greater of \$5 per month, an amount designated in an Internal Revenue Bulletin (IRB), or the lesser of either a dollar amount specifically prescribed under a state or local law or a maximum amount designated by an IRB publication.

If installing an actual meter is difficult because of plumbing or wiring configurations, or the owner chooses not to install individual meters, the RUBS (Ratio Utility Billing System) method is sometimes used. The RUBS method is based on an allocation formula which takes into consideration the number of occupants, unit square footage, number of bathrooms, and number of water heaters. The RUBS method is not acceptable by the IRS for determining a utility allowances as the allocation method is not based on tenant actual consumption. Buildings that use the RUBS method must consider the cost paid by the tenant as a non-optional fee and the fee must be included in the maximum allowable rent calculation.

Owner responsibilities:

Utility allowances must be reviewed annually to ensure that allowances used are comparable to what the LIHTC tenant is actually paying. Owners may choose to review allowances more than once per year however, each time a review is completed, whether a mandated annual review, or a self-imposed review, owners and agents have a maximum of 90 days after the new allowances are determined to implement them into the maximum allowable rent computation.

The 90 day implementation period begins for:

- PHA- When the PHA makes the revision available
- Utility Company- with receipt date of the new information
- HUD Model- the date entered as the form date on the HUD form 52667
- Energy Consumption Model- 60 days after the end of the last month of the 12-month period used to compute the estimate

Each year when the allowances are reviewed, the owner or agent must retain any supporting documentation or data collected that is used to calculate the utility allowance. This information must be kept on file in order to provide proof of compliance during the entire credit and compliance period and made available to the IRS or OHCS on request. Owners or agents must submit the utility allowance documentation paperwork to OHCS each year with the annual CCPC, at inspection, and when requested. The information must be made available to all tenants at the beginning of the 90 day period before the new utility allowance can be used to calculate rent. Proof of resident notification must also be kept on file for OHCS review.

Notification requirements:

- **Obtained UA from PHA-** If the Owner obtained a utility allowance from the PHA the owner must make the utility allowance calculation notification available to all tenants at the beginning of the 90 day period.
- **Obtained UA from Utility Company, using the HUD Model, or Energy Consumption Model (ECM) -** the owner must submit copies of the utility calculations with supporting documentation to OHCS and make the calculation available to all tenants in the building at the beginning of the 90 day period. OHCS may require additional documentation from owner during the 90 day period.

Cost of estimates:

The building owner is responsible for the costs incurred in obtaining the utility allowance calculations. The building owner must also pay the cost of notification to the tenants and OHCS.

Changing methods:

Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately calculate the utility allowance. OHCS must be notified of the change per the notification requirements listed above in this notice and must approve the provider of the energy consumption model calculation if applicable. Changing methods without notification to OHCS can result in the property being designated as “in non-compliance”.

Common Causes of Utility Allowance Noncompliance:

- The appropriate utility allowance is not used.
- The utility allowance is not calculated properly.
- Rents are not reduced when the tenant is paying for the utility.
- Owner/agent did not review the basis on which the utility allowance was established at least once during the calendar year.
- Owner failed to update rents for a UA change within the 90 day period.
- Owner failed to maintain adequate documentation regarding the computation of utility allowances. Without proof of the UA or how it was calculated, there is no way to correctly calculate the rent.

Severe consequence of Noncompliance for not reducing rents:

Once a unit is determined to be out of compliance with the rent limits and it is determined that a tenant has overpaid rent for even one month, the unit ceases to be a low-income unit for the remainder of the owners tax year. An owner cannot avoid the disallowance of the LIHTC by rebating the excess rent or fees to the affected tenants. OHCS will require that the over charged rent is refunded; however, this will not bring the unit back into compliance and a required 8823 form will be filed with the IRS as applicable.

Tips to remain in compliance:

- Check, calculate and change utility allowance at least once per calendar year as applicable.
- Make sure that the utility allowance used is a method approved by OHCS and the IRS.
- Reduce rents within time frame allowed if applicable.
- Consider maintaining a “buffer” below maximum rents so that a change in utility allowance does not put the property out of compliance.
- Maintain all documentation required to show proof of compliance.
- Submit required documentation to OHCS as explained in this notice.
- Notify tenants of utility calculations when required.
- Know the difference between actual sub-metering and RUBS.
- Obtain OHCS approval before changing methods of calculation.
- Know the requirements involved for all funding sources of the property.
- When utilizing the ECM method be sure that you are using a qualified calculator or that your calculator is approved by OHCS before modeling the property.
- Do not obtain an ECM for any LIHTC building that contains one or more project based units.
- If utility costs decrease the rents should not automatically increase. OHCS approval must be received before raising rents.

If you have questions regarding utility allowance calculations, please contact the property Compliance Officer directly or contact me by email at Jennifer.C.Marchand@Oregon.gov

Thank you,
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Jennifer Marchand
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