



GOVERNMENT OF THE DISTRICT OF COLUMBIA

DC Department of Housing and Community Development
1909 Martin Luther King Jr. Avenue SE | Washington, DC 20020



UTILITY ALLOWANCE POLICIES AND PROCEDURES FOR LOW INCOME HOUSING TAX CREDIT (LIHTC) and DHCD Multifamily Loan Properties

This policy outlines the District of Columbia Department of Housing & Community Development (DHCD's updated Utility Allowance Policy (the "Policy") regarding the ways in which utility allowances and gross rents are determined for Low Income Housing Tax Credit (LIHTC) and DHCD Multifamily Loan properties where tenants pay for their own utilities.

Utility allowance options:

Properties developed with LIHTC calculate rents to include a utility allowance for tenant -paid utilities. Utility allowances for rent-restricted units may be determined using one of the following options: 1. Local Public Housing Authority Schedule 2. Actual Usage and Rate Estimate (Local Utility Company) 3. HUD Utility Schedule Model or 4. Energy Consumption Model.

Gross rents in compliance:

The Internal revenue Code and Code of Federal Regulations define "gross rent" as the total of tenant-paid rent plus a utility allowance and any non-optional fees. The utility allowance is used to cover any utilities a household is required to pay, except for telephone, cable, or internet (unless telephone, cable or in). Low service is not optional). Low-income housing projects are in compliance when the appropriate utility allowance is included, and the total does not exceed the maximum rent based on unit size and the applicable Multifamily Tax Subsidy Program income limits.

Reportable Noncompliance:

For LIHTC developments, failure to properly calculate utility allowances and charging gross rents that exceed the maximum rent allowed are both considered reportable noncompliance by the IRS and will result in a loss of tax credits. Once a LIHTC unit is out of compliance with the rent limit, it ceases to be a low-income unit for the remainder of the owner's tax year. For DHCD Multifamily Loan developments without LIHTC, failure to properly calculate utility allowances and charging gross rents that exceed the maximum rent allowed may result in suspension of reserve withdrawals, a prohibition of any modification to existing financing terms, disqualification for future DHCD financing, and/or legal action.

If the property does not properly calculate utility allowances and charges inappropriate gross rents, DHCD reserves the right to require refunds to the tenants for overcharges.

Households with HUD Section 8 (Tenant-Based Vouchers):

For individual units assisted with HUD Section 8 tenant-based vouchers, owners must use the utility allowance schedule issued by the PHA that administers the specific household's voucher.

Utility Allowance Changes:

Changing from one utility allowance source to another requires written approval by DHCD prior to implementation.

Utility Allowance Update (90-day period):

Under regulation 26 CFR S1.42-10C, if the applicable utility allowance changes as part of the annual update, the new utility allowance must be used to calculate gross rents no sooner or later than 90 days after the change takes effect. This is referred to as the “90-day period”. In other words, when the utility allowance changes, the owner must demonstrate that the new utility allowance was not implemented and used to calculate gross rents for existing LIHTC households until the first day immediately following the 90-day period. The 90-day period begins on the effective date of the new utility allowance schedule and is applicable to all LIHTC and DHCD Multifamily Loan properties where tenants are required to pay utilities. This requirement is applicable throughout the extended use period (as defined in the development’s LURA).

Annual Compliance Review:

As part of initial and regular LIHTC and Multifamily Loan compliance reviews, Compliance Specialists will review utility allowance schedules and Tenant Income Certifications (TICs) to ensure compliance with the 90-day period. Exceptions: DHCD permits two exceptions to the 90-day period. When the utility allowances increase resulting in a required decrease in tenant-paid rent. Since a rent decrease benefits the tenant, any decrease in rent due to a change in utility allowance may be implemented before the end of the 90-day period. This exception does not apply to an increase in tenant-paid rent. For new households who move into the development during the 90-day period, management may apply the new allowances on the move-in certification. **Property owners must document on an annual basis and update accordingly regardless of any changes to utility rates.**

Application of Newly Calculated Utility Allowances:

To bring financial stability to a project during the beginning of its operations, building owners are not required to review or implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days, **or** the end of the first year of the credit period, whichever is earlier.

Example:

An owner acquired an existing building and completed substantial rehab. The building has 100 units and placed in service on November 1, 2019. The owner elected to begin the credit period the year after the building was placed in service on January 1, 2020. The owner chose to use the HUD utility schedule model and correctly determined the utility allowance using the utility rates in effect on November 1, 2018.

The owner rented the ninety-first unit in May of 2019 and maintained an occupancy rate of at least 94 percent through the end of August 2019. Since the owner had achieved 90 percent occupancy for 90 consecutive days, the owner was required to conduct a utility allowance review.

Effective date of annual utility allowance schedule:

The effective date is the date indicated/published on the utility schedule.

Examples of effective dates:

- **PHA:** If the utility schedule indicates January 2019, the effective date is January 1, 2019, the first day of the 90-day period.
- **Local Utility Company Estimates:** Utility allowance is obtained when the building owner received in writing information from the utility company providing the estimated per unit cost of the utility. Receipt of information from the utility company begins the 90-day period.

- **HUD Model:** The date entered as the “Form Date” on the Location Spreadsheet of the Utility Schedule Model and reflected on the Form 52667 is the effective date.
- **Energy Consumption Model:** The effective date is the date of the Engineer’s Energy Consumption Model report if the report is prepared on the first of the month. If the report date is different than the first day of the month, the first day of the following month will be used as the effective date.

Example:

Energy Consumption Model report is dated November 5, 2019. December 1, 2019, is the effective date of the new utility allowance schedule as well as the first day of the 90-day period to notify LIHTC households of utility allowance changes. Any changes to utility allowances and tenant rent will take effect on March 1, 2020 (implementation date).

Tenant notification period:

The notification period begins the first day of the effective date of the utility schedule and continues for a period of 90 calendar days. If there are any changes to the utility allowance, the owner is required to notify LIHTC tenants of the changes regardless of which utility schedule option is selected.

LIHTC Application Process (New Developments)

New developments applying for LIHTC, that are not regulated by HUD must rely on utility allowances from one of the following three sources: Local Public Housing Authority, HUD Utility Schedule Model or Energy Consumption Model. Request to change to an Actual usage and Rate Estimate may be submitted to the assigned compliance specialist after one year of occupancy, when 12 months of actual usage data is available. Applicants relying on the HUD Utility Schedule Model or the Energy Consumption Model must submit a request for preliminary approval, including all required documents and fees outlined in this policy, to DHCD’s Development Finance Division (DFD) Project Manager at least 45 days prior to the LIHTC submission date.

If the LIHTC application is approved, the owner must submit an updated request for final approval, including all required documents and fees outlined in this policy, to DHCD’s Portfolio and Asset Management Division (PAMD) between 30-60 days before the property begins leasing.

Excluded Utilities:

Cable, satellite television, telephone, and internet costs are optional and are not included in the utility allowance calculations.

Sub-Metering (Water & Sewer):

Subject to the sub-metering mentioned below, only utility costs paid by the tenant(s) (other than optional utilities noted above) and not by the owner are included in the utility allowance calculation.

If the cost of a particular utility for a residential unit is paid pursuant to an actual consumption sub-metering arrangement, then that cost is treated as being paid directly by the household and not through the building owner. All HUD-regulated buildings and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the applicable HUD rules apply.

For all other households in rent-restricted units, or to the extent that HUD rules govern pursuant to the foregoing sentence, the following requirements apply:

1. The billed amount must reflect the unit's actual consumption of the utility.
2. The utility rates charged to the tenant in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owner for that utility.
3. If the building owner charges tenants a fee for the administrative cost of sub-metering, the fee will not be considered gross rent if the fee does not exceed an aggregate amount per unit of \$5.00 per month.
4. If sewer charges are on a combined water and sewer bill and are based on the household's actual water consumption determined by a sub-metering system, then the household's sewerage costs are treated as paid directly by the tenant for purposes of the utility allowances regulations.

Ratio Utility Billing System (RUBS)

A RUBS is a system in which the owner pays for the property's utilities and bills each household for their estimated portion of the cost. The estimate of each unit's monthly consumption is made using a formula based on the number of household members, unit square footage, etc. *While IRS regulation does not prohibit the use of RUBS for LIHTC properties, the owner must include the monthly amount charged to the household as a non-optional fee to calculate gross rent.

In other words, an owner using RUBS may not use a utility allowance to calculate gross rent.

Utility allowance calculations required per property type:

- HUD Section 8 and HOME properties operating in combination with Section 42/LIHTC. Use the applicable HUD utility allowances
- HUD Section 8 tenant-based vouchers operating in combination with Section 42/LIHTC. Use the applicable local Public Housing Authority (PHA) utility allowances
- Section 42/LIHTC Properties - Applicable utility allowances for rent restricted units in the building are determined by using one of the following options:
 1. Applicable local PHA Utility Allowances
 2. Local Utility Company Estimates
 3. HUD Utility Schedule Model
 4. Energy Consumption Model

Option 1:

Public Housing Authority (PHA) Utility Allowance Schedule

Owners and/or management using this option must obtain a copy of the PHA's utility allowance schedule in the jurisdiction where the property resides. If the PHA directs the owner to utilize a utility allowance schedule from sources other than the local PHA, (i.e., state) owner must have this in writing from the PHA. The utility allowance schedule must reflect the most current effective date. The new utility allowance must be used to compute gross rent of rent-restricted units due the first day immediately following the 90-day period. Any updates to the PHA must be implemented immediately following the 90-day period from the most current effective date of the utility allowance schedule.

Option 2:

Local Utility Company Estimates (Owner's average of actual consumption) (PEPCO)

These estimates are based on actual utility company data. The utility allowance schedule must reflect a current effective date. Owners must obtain copies of actual usage data from the applicable utility company (local utility provider for the building). The actual usage includes only continuously occupied units (50 or more weeks) in the most recent 12-month period. The most recent month data is no older than 60 days from the effective date.

Data is required for at least 25 units, representing each bedroom size geographically dispersed across the property, or all units if the property has less than 25 units. The owner must itemize the monthly usage by unit into a spreadsheet, including building address, unit number, unit size, and square footage, then average by unit type. Newly constructed or renovated buildings with less than 12 months of data may use units of similar size and construction characteristics within the same geographical area of the subject property.

Option 3:

HUD Utility Schedule Model

These estimates are based on information entered by the owner into the HUD Utility Schedule Model. The HUD Utility Schedule Model is a tool that provides "Location and Heating Degree Data" that requires input to the model. Information regarding the use of this model can be found at: www.huduser.org/datasets/lihtc.html. The HUD Utility Schedule Model uses rates that are no older than the rates in place 60 days prior to the effective date.

Option 4:

Energy Consumption Model

Under Treas. Reg. §1.42-10(b)(4)(ii)(E), a building owner may calculate a utility allowance using an energy, water and sewage consumption analysis model (Energy Consumption Model). The Energy Consumption Model must, at a minimum, consider 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.

- The utility consumption estimates must be prepared by a properly licensed engineer or a qualified professional. A qualified professional must not be related to the building owner within the meaning of IRC 267(b) or 707(b) and must be approved by DHCD.
- The 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.

Documentation required

For Utility Options 2, 3, and 4, all supporting data received by owner's utility source must be submitted to PAMD along with the Owner's Certification of Utility Estimates, Engineer's Certification (if applicable), and a copy of the engineer's license (if applicable). In addition, submit the appropriate review/processing fee for Options 2, 3, and 4. Requests must be sent to:

**District of Columbia Department of Housing & Community Development (DHCD)
Portfolio and Asset Management Division (PAMD)
Attn: Compliance Specialist (assigned to the property)
1909 Martin Luther King Jr. Avenue, SE
Washington, DC. 20020**

***Please allow 14 business days for review and approval, after the comment period deadline.**

Fees:

Currently, a \$150.00 administrative fee will apply to all owner estimate submissions choosing Option Two (2) (Local Utility Company Estimates) and Option Four (4) (Energy Consumption Model).

***No administrative fee will be charged for the selection of Option One (1) (PHA estimates) and Option Three (3) HUD Utility Schedule Model, unless the UA study was conducted by a professional contractor and/or their designee, at the owner's request.** The property owner is responsible for all the costs incurred in obtaining utility allowance estimates. Fees may change from time to time. Contact PAMD for current fee pricing. **No personal checks will be accepted. All checks should be a company check; money orders are accepted.** Checks or money orders should be made payable to the **DC Treasurer**, and please note in the memo section the name of the property requesting the review and management company.

Review, approval, or denial of owner's estimates:

Owners using Options 2, 3, or 4 that submit complete and accurate data, the Owner Certification of Utility Estimates form, and the applicable administrative fee to PAMD will receive notification of the approval or denial within 14 business days after the comment period deadline. The owner must notify all rent-restricted residents of any utility change ninety (90) days prior to implementing new gross rents (the 90-day period)

PAMD staff may deny owner estimate submissions if:

- the Owner fails to provide complete and accurate information and fees.
- the subject property is not eligible.
- the Owner includes utility costs other than what is paid directly by the resident.
- the Owner includes costs such as cable or satellite television, telephone, and internet into the utility allowance calculations; or
- the Owner fails to submit the Owner Certification of Utility Estimates form.

Record Retention Requirements:

The property owner is responsible for the accuracy of all data submitted and is responsible for ensuring their LIHTC properties remain in compliance with all Section 42 requirements as well as retain any utility consumption estimates and supporting data as part of the taxpayer's records. At all times, a current utility allowance must be available for review and inspection per the record retention requirements.

Resources and References:

26 CFR 1.42-10: Treasury regulations regarding utility allowances

IRS 8823 Audit Technique Guide, Chapter 18

26 USC 267 (b): Clarification regarding sub-metering

707 (b): IRS restrictions on relationship between property owners and Qualified professionals engaged to complete Energy Consumption Model.

Questions or concerns may be directed to the Portfolio Asset Management Division at

pamd.compliance@dc.gov