



**Effective as of Jan. 1, 2009**

## Utility Allowance

The Internal Revenue Service requires that utility allowances be set according to 26 CFR 1.42-10 (April 24, 1994), effective May 2, 1994, and amended 7/29/2008, implemented 1/1/09.

The utility allowance for an LIHTC unit is the amount the tenant pays directly for utilities (excluding telephone, cable television or internet) under the lease. If all utilities are paid by the owner the utility allowance added to gross rent is zero. When utilities are paid directly by the tenant, a utility allowance must be used to determine maximum eligible unit rents.

Utility allowance regulations are applied, individually, to each building in the development. Therefore, depending on the development, an owner or manager could have buildings in the same development using different utility allowances.

Regulations require that new utility allowances be used to compute rents that are due 90 days after the effective of the new allowances. For new buildings, owners are not required to review or implement new utility allowances until a 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.

Utility allowances must be reviewed and updated at least annually based on current rates – consider changes to the buildings' that would impact consumption. Owners must provide changes in writing to NH Housing 90 days prior to effective date.

Copies of the utility allowance(s) used for the years being reviewed must be submitted to NH Housing upon notice of inspection/review of files. Section 42 lists the different sources of utility allowances for tax credit developments. The following is a summary of the sources of utility allowances:

- 1.** USDA Rural Housing Service (formerly FmHA) financed projects must use the RHS utility allowance.
- 2.** HUD regulated buildings must use the HUD utility allowance (project based HUD financing).
- 3.** Any individual apartments occupied by residents who receive HUD assistance (Section 8 Existing, etc.), must use the HUD utility allowance from the Public Housing Authority (PHA) administering the assistance.

4. For Section 42 buildings without RHS or HUD assistance, the following options may be used:
- a. A PHA utility allowance from the local housing authority administering section 8 vouchers.
  - b. A utility company estimate. Any interested party (including a low-income tenant, a building owner, or an agency) may request the utility company estimation of utility consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar sizes and construction for that geographic area. Costs incurred in obtaining the estimate are borne by the initiating party. The party that obtains the local utility company estimate must retain the original of the utility company estimate and must furnish a copy to the owner and the monitoring agency. The owner of the building must make copies available to all tenants in the building. In the case of deregulated utility services, the interested party is required to obtain an estimate from one utility company even if multiple companies can provide the same utility service to the building in order for that company's rates to be used. The estimate should include all component deregulated charges for providing the utility service.
  - c. A HUD utility Schedule Model. This model can be found on HUD's website at [www.huduser.org/datasets/lihtc.html](http://www.huduser.org/datasets/lihtc.html). Utility rates using the HUD utility model must be no older than the rates in place 60 days prior to the effective date of the utility allowance.
  - d. An Energy Consumption Model using an energy, water and sewage consumption and analysis model. The 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, and characteristics of the building location. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the State of New Hampshire. The engineer and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the minimum requirements described above. Use of the energy consumption model is limited to a building's consumption data and local rates for the 12 month period ending no earlier than 60 days prior to the effective date of the utility allowance. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.
  - e. Agency Estimate is not offered by NH Housing.

With the exception of HUD and RD-regulated properties, owners may combine any methodology for each utility service type. Be advised, that the effective date of the PHA allowance will likely be

different than the Owner's Average of Actual Consumption resulting in adjustments to utility allowances and, potentially, rents multiple times during the year.

Failure to maintain or provide the Utility Allowance and supporting documentation annually is considered noncompliance; without proof of the amount of the allowance, there is no way to correctly compute the gross rent. In addition, an incorrect utility allowance calculation may result in noncompliance for gross rents that exceed the tax credit rent limits.

It is the owner's responsibility to contact the appropriate organization to request current utility allowance information. NH Housing does not collect or maintain the various utility allowances. Any costs incurred in obtaining a utility allowance are the responsibility of the owner.

Utility allowances and supporting documentation for options c and d must be submitted to NH Housing at the beginning of the 90 day period before utility allowances can be used in determining the gross rent. The effective date of the utility allowance proposed must be no later than 60 days after the rates used in the supporting documentation.

**All Options:** Apply throughout the Extended Use Period. Owner must maintain records throughout the extended use period.