LIHTC Utility Allowances

The Internal Revenue Service requires that utility allowances be set in accordance with Treasury Regulation §1.42-10. A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances.

These utility allowance procedures may be amended at New Hampshire Housing’s discretion, upon changes to governing legislation, or based on further IRS clarification/guidance.

If the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent for that unit includes the applicable utility allowance determined under §1.42-10. For purposes of the preceding sentence, if the cost of a particular utility for a residential unit is paid pursuant to an actual-consumption submetering arrangement within the meaning outlined in Treasury Regulation §1.42-10(e), then the cost is treated as being paid directly by the tenant(s) and not by or through the owner of the building. This section only applies for purposes of determining gross rent under §42(g)(2)(B)(ii) as to rent restricted units.

The utility allowance is computed on a building-by-building basis. Utility allowance regulations are applied individually to each building in the development; therefore, it is possible that a multiple building project may have buildings within the same project using different utility allowances.

Notification to Tenants and New Hampshire Housing

In accordance with §1.42-10, if at any time during the building's extended use period (as defined in §42(h)(6)(D)) the applicable utility allowance for units changes, the new utility allowance must be used to compute the gross rents of the units due 90 days after the change (the 90-day period). A building owner using a utility company estimate, an agency estimate, the HUD Utility Schedule Model, or an energy consumption model must submit copies of the utility estimates to New Hampshire Housing and make the estimates available to all tenants in the building at the beginning of the 90-day period before the utility allowances can be used in determining the gross rent of rent-restricted units. New Hampshire Housing may require additional information from the owner during the 90-day period.

For new buildings, owners are not required to review or implement new utility allowances until a building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

Annual Review

A building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance as noted above. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

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Applicable Utility Allowances

Treasury Regulation §1.42-10 outlines the applicable utility allowances for tax credit developments. The following is a summary of the applicable utility allowances, as well as New Hampshire Housing’s procedures for implementing those allowances.

1. Buildings assisted by the Rural Housing Service. If a building receives assistance from the Rural Housing Service (RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the Rural Housing Service (RHS) for the building (whether or not the building or its tenants also receive other state or federal assistance).

2. Buildings with Rural Housing Service assisted tenants. If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

3. Buildings regulated by the Department of Housing and Urban Development. If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

4. Other buildings. If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

   a. Tenants receiving HUD rental assistance. The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

   b. As a general rule, if none of the rules above apply to any rent-restricted unit in a building, the appropriate utility allowance for the units is the applicable PHA utility allowance. However, if one of the following estimates is obtained for any unit in the building, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building.

   c. Utility company estimate. Any interested party (including a low-income tenant, a building owner, or New Hampshire Housing) 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 of the building and New Hampshire Housing. 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 utility company must offer utility services to the building in order for that utility company’s rates to be used in calculating the utility allowance. The estimate should include all component deregulated charges for providing the utility service.

   d. Agency Estimate. New Hampshire Housing will allow the use of actual utility company usage data and rates for the building; however, use of the Agency estimate is limited to the building’s consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period and utility rates used

Revised September 28, 2016
for the Agency estimate must be no older than the rates in place 60 days prior to the beginning of the 90-day period. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the Owner may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located. The Owner must submit a Utility Analysis and, at a minimum, the following requirements must be met.

- The Analysis must include 80% of each unit type/bedroom size.
- The Analysis must be based on electric kilowatt hours, propane or oil gallon usage, or natural gas therm usage.
- To determine the average, remove the high and low of each unit type.
- Units that have experienced a vacancy within the 12 month period are to be omitted from the calculations.
- Supporting documentation which includes actual usage data from the utility provider (billing statements, etc.) must accompany the analysis.
- The current cost per kilowatt hour, per gallon or per therm (and any anticipated increase in cost over the next 12 months) and the monthly usage fee must be documented and submitted with the analysis.
- The analysis must be submitted for each unit and each unit type on the LIHTC Utility Analysis Grid.
- The analysis must be for a continuous 12 month period.

e. HUD Utility Schedule Model. A building owner may calculate a utility estimate using the HUD Utility Schedule Model that can be found at: http://www.huduser.org/portal/resources/utilallowance.html. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period.

f. 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. 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 within the meaning of section 267(b) or 707(b). If a qualified professional is not a properly licensed engineer and if the building owner wants to utilize that qualified professional to calculate utility consumption estimates, then the owner must obtain approval from New Hampshire Housing. Further, regardless of the type of qualified professional, New Hampshire Housing may approve or disapprove of the energy consumption model or require information before permitting its use. In addition, 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.

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.

Utility Allowance Spreadsheet

All submissions of a utility company estimate, HUD Utility Schedule Model, and/or energy consumption model must also include a Utility Allowance Spreadsheet. At a minimum the spreadsheet must include the Property Name, Date Utility Allowance Estimate was received, Implementation Effective Date, the Building Identification Number (BIN) for each building, the address and other identifying information associated with the BIN, the unit size/type, unit square footage and the utility allowance amount.
Age of Data

For each of the options, New Hampshire Housing requires that the estimate be based on the most recent 12-month period. Data must be no older than 60 days at the time of submission.

In the case of buildings with less than 12 months of consumption data, the owner may use 12 months of data from similar units in similarly-constructed buildings in the subject’s geographic area.

Failure to Maintain or Provide Utility Allowance

Low-income housing projects are in compliance when the appropriate utility allowance is used, the utility allowance is properly calculated, rents are reduced for a utility allowance when utilities are paid directly by the tenant, and the maximum gross rent is not exceeded.

Owners must demonstrate that that the basis on which utility allowances have been established (consumption and rates) have been reviewed at least once during each calendar year. If applicable, the owner must also demonstrate that 1) tenants and New Hampshire Housing have been timely notified of any changes, and 2) the new utility allowance was used to compute gross rents due after the end of the 90-day period. Failure to maintain or provide the utility allowance and supporting documentation is considered noncompliance and will be reported to the IRS on Form 8823.

Responsibility for Data and Costs

It is the owner’s or its engineer’s responsibility to collect utility company data. The owner, through its property management office, must maintain utility allowance data and make it available for inspection by the tenant during regular business hours. If there is no resident manager and the tenant requests a review of the utility allowance data, requested data must be mailed to the tenant.

Costs associated with obtaining annual estimates are the sole responsibility of the property owner.

Record Retention

The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records for purposes of Treasury Regulation §1.6001–1(a).

Submission Requirements

Utility allowances and supporting documentation for options c, d, e and f above must be submitted to New Hampshire Housing at the beginning of the 90-day period before utility allowances can be used in determining the gross rent.

Complete submissions must include the following documentation.

Agency estimate
1. Cover letter stating utility allowance option
2. Copies of actual usage data from the utility provider
3. Utility Analysis Grid
4. Copy of 90-day notice to residents
5. New Hampshire Housing Certification of Completeness and Accuracy
6. Utility Allowance Spreadsheet

Local Utility Company Estimate:
1. Cover letter stating utility allowance option

Revised September 28, 2016
2. Documents provided by local utility company supporting estimate
3. Copy of 90-day notice to residents
4. New Hampshire Housing Certification of Completeness and Accuracy
5. Utility Allowance Spreadsheet

HUD Utility Schedule Model:
7. Cover letter stating utility allowance option
8. Copies of actual usage data from the utility company. If per unit usage data from the utility company is not available, provide copies of actual resident utility bills.
9. Copy of 90-day notice to residents
10. New Hampshire Housing Certification of Completeness and Accuracy
11. Utility Allowance Spreadsheet

Energy Consumption Model
1. Cover letter stating utility allowance option
2. Owner/Engineer Certification of Utility Data, certifying complete and accurate information; owner authorized signature, engineer’s signature and photocopy of the engineer’s current license is required.
3. Copy of 90-day notice to residents
4. New Hampshire Housing Certification of Completeness and Accuracy
5. Utility Allowance Spreadsheet

Submit Complete Documentation to:

New Hampshire Housing
Attn: Melanie Toscano, Portfolio Manager
P.O. Box 5087
Manchester, NH 03108

Notification of Approval/Denial

When using the Local Utility Company, HUD Model, or Energy Consumption model to obtain utility allowance estimates, New Hampshire Housing will provide a written approval/denial notification within 30 days of receiving complete and accurate information from the owner. The owner will be notified if information provided is incomplete or insufficient.