



LIHTC Utility Allowances

Revised December 23, 2020

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 household, 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.

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.

NOTE: This includes both the Section 8 project-based and Section 811 programs. Utility allowances in projects that have contracts with HUD under one of these programs must be effective on the date of the HUD contract.

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. **PHA Utility Allowance.** 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 size 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 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.
 - Supporting documentation, which includes actual usage data from the utility provider (billing statements, etc.), must accompany the Analysis.
 - 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.
 - The current cost(s) per kilowatt hour, per gallon or per therm (and any anticipated increase in cost(s) over the next 12 months) and any monthly usage fee(s) must be documented (i.e., copy of rate information from the utility provider's website) 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 at least 10 months out of the previous 12-month period.

NOTE: New Hampshire Housing understands that obtaining an adequate sample size can be challenging in some situations. Exceptions to these requirements may be made on a case-by-case basis. The Owner is encouraged to reach out to the Asset Manager assigned to the property to discuss possible options.

- 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>. The HUD Utility Schedule Model must be completed 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 complete the HUD Utility Schedule Model, then the owner must obtain approval from New Hampshire Housing. 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 deny 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.

Submetering Arrangements and Renewable Energy Utilities

Utility charges that are submetered are based on a household's actual energy consumption but are paid by the building owner to a local utility company. These are treated as paid by the tenant to the utility company. Owners may, therefore, establish a utility allowance using one of the methods described above. If applicable, administrative fees may be charged to households; however, such fees may not exceed the greater of \$5.00 dollars per month, an amount (if any) designated by IRS notice, or the lesser of the dollar amount (if any) specifically prescribed under State or local law or the maximum amount (if any) designated by IRS notice.

The federal regulation extends the principle of submetering to property owners that provide households with energy directly acquired from a renewable source and that is not delivered by a local utility provider. Utility allowances can be calculated for these renewable energy utilities if the rates charged for renewable energy are not greater than other options available through local utility providers.

Ratio Utility Billing System (RUBS)

RUBS uses a formula that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not actual consumption by the tenant(s) in the unit. The federal regulation does not prohibit the use of RUBS; however, any amount paid by the household for utilities using RUBS must be included in the gross rent calculation. The building owner is responsible for keeping organized and detailed records to confirm the monthly rent charged to the tenants, including any RUBS allocations.

Availability of Utility Estimates

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, 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. Any utility estimates obtained under the Agency estimate must also be made available to all tenants in the building at the beginning of the 90-day period. New Hampshire Housing may require additional information from the owner during the 90-day period.

The 90-day period begins as follows:

- PHA Utility Allowance: The date the PHA makes revised utility allowances available
- Utility Company Estimate: The date the building owner receives, in writing, information from the utility company providing the estimated per unit cost of the utility
- Agency Estimate: The date the building owner receives written approval from New Hampshire Housing of the calculated utility allowance.
- HUD Utility Schedule Model: The date entered as the “Form Date” on the “Location” spreadsheet of the Utility Schedule Model.
- Energy Consumption Model: 60-days after the end of the last month of the 12-month period for which data was used to compute the estimate. (E.g., last month of data is November 2020; 90-day period begins on February 1, 2021.)

Notice to Tenants

At the beginning of the 90-day period, the Owner must make copies of the utility allowance estimates available to all tenants. A sample tenant notification is available on our website. A copy of the notification must be submitted to New Hampshire Housing with the utility allowance documentation. In the case of the Agency Estimate, a copy of the notice must be sent at the same time it is provided to tenants.

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.

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.

Age of Data

For each of the options, New Hampshire Housing requires the estimate to 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 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 or emailed 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).

Cover Letter

All submissions must include a cover letter that includes the following:

- The utility allowance method chosen
- The date the estimate was completed/received by the Owner
- The implementation effective date
- The proposed utility allowance amount for each unit size/type

Submission Requirements

Utility allowances and supporting documentation for options c, 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. Agency estimate submissions must be received no earlier than 60 days prior to the beginning of the 90-day period.

Complete submissions must include the following documentation.

Agency estimate

1. Cover letter including all requirements outlined above
2. Copies of actual usage data from the utility provider
3. Utility Analysis Grid
4. New Hampshire Housing Certification of Completeness and Accuracy

Note: A copy of the 90-day notice to tenants must be submitted to New Hampshire Housing at the same time that it is sent to tenants.

Local Utility Company Estimate:

1. Cover letter including all requirements outlined above
2. Documents provided by local utility company supporting estimate
3. Copy of 90-day notice to tenants
4. New Hampshire Housing Certification of Completeness and Accuracy

HUD Utility Schedule Model:

1. Cover letter including all requirements outlined above
2. Completed HUD Model and supporting rates, schedules, taxes, fees, and riders.
3. Copy of 90-day notice to tenants
4. New Hampshire Housing Certification of Completeness and Accuracy

Energy Consumption Model

1. Cover letter including all requirements outlined above
2. Copy of engineer's report
3. Copy of 90-day notice to tenants
4. New Hampshire Housing Certification of Completeness and Accuracy, including Owner/Engineer Certification of Utility Data, certifying complete and accurate information; owner's authorized signature, engineer's signature and photocopy of the engineer's current license is required.

Submit Complete Documentation to:

assetmanagement@nhhfa.org

Notification of Approval/Denial

When using the Local Utility Company Estimate, Agency Estimate, HUD Utility Schedule 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.