

Low Income Housing Tax Credit Utility Allowance Policy

On July 29, 2008, the Internal Revenue Service (IRS) issued final regulations that amend the utility allowance regulations of Section 1.42-10, for the Low-Income Housing Tax Credit Program. The final regulations provide three new options for estimating tenant utility costs. The options are: The Agency Estimate, The HUD Utility Schedule Model, and the Energy Consumption Model. The Agency Estimate is not being implemented by the Maryland Department of Housing and Community Development (the Department) at this time. The following guidelines are the Department's implementation procedures for the revised regulations:

1. Effective Date

The final regulations are effective for taxable years beginning after July 29, 2008. This policy is effective for allowances developed on or after June 14, 2010 until otherwise amended.

2. General Overview

Low-income housing projects are in compliance when the appropriate utility allowance is used, the utility allowance is properly calculated, and the rent charged to the tenant plus the current utility allowance does not exceed the maximum allowed gross rent limit per the income restriction as recorded in the Extended Low-Income Housing Covenant. (Also known as the Tax Credit Covenant.) Failure to provide documentation of current utility allowances is considered a non-compliance issue because without such documentation the correct rent will not be charged to low-income residents.

Sub-metered Buildings

Utility allowances must include the costs of all utilities (except cable television, telephone, and internet costs) paid directly by the tenant and not by, or through, the owner of the building. However, the IRS issued Notice 2009-44 on May 5, 2009, which clarifies that utility costs paid by a tenant which are based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant and not paid by or through the owner of the building.

In such instances:

- a) The utility rate charged to the tenant must be the same rate charged by the utility company to the owner;
- b) Any fee charged for the administrative costs of sub-metering shall be reasonable and may not exceed five dollars per month per unit;

- c) Any reasonable fee charged shall not be included in the gross rent calculations; and
- d) The tenant's sewage cost is treated as paid directly by the tenant if the cost is based on the tenant's annual water consumption as determined by a sub-metering system and if the cost is included on a combined water and sewage bill.

3. Methodologies for Determining Utility Allowance Estimates

The following methodologies may be used by the owner to calculate a utility allowance. Note the first three methods are not optional and are governed by the type of assistance associated with the building.

Method 1 – Building assisted by the Rural Housing Service (RHS):

If a building receives assistance from the RHS (i.e., RHS assisted building), the applicable utility allowance for all rent-restricted units in the building is the RHS utility allowance.

Method 2 – Building with RHS tenants:

If any tenant in a building receives RHS rental assistance payments (i.e., RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building is the RHS utility allowance.

Method 3 – Building regulated by the Department of Housing and Urban Development (HUD-Regulated Building):

If the building's rents and utility allowances are reviewed by HUD on an annual basis (i.e. HUD-Regulated Building), the utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance. However; if a building or a tenant in a HUD-Regulated Building also receives RHS assistance, Method 1 or 2 supersedes Method 3.

Method 4 – Other Buildings:

If a building does not fall within the above three categories (i.e., it is not RHS-assisted, not HUD-regulated, and no tenant receives RHS tenant assistance), the applicable utility allowance for rent-restricted units in the building is determined under the following methods. If none of the rules of Method 1, 2, 3, or 4(A) apply to determine the appropriate utility allowance for a rent-restricted unit, then one of the following methods becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building.

Option A – PHA Utility Allowance

The owner may obtain and use the local PHA utility allowance established for the Section 8 Housing Choice Voucher Program. The PHA utility allowance must be implemented within 90-days upon receipt by the owner.

Option B – Utility Company Estimate



The owner may use a utility company estimate. The estimate must be obtained in writing from a local utility provider. The utility company must provide the estimated cost of that utility for units of similar size and construction for the geographic area in which the building is located. The regulation requires that the written local estimate include all “component deregulated charges” for providing the utility service. In deregulated areas, an estimate from one utility company is allowed even if several companies can provide the same utility service to the building. However, the estimate must come from a provider that offers services to the building. This option can be used for new construction provided the utility company provides an estimate for similarly constructed units in the geographic area.

Any interested party (including a low-income tenant, a building owner, or the Department) may obtain a utility company estimate. Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party.

A copy of the utility company estimate must be made available to the tenants 90-days prior to the effective (i.e., implementation) date.

The Owner Certification of Utility Allowance Completeness and Accuracy (Attachment 1), a copy of the notice to the residents, and the utility company estimate must be submitted to the Department 90-days prior to the effective date. The Department will rely on the certification of the owner and will retain the documents for its records.

Option C – HUD Utility Schedule Model

The owner may calculate, or may elect to retain the service of a properly licensed engineer or a qualified professional to calculate, a utility allowance using the [HUD Utility Schedule Model](#).

If the owner obtains the services of an engineer or qualified professional to calculate the utility allowance under the HUD Utility Schedule Model, such individual must not be related to the owner within the meaning of IRC Section 267(b) or 707 (b). In addition, the Department requires that the engineer/professional be approved.

A listing of approved properly licensed engineers and/or qualified professional’s will be maintained in the [Multifamily Housing Development Document Library](#) on the Department’s website. To be added to the listing, the engineer and/or qualified professional must submit the specific documents detailed in the listing.

The use of the HUD Utility Schedule model does not require the collection of consumption data. However, amounts used for utility rates, applicable taxes and fees must be no older than the amounts in effect 60-days prior to the beginning of the 90-day tenant notification period after which the new allowances will take effect.

Owners and/or properly licensed engineers/professionals who use the HUD Utility Schedule model must certify that the analysis was performed in accordance with applicable regulations and must provide documentation of the source and content of all factors entered into the model as well as a printout of the utility allowance generated from the model.



See Attachment 2 for the submission letter to be used for the HUD Utility Schedule Model Estimate. The Owner Certification of Utility Allowance Completeness and Accuracy (Attachment 1) and a copy of the 90-day notice to residents must be provided to the Department with the submission letter. The Department will rely on the certification of the owner and will retain the documents for its records.

Option D – Energy Consumption Model

The utility allowance may be calculated by using an energy and water/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 and characteristics of the building location.

The model must use building consumption data for the 12-month period ending no earlier than 60-days prior to the beginning of the 90-day notification period after which the new utility allowance must be in effect. The amounts used for utility rates, applicable fees, and taxes in the estimate must be no older than the amounts in effect 60-days prior to the 90-day notification period.

In the case of newly constructed or renovated buildings with less than 12-months of operation, the 12-month consumption data must be obtained from units of similar size and construction in the geographic area in which the building is located.

The estimate must be calculated by either a properly licensed engineer or a qualified professional who is not related to the building owner within the meaning of IRC Sections 267(b) or 707(b). The IRS requires that the engineer/professional be approved by the Department.

A listing of approved properly licensed engineers and/or qualified professional's will be maintained in the [Multifamily Housing Development Document Library](#) on the Department's website. To be added to the listing, the engineer and/or qualified professional must submit the specific documents detailed in the listing.

Owners and/or properly licensed engineers/professionals who use this model must certify that the analysis was performed in accordance with applicable regulations and must provide documentation of the source and content of all factors entered into the model as well as a printout of the utility allowance generated from the model.

See Attachment 3 for the submission letter to be used for the Energy Consumption Model Estimate. The Owner Certification of Utility Allowance Completeness and Accuracy (Attachment 1) and a copy of the 90-day notice to residents must be provided to the Department with the submission letter. The Department will rely on the certification of the owner and will retain the documents for its records.



4. Effective Date and Annual Review Requirements

If the applicable utility allowance for a unit changes, the new utility allowance must be used to determine the gross rent due 90-days after the change.

Property owners of buildings which have recently placed-in-service may implement new utility allowances at the earlier of:

- a) the date the building has achieved 90 percent occupancy for 90-consecutive days; or
- b) the end of the first year of the credit period.

Thereafter, utility allowances must be reviewed and updated at least once during each calendar year. The annual review must take into account any changes in utility rates as well as any changes such as energy conservation measures which may affect the energy consumption of the building. Documentation of the annual review shall be maintained and made available for Department review, at its discretion.

5. Notification Requirements

1. Owners must provide a copy of the utility allowance schedule only (i.e. without back-up supporting documentation) as part of the annual submission for year-end compliance monitoring to the Department's designated agent at:
Maryland Department of Housing and Community Development c/o Zabrina Morten
7800 Harkins Road
Lanham, MD 20706
Phone: 301-429-7725
Email: zabrina.morten@maryland.gov
This information is generally due the end of February for the prior compliance year ending December 31.
2. Owners using one of the following methods to determine utility allowances must make the estimate available to residents and to the Department 90-days prior to the effective (i.e., implementation) date:
 - The Utility Company Estimate (Method 4, Option B)
 - HUD Utility Schedule Model (Method 4, Option C)
 - Energy Consumption Model (Method 4, Option D)

All correspondence and documentation to the Department shall be directed to:

Caty Waterman
Director, Compliance and Administration
Maryland Department of Housing and Community Development
7800 Harkins Road
Lanham, MD 20706
Phone: 301-429-7776
Email: Taxcredits.dhcd@maryland.gov



NOTE: It is the responsibility of the building owner to comply with all federal and state regulations. The Department will periodically review utility allowance submissions for completeness and reasonableness. If the Department identifies problems with utility allowance submissions, the owner will have 30-days from the date of written notification from the Department to address the matter or the Department will consider the project out-of-compliance and will issue the IRS Form 8823.



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
7800 Harkins Rd • Lanham, MD 20706 • dhcd.maryland.gov
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258



ATTACHMENT 1

Owner Certification of Utility Allowance Completeness and Accuracy

(Required for Option B-Utility Company Estimate; Option C-HUD Utility Schedule Model and Option D-Energy Consumption Model)

Project Name: _____

Project Address: _____

BIN Number(s): _____

Methodology used for Utility Allowance Estimate: _____

The undersigned owner or owner designee hereby submits to the Department the utility allowance estimate and supporting documentation and hereby certifies that:

1. I am the authorized signatory (per the Extended Low-Income Housing Covenant or per alternate designated in writing by the authorized signatory) for the above named project;
2. I have reviewed and approve of the documentation provided for the attached estimate which conforms to Section 42 of the Internal Revenue Code and relevant regulations;
3. Only utility costs paid directly by the residents and not by or through the owner are included in the utility allowance estimate with the exception of utility costs paid by residents based on actual consumption in sub-metered rent restricted units;
☐ Check if sub-metered utility allowances are included.
4. Cable television, telephone and internet costs are excluded from the utility allowance calculations;
5. If historical comparative data is used, the information is complete, factual, and based only on units continuously occupied 12 or more months;
6. The utility allowances are based only on utilities that are metered directly to individual units and where residents receive a monthly bill specific to usage in their unit; (An exception is provided for sub-metered units as noted under item number 3 above.)
7. This submission accounts for any building changes since the last submission of this form that affect the building's energy usage, either positively or negatively, resulting from differences in construction, appliances, utility type used, systems, and applicable utility rates, taxes and fees;
8. All expenses associated with establishing these utility allowances have been paid directly by the owner and the tenants have not and will not be charged for establishing utility allowances and/or for accessing and furnishing this information to tenants in the building;
9. If a utility company estimate was used to establish the utility allowance: the estimate was obtained in writing from a local utility company; the estimated utility cost is based on units of similar size and construction for the geographic area in which the building is located, and the estimate includes all component deregulated charges for providing the utility service;
☐ Check if applicable



10. If the HUD Utility Schedule Model was used to establish the utility allowance, Attachment 2 (Submission Letter for Option C) is included with this certification;
Check if applicable
11. If the Energy Consumption Model was used to establish the utility allowance, Attachment 3 (Submission Letter for Option D) is included with this Certification;
☐ Check if applicable
12. If the Utility Company Estimate, the HUD Utility Schedule, or the Energy Consumption Model was used to calculate the utility allowance, the 90-day notice to residents is attached.
☐ Check if applicable

The undersigned hereby certifies that the information set forth herein and in any attachments in support hereof is true, correct and complete to the best of his/her knowledge and belief. Failure to provide accurate information may constitute noncompliance with the Federal Low-Income Housing Tax Credit Program and a Report of Noncompliance (IRS Form 8823) will be filed with the Internal Revenue Service. In addition, failure to provide accurate information will render the owner entity ineligible for further participation in either the Rental Housing Fund or the Tax Credit Program under the Maryland Qualified Allocation Plan and Multifamily Rental Financing Guide.

IN WITNESS WHEREOF, the owner/owner designee¹ has caused this document to be duly executed in its name on this _____ day _____ of, _____.

Full legal name of Ownership Entity: _____

Signature: _____

Name: _____

Title: _____

¹ If designee, must have written authorization on file with the Department.



ATTACHMENT 2

Submission Letter for Option C – HUD Utility Schedule Model

Property Name: _____

Property Address: _____

BIN Number(s): _____

The undersigned certifies that:

1. A HUD Utility Schedule Model study was performed by [Click or tap here to enter text.](#) of [Click or tap here to enter text.](#) for the above referenced property according to IRS 26 CFR Part 1, Section 42 Utility Allowance Regulation, §1.42-10, update dated July 29, 2008;
2. Utility rates, applicable taxes and fees used in this analysis are no older than the rates in place 60 days prior to the beginning of the 90 day period after which the new utility allowance must be in place;
3. The [HUD Utility Schedule Model](#) was used for this analysis;
4. The licensed engineer or qualified professional retained to calculate the utility allowance is noted on the Department of Housing and Community Development's listing of approved properly licensed engineers and/or professionals deemed qualified to prepare utility allowances in accordance with the HUD Utility Schedule Model;
☐ Check if applicable
5. The sources and content of all factors entered into the model as well as a printout of the utility allowance generated from the model are attached;
6. If the HUD Utility Schedule Model was completed by an engineer/qualified professional, _____ and/or _____ is not related to the building owner within the meaning of IRC Section 267 (b) or 707 (b).

Owner/Owner Designee²

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

² If designee, must have written authorization on file with the Department.



Engineer/Qualified Professional (if applicable)

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____



MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
7800 Harkins Rd • Lanham, MD 20706 • dhcd.maryland.gov
301-429-7400 • 1-800-756-0119 • TTY/RELAY 711 or 1-800-735-2258



ATTACHMENT 3

Submission Letter for Option D – Energy Consumption Model

Property Name: _____

Property Address: _____

BIN Number(s): _____

The undersigned certifies that:

1. An Energy Consumption Model study was performed by _____ of _____ for the above referenced property according to IRS 26 CFR Part 1, IRC Section 42 Utility Allowance Regulation, §1.42-10, updated July 29, 2008;
2. _____ and/or _____ is not related to the building owner within the meaning of IRC Section 267(b) or 707(b);
3. Consumption data from the building or comparable buildings used in this analysis is limited to the twelve-month period ending no earlier than 60 days prior to the beginning of the 90 day period after which the new utility allowance must be in place;
4. Utility rates, applicable taxes and fees used in this analysis are no older than the amounts in effect 60 days prior to the beginning of the 90 day period after which the new utility allowance must be in place;
5. The Energy Consumption Model at a minimum takes 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;
6. The sources and content of all factors entered into the model as well as a printout of the utility allowance generated from the model are attached;
7. The following computer software was used in this analysis;
8. The licensed engineer or qualified professional is noted on the Department of Housing and Community Development's listing of approved properly licensed engineers and/or professionals deemed qualified to prepare utility allowances in accordance with the HUD Utility Schedule Model and/or the Energy Consumption Model.

Owner/Owner Designee³

Name: _____

Title: _____

Address: _____

³ If designee, must have written authorization on file with the Department.



Signature: _____

Date: _____

Engineer/Qualified Professional (if applicable)

Name: _____

Title: _____

Address: _____

Signature: _____

Date: _____

