



**To: All Owners and Managers**  
**From: Bob Conroy, Director of Asset Management**

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**I. LIHTC and FedHOME Programs Utility Allowance Summary of Requirements**

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This notice includes information and schedules for the recently published “**LIHTC Allocating Agency Utility Estimates**” by MaineHousing.

These Utility Allowance (UA) schedules replace the more common “Public Housing Authority Utility Allowance Charts”, and should be applied to all FedHOME units with a funding commitment on or after **August 23, 2013**, and all LIHTC units with Taxable Years beginning after **July 28, 2008**, unless the Owner has elected to apply one of the other UA options available under the IRS and notified MaineHousing of this election prior to implementation.

The PHA charts can no longer be utilized for those groups of projects.

The Utility Allowance Schedules are available on MaineHousing’s website at <http://www.mainehousing.org/partners/partner-type/asset-management>

If you have questions concerning this information, please contact your Asset Manager.

**Attachments:**

- **Summary of Utility Allowance Requirements – Low Income Housing Tax Credit and FedHOME**

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## HOMEfires - Vol. 13 No. 2, May 2016

*This guidance was originally published in May 2016 and revised in August 2016.*

### **Q. When does the utility allowance (UA) requirement established in the 2013 HOME Final Rule (HOME Rule) become effective, and what methods may a participating jurisdiction (PJ) use to establish the UA for HOME-assisted rental units?**

A. PJs are required to determine UAs for HOME-assisted rental units by using either the HUD Utility Schedule Model (HUSM) or a project-specific methodology. This HOMEfires reviews the HUSM and identifies several other methodologies that meet the HOME regulatory requirements including the HUD Multifamily Housing Utility Analysis, a Utility Company Estimate, a Low Income Housing Tax Credit (LIHTC) Agency Estimate, or an Energy Consumption Model.

### **Background**

The HOME statute and the regulations at 24 CFR Part 92 establish rent limits for HOME-assisted rental units. These are gross limits that include contract rent plus utilities or a UA for tenant-paid utilities. PJs are required to establish maximum monthly allowances for utilities and services (excluding telephone) and to update the allowances annually. The HOME Rule requires PJs to use the HUD Utility Schedule Model (HUSM) or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

The utility allowance requirement at §92.252(d) in the HOME Rule is applicable to all rental projects to which HOME funds were committed on or after August 23, 2013. Unfortunately, when the HOME Rule was published in 2013, the HUSM contained errors that caused anomalous results. Therefore, it was not possible for PJs to comply with the regulatory UA requirement while the model was producing inaccurate utility allowances. In November 2015, HUD released an updated version of the HUSM, which corrected the errors and helped to ensure proper sequencing of consumption estimates across bedroom sizes and/or structure types. This updated HUSM now is available for PJ use. Consequently, beginning immediately PJs must take steps to implement the UA requirements at 24 CFR 92.252(d) for projects to which HOME funds were committed on or after August 23, 2013 and which are completed and occupied. PJs must instruct owners of these projects to comply with the UA requirements at lease renewal, or as soon as is practicable.

Under the HOME Rule, PJs are no longer permitted to use the utility allowance established by the local Public Housing Authority (PHA) for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013. Projects to which HOME funds were committed before the effective date of the 2013 HOME Rule may continue to use the PHA utility schedule. The methods used by PHAs to establish these utility schedules vary across the country and, therefore, may generate

inconsistent or inaccurate allowances. In addition, PHA utility schedules are based on average consumption rates across a PHA's portfolio. Application of these standardized utility allowances may result in undercharging or overcharging of rent, particularly in projects where tenants pay utilities directly. As more projects are constructed or rehabilitated to higher energy-efficiency standards, thus enhancing affordability of units, the use of a standard utility allowance may not represent actual utility costs.

The option established in the HOME regulations to "otherwise determine the utility allowance for the project based on the type of utilities used at the project" means that, if PJs choose not to use the HUSM, the UA must be established using a project-specific methodology. A project-specific methodology is based on actual utility usage at the property or estimates an allowance based on project-specific factors such as size, orientation, building materials, mechanical systems and construction quality, as well as local climate conditions.

### **Responsibility for UA Determination**

The HOME Rule requires the PJ to establish a UA for a HOME-assisted unit. However, a PJ may require property owners to complete initial UA calculations and submit their calculations for review and approval of the PJ prior to implementation. The staff cost of determining UAs can be charged as an administrative cost under 24 CFR 92.207(a). In addition, the staff cost of determining the initial UA, prior to project completion, can be charged as a project-related soft cost for projects to which HOME funds were committed on or after August 23, 2013 under 24 CFR 92.206(d).

PJs may establish local policies and procedures for determining and annually updating UAs for each HOME-assisted rental project. Specifically, PJs may:

- Directly calculate the UA for each project based on any of the acceptable methods outlined below using its own qualified staff or by contracting with qualified professionals;
- Require property owners to use a specific method or choose from any of the acceptable methods outlined below to prepare (or employ a qualified third-party professional to prepare) and submit a UA determination for the PJ's review and approval; or
- Accept a UA approved by another funder (state tax credit allocator, federal agency, etc.) provided the UA is calculated using a method acceptable under the HOME Program. In such cases, the PJ is ultimately responsible for ensuring that the UA meets HOME requirements.

### **Acceptable Methods for Calculating UAs**

The following five methodologies used in other Federal housing programs will meet the HOME regulatory requirement that the utility allowance for a specific project be based upon the utilities used at the project. A PJ may adopt one or more of these options across its HOME rental program or may limit their use to a single method. However, a PJ must use the same UA methodology for all HOME units within a single project. HUD encourages PJs to align with other funders, to the extent feasible, when determining the UA for a project with multiple funding sources. The acceptable methods include, but are not limited to:

1. **HUD Utility Schedule Model:** The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D).

The HUSM and use instructions can be accessed on HUD User at <https://www.huduser.gov/portal/resources/utilallowance.html>. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at <https://www.huduser.gov/portal/datasets/husm/uam.html>. During {2016?}, HUD will deliver a web-based training on the use of the HUSM and post the recording on the HUD Resource Exchange as an additional resource for PJs.

2. **Multifamily Housing Utility Analysis:** In 2015, HUD published [Multifamily Notice H-2015-4](#) to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). HOME PJs may use the methodology from the notice, including the required baseline utility analysis; the optional factor-based utility analysis; and, the utility analysis sample size which are described in [Attachment 1](#) to this HOMEfires.
3. **Utility Company Estimate ([26 CFR 1.42-10\(b\)\(4\)\(B\)](#))** – A PJ may establish or approve a UA based on estimates obtained from a local utility company for each of the utilities used in the project. IRS regulations state that the estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.
4. **LIHTC Agency Estimate ([26 CFR 1.42-10\(b\)\(4\)\(C\)](#))** – Under IRS regulations, the tax credit allocating agency estimate entails two options: 1) an agency estimate that is a prospective projection of utility costs based on site and building characteristics, and 2) an actual usage methodology. If a project is receiving both HOME and LIHTC funding, a PJ may coordinate with the LIHTC agency to obtain a project-specific agency estimate or may accept a UA approved by the LIHTC agency based on its actual usage methodology.
5. **Energy Consumption Model (Engineer Model) ([26 CFR 1.42-10\(b\)\(4\)\(E\)](#))** – A PJ may establish or approve a UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

## Attachment 1: Multifamily Housing Utility Analysis Methodology

**Baseline Utility Analysis** – If a PJ uses the Multifamily Housing analysis, a baseline utility allowance must be established every three years using the required sample size. For the two years after the baseline is established, PJs have the option to perform the factor-based utility analysis described below. A baseline utility analysis consists of the following steps:

- Request utility data from either the utility company of the tenant household for at least the number of units determined by the sample size methodology. This must be done for each bedroom size at the property. If the property consists of multiple identical buildings (or buildings that are substantially similar), then the sampling may be performed at the property level (encompassing all buildings on a site) for each bedroom. If the buildings are not identical, the sampling must be done for each bedroom size for each building.
- Determine the average utility cost for each bedroom size without removing any units from the analysis beyond those excluded from the sample size as indicated in the sampling instructions below. Do not remove the highest or lowest utility cost household when determining the average.

A sample format for utility allowance submissions, which includes built-in formulas to average utility costs for each unit size, can be found as [Attachment A](#) to Notice H-2015-4. In addition, HUD recognizes the difficulties associated with obtaining utility data from utility companies and tenant households. To assist in obtaining the required sample size, a sample tenant release form is included as [Attachment B](#) to Notice H-2015-4.

**Factor-Based Utility Analysis** – If a PJ has calculated a baseline utility allowance, then the PJ may use a factor-based utility analysis for the following two years. The baseline utility allowance must be recalculated every three years. To conduct a factor-based utility allowance, the PJ will adjust the baseline utility allowance amounts for each bedroom size and each utility at the property by a state-specific increase factor, the [Utility Allowance Factor \(UAF\)](#) provided by HUD. The UAF, which can be found on the HUD User website, is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil/propane for residential consumers that is published by the U. S. Energy Information Administration.

After completing the property's utility analysis under the factor-based utility analysis method, the adjusted utility allowances should be compared to the paid utilities over the previous twelve months. If a PJ determines that the results indicate a significant disparity between the two, a baseline analysis should be completed to ensure that the allowances provided are accurate.

**Utility Analysis Sample Size** – An appropriate sample size must be used to perform a statistically accurate utility analysis. HUD's Office of Policy Development and Research (PD&R) created a sample size rule and formula for this purpose. This formula has been built into the utility allowance submission template, [Attachment A](#), and Figure 1 below shows how it translates based on the number of units per bedroom size.

Figure 1	
Number of Units*	Minimum Sample
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25
150-191	26
192-259	27
260-388	28
389 and above	29

\* Per Bedroom Size. If the property consists of multiple non-identical buildings (the buildings are not substantially similar), then the sampling must be performed for each bedroom size for each building on the site.

Figure 2 illustrates how many units would be sampled using a random representation of units of multiple bedroom sizes within a property.

Figure 2		
Bedroom Size	Number of Units	Sampling for Utility Analysis
0 Bedroom	15	15
1 Bedroom	113	24
2 Bedroom	74	22
3 Bedroom	50	20
4 Bedroom	7	7
Total Units	259	88

A unit should be excluded from the sample only if it:

1. Is receiving an increased utility allowance as a reasonable accommodation;
2. Has been vacant for more than two months. Units included in the sample should have at least 10 months of occupancy; or,
3. Is receiving a flat utility rate as part of a low-income rate assistance utility program.

Multifamily Notice H-2015-4 and its two attachments can be accessed at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/notices/hsg/2015](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg/2015)

The UAF is available on HUD User at: <https://www.huduser.gov/portal/datasets/muaf.html>

## **I. Low Income Housing Tax Credit Utility Allowance Summary of Requirements**

An allowance for the cost of any utilities, other than telephone, cable television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building is included in the computation of gross rent under IRC §42(g)(2)(B).

A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by-building basis. The maximum rent that may be paid by the tenant must be reduced by utility allowance(s) obtained in the following manner:

1. If a building receives assistance from the Rural Housing Service (RHS-assisted building) then the utility allowance is determined using the method prescribed by the Rural Housing Service (RHS) for the building, regardless of whether the building or its tenants also receive other state or federal assistance.
2. If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units is the applicable RHS utility allowance, including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD).
3. If neither a building nor any tenant in the building receives RHS housing assistance, and the building's rents and utility allowances are reviewed by HUD on an annual basis (HUD-regulated building), then the applicable HUD utility allowance is the utility allowance for all rent-restricted units in the building.
4. If a building is neither an RHS-assisted nor HUD-regulated, and no tenant receives RHS tenant assistance, the applicable utility allowance for any rentrestricted unit 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.
5. Taxable years beginning before July 29, 2008: If neither the building nor tenants are subject to the rules described in 1-4 above, then the local public housing authority (PHA) allowance is used. However, if an estimate is obtained for any unit from a utility company, that estimate is used as the utility allowance for all similar units in the building.

Taxable years beginning after July 28, 2008: If neither the building nor tenants are subject to the rules described in 1-4 above, then the local public housing authority (PHA) allowance is used. However, if an estimate is obtained for any unit in the building, that estimate is used as the utility allowance for all similar units in the building. Estimates may be obtained from a local utility company or a state or local housing credit agency, or calculated using HUD's Utility Schedule Model or an energy consumption model.

## **PHA Utility Allowance**

### ***Taxable Years Beginning Before July 29, 2008***

Requirements for utility allowances are found in 24 CFR 982.517, Utility Allowance Schedule.

The PHA must provide a utility allowance for utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. The PHA must classify utilities and other housing services according to specific categories and the allowance for each category must be separately stated.

State agencies reported that the local PHA utility allowances did not always reflect a fair approximation of actual utility costs for such buildings. Accordingly, until further guidance was provided in Treas. Reg. §1.42-10,<sup>2</sup> taxpayers were allowed to calculate utility allowances for the rent-restricted units in the building based upon an average of the actual use of similarly constructed and sized units *in the building* using actual utility usage data and rates, provided that the taxpayer had written approval from the state agency.

If an owner computed the utility allowance estimates based on the expected or historical use by the LIHC buildings/units, the estimate must have been calculated in a reasonable manner and *contemporaneously* documented<sup>3</sup> to show how the estimate was determined. State agencies were required to review the methodology used to calculate the estimate for reasonableness, and ensure that the estimate is computed accurately.

### **Paid Directly by the Tenants and not by or through the Owner of the Building – For Taxable Years Beginning after July 28, 2008**

Some buildings in qualified low-income housing projects are sub-metered. Submetering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease. Notice 2009-44<sup>4</sup> clarifies that, for purposes of Treas. Reg. §1.42-10(a), utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For RHS-assisted buildings, buildings with RHS tenant assistance, HUD-regulated buildings, and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the applicable RHS or HUD rules apply. For all other tenants in rent-restricted units in other buildings:

1. The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents).
2. If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under IRC §42(g)(2). The fee must not exceed an aggregate amount per unit of \$5 per month unless State law provides otherwise.
3. If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Notice 2009-44 is effective for utility allowances subject to the effective date in Treas.Reg. §1.42-12(a)(4). Consistent with Treas. Reg. §1.42-12(a)(4), building owners (or their agents) may rely on Notice 2009-44 for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

#### **Utility Company Estimates**

Under Treas. Reg. §1.42-10(b)(4)(ii)(B), any interested party (tenant, owner, or state agency) may request a written estimated cost of that utility for a unit of similar size and construction *for the geographic area in which the building is located*. This estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. The local utility estimate is not available to buildings/tenants subject to Rural Housing Service or HUD jurisdiction.

#### **Taxable Years Beginning Before July 29, 2008**

Before Treas. Reg. §1.42-10 was revised, the election to use a local utility company estimate was permanent; i.e., the taxpayer could not switch back and forth between the local PHA and utility company estimates. State agencies reported that although utility companies may have been willing to provide interested parties (owner, tenant, state agency) with an initial estimate, utility companies were increasingly unwilling to provide estimates on an on-going basis. Accordingly, until the regulation was revised, the IRS did not challenge the owner's return to using the applicable PHA utility allowance, provided that:

1. The taxpayer has demonstrated to the state agency that the local utility company was unwilling to provide an updated estimate, and
2. The owner had *written* approval from the state agency to use a mutually agreed upon utility allowance.

#### **Taxable Years Beginning After July 28, 2008**

If neither the building nor tenants are subject to the rules described in 1-4 \*on page 18-1,\* then the local public housing authority (PHA) allowance is used. However, if an estimate is obtained for any unit in the building, that estimate is used as the utility allowance for all similar units in the building. Estimates may be obtained from a local utility company or a state or local housing credit agency, or calculated using HUD's Utility Schedule Model or an energy consumption model.

In the case of deregulated utility services, the interested party is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to the unit.

However:

1. 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.
2. The estimate should include all component deregulated charges for providing the utility service. The utility allowance is "obtained" when the building owner receives, *in writing*, information from the utility company providing the estimated per unit cost of the utility. Receipt of the information from the utility company begins the 90-day period after which the new utility allowance must be used to compute gross rents.

#### **State or Local Housing Credit Agency -**

##### ***Taxable Years Beginning After July 28, 2008***

Under Treas. Reg. §1.42-10(b)(4)(ii)(C),<sup>s</sup> a building owner may obtain a utility allowance from the state agency that has jurisdiction over the building, provided the state agency agrees to provide the estimate.

The building owner may obtain a utility allowance at any time during the building's extended use period<sup>6</sup> and the associated costs are borne by the building owner.

The utility allowance is "obtained" when the building owner receives, *in writing*, information from the state agency providing the estimated per unit cost of the utility.

Receipt of the information from the state agency begins the 90-day period after which the new utility allowance must be used to compute gross rents.

#### Factors to Consider

The utility allowance must take into account, among other things, the following:

- (1) local utility rates,
- (2) property type,
- (3) climate and degree-day variables by region in the state,
- (4) taxes and fees on utility charges,
- (5) building materials, and
- (6) mechanical systems.

#### Actual Building Usage

The state agency may use actual utility company usage data and rates of the building for which the utility allowance is requested.

1. The data used to compute the estimate is limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance will change.

For newly constructed or renovated buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical area in which the building is located will be used.

2. The utility rates used to compute the estimates must be the rates in place 60 days prior to the date the utility allowance will change.

#### Estimates Provided by State Agency's Agent or Private Contractor

A state agency may use an agent or other private contractor to calculate the utility estimates. The agent or contractor must be a properly licensed engineer or a qualified professional. A qualified professional must be:

- (1) approved by the state/local housing credit agency having jurisdiction over the building, and
- (2) must not be related to the building owner within the meaning of IRC §§ 267(b)<sup>7</sup> or 707(b).

#### **HUD Utility Schedule Model –**

##### ***Taxable Years Beginning After July 28, 2008***

Under Treas. Reg. §1.42-10(b)(4)(ii)(D),<sup>9</sup> a building owner may calculate a utility allowance using the "HUD Utility Schedule Model" that can be found on HUD's Internet site, the Low-Income Housing Tax Credits page at [www.huduser.org/datasets/lihtc.html](http://www.huduser.org/datasets/lihtc.html) or successor URL.

Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the date the utility allowance will change. The utility allowance is deemed "obtained" based on the date entered as the "Form Date" on the "Location" spreadsheet of the Utility Schedule Model. This date will also be reflected on the Form 52667, Allowances for Tenant-Furnished Utilities and Other Services. This date begins the 90-day period after which the new utility allowance must be used to compute gross rents.

**Energy Consumption Model –**  
**Taxable Years Beginning After July 28, 2008**

Under Treas. Reg. §1.42-10(b)(4)(ii)(E),<sup>10</sup> a building owner may calculate a utility allowance using an energy and water and sewage consumption analysis model (ECM – energy consumption model).

**Factors to Consider**

The energy consumption model must, at a minimum, take into account specific factors including, but not limited to:

- (1) unit size,
- (2) building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.

**Building’s Consumption Data and Utility Rates**

Use of the energy consumption model 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 under paragraph (c)(1) of this section, and 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 under paragraph (c)(1) of this section.

In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional 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.

**Estimates Provided by Licensed Engineer or Qualified Professional**

The utility allowance must be prepared by a properly licensed engineer or a qualified professional. A qualified professional must be:

- (1) approved by the state/local housing credit agency having jurisdiction over the building, and
- (2) must not be related to the building owner within the meaning of IRC §§ 267(b) or 707(b).<sup>11</sup>

**Annual Review -**  
**Taxable Years Beginning After July 28, 2009**

Under Treas. Reg. §1.42-10(c)(2),<sup>12</sup> a building owner *must* review the basis on which utility allowances have been established at least once during each calendar year and must update the allowance if required. Building owners *may* choose to calculate new utility allowances more frequently than once during a calendar year, provided the owner complies with the requirement of Treas. Reg. §1.42-10, including the requirement to notify the state/local housing credit agency and tenants.

**First Year of the Credit Period**

No review is required until the building has achieved 90 percent occupancy for a period of 90 consecutive days, or by [at] the end of the first year of the credit period, whichever is earlier. If the review is completed at the end of the year, the consumption rates as of December 31<sup>st</sup> of the first year of the credit period.

Consequently, the 90-day period will begin no later March 1 of the year subsequent to the first year of the credit period.

**Review Requirements**

1. The review must take into account any changes to the building such as any energy conservation measures and affect energy consumption and changes in utility rates.
2. Owners may use different methods for computing the allowances for different utilities.
3. Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately estimate the utility allowance.

### **Updating Utility Allowances –**

#### ***Taxable Years Beginning Before July 29, 2008***

If the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of LIHC units due 90 days after the change. As a practical matter, utility allowances are usually reviewed when HUD updates the Area Median Gross Income (AMGI) for the location (which may change the allowable gross rent). If the applicable utility allowance for a unit changes, the new allowance must be used to compute gross rents due 90 days after the change.

#### PHA Utility Estimates

As explained in 24 CFR 982.517, Utility Allowance Schedule, paragraph (4)(c)(1), a PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more since the last time the utility allowance was revised. The 90-day implementation period begins when the PHA makes revised utility allowances available.

### **Updating Utility Allowances –**

#### ***Taxable Years Beginning After July 28, 2008***

If the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of LIHC units due 90 days after the change (90-day period). However, an owner is not required to implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 days or by the end of the first year of the credit period, whichever is earlier.

#### PHA Utility Estimates

As explained in 24 CFR 982.517, Utility Allowance Schedule, paragraph (4)(c)(1), a PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there has been a change of 10 percent or more since the last time the utility allowance was revised. The 90-day implementation period begins when the PHA makes revised utility allowances available.

#### Utility Company and State/Local Housing Credit Agency Estimates

If an owner obtains a utility estimate from a local utility company or state/local housing credit agency, the 90-day period will begin with the receipt of the information. The date of receipt is determined based on the date of the correspondence.

#### Example 1: Lower Estimate Obtained from Utility Company

The rent for an LIHC building must be lowered because a local utility company estimate obtained by the owner shows a higher utility cost than the utility allowance currently being used. The utility company's letter is dated August 15, 2008. The lower rent must be in effect for rent due after November 13, 2008.

#### HUD's Utility Schedule Model

The date entered as the "Form Date" on the "Location" spreadsheet of the Utility Schedule Model and reflected on the Form 52667, Allowances for Tenant-Furnished Utilities and Other Services, begins the 90-day period after which the new utility allowance must be used to compute gross rents.

#### Energy Consumption Model

The 90-day period will begin 60 days after the end of the last month of the 12-month period for which data was used to compute the estimate.

#### Notification Requirements

1. If the owner obtained a utility allowance from a state or local housing credit agency, the owner must make the utility estimate available to all tenants in the building at the beginning of the 90-day period.
2. If the owner obtained a utility allowance from a utility company, using the HUD Utility Schedule Model, or calculated using an energy consumption model, the owner must:
  - (1) submit copies of the utility estimates to the agency having jurisdiction over the building and
  - (2) make the utility estimate available to all tenants in the building at the beginning of the 90-day period.

An agency may require additional information from the owner during the 90-day period.

**Cost of Securing Utility Estimates -**  
***Taxable Years Beginning After July 28, 2009***

The building owner must pay all the costs incurred in obtaining the estimates from a utility company or state/local housing credit agency, HUD's Utility Schedule Model, or an energy consumption model. The building owner also bears the costs of notifications to the tenants and state/local agency.

**Record Retention**

The building owner must retain any consumption estimates and supporting data as part of the *taxpayer's* records for purposes of Treas. Reg. §1.6001-1(a). Under this requirement, taxpayers are required to keep such permanent books of account or records as are sufficient to establish the amount of gross income, deductions, *credits*, or *other matters required to be shown* by such person.

Under Treas. Reg. §1.6001-1, the IRS may require the owner to render such statements or keep such specific records as will enable the IRS to determine whether or not the owner is liable for tax. The books and records shall be kept at all times available for inspection by the IRS and shall be retained so long as the contents thereof may become material in the administration of the Internal Revenue Code.

## **II. Federal HOME Program Utility Allowance Summary of Requirements**

Mainehousing, as a Participating Jurisdiction, is required to determine Utility Allowances (UAs) for HOME-assisted rental units by using either the HUD Utility Schedule Model (HUSM) or a project-specific methodology. This summary reviews the HUSM and identifies several other methodologies that meet the HOME regulatory requirements including:

1. HUD Multifamily Housing Utility Analysis,
2. Utility Company Estimate,
3. Low Income Housing Tax Credit (LIHTC) Agency Estimate, or
4. Energy Consumption Model.

The HOME statute and the regulations at 24 CFR Part 92 establish rent limits for HOME-assisted rental units. These are gross limits that include contract rent plus utilities or a UA for tenant-paid utilities. PJs are required to establish maximum monthly allowances for utilities and services (excluding telephone) and to update the allowances annually. The HOME Rule requires Participating Jurisdictions (PJs) to use the HUD Utility Schedule Model (HUSM) or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

The utility allowance requirement at §92.252(d) in the HOME Rule is applicable to all rental projects to which HOME funds were committed on or after August 23, 2013. Unfortunately, when the HOME Rule was published in 2013, the HUSM contained errors that caused anomalous results. Therefore, it was not possible for PJs to comply with the regulatory UA requirement while the model was producing inaccurate utility allowances.

In November 2015, HUD released an updated version of the HUSM, which corrected the errors and helped to ensure proper sequencing of consumption estimates across bedroom sizes and/or structure types. This updated HUSM now is available for PJ use. Consequently, beginning immediately PJs must take steps to implement the UA requirements at 24 CFR 92.252(d) for projects to which HOME funds were committed on or after August 23, 2013 and which are completed and occupied.

PJs must instruct owners of these projects to comply with the UA requirements at lease renewal, or as soon as is practicable.

Under the HOME Rule, PJs are no longer permitted to use the utility allowance established by the local Public Housing Authority (PHA) for HOME-assisted rental projects for which HOME funds were committed on or after August 23, 2013.

Projects to which HOME funds were committed before the effective date of the 2013 HOME Rule may continue to use the PHA utility schedule. The methods used by PHAs to establish these utility schedules vary across the country and, therefore, may generate inconsistent or inaccurate allowances. In addition, PHA utility schedules are based on average consumption rates across a PHA's portfolio.

Application of these standardized utility allowances may result in undercharging or overcharging of rent, particularly in projects where tenants pay utilities directly. As more projects are constructed or rehabilitated to higher energy-efficiency standards, thus enhancing affordability of units, the use of a standard utility allowance may not represent actual utility costs.

The option established in the HOME regulations to “otherwise determine the utility allowance for the project based on the type of utilities used at the project” means that, if PJs choose not to use the HUSM, the UA must be established using a project-specific methodology. A project-specific methodology is based on actual utility usage at the property or estimates an allowance based on project-specific factors such as size, orientation, building materials, mechanical systems and construction quality, as well as local climate conditions.

### **Responsibility for UA Determination**

The HOME Rule requires the PJ to establish a UA for a HOME-assisted unit. However, a PJ may require property owners to complete initial UA calculations and submit their calculations for review and approval of the PJ prior to implementation. The staff cost of determining UAs can be charged as an administrative cost under 24 CFR 92.207(a). In addition, the staff cost of determining the initial UA, prior to project completion, can be charged as a project-related soft cost for projects to which HOME funds were committed on or after August 23, 2013 under 24 CFR 92.206(d).

PJs may establish local policies and procedures for determining and annually updating UAs for each HOME-assisted rental project. Specifically, PJs may:

- Directly calculate the UA for each project based on any of the acceptable methods outlined below using its own qualified staff or by contracting with qualified professionals;
- Require property owners to use a specific method or choose from any of the acceptable methods outlined below to prepare (or employ a qualified third-party professional to prepare) and submit a UA determination for the PJ's review and approval; or

Accept a UA approved by another funder (state tax credit allocator, federal agency, etc.) provided the UA is calculated using a method acceptable under the HOME Program. In such cases, the PJ is ultimately responsible for ensuring that the UA meets HOME requirements.

### **Acceptable Methods for Calculating UAs**

The following five methodologies used in other Federal housing programs will meet the HOME regulatory requirement that the utility allowance for a specific project be based upon the utilities used at the project. A PJ may adopt one or more of these options across its HOME rental program or may limit their use to a single method. However, a PJ must use the same UA methodology for all HOME units within a single project. HUD encourages PJs to align with other funders, to the extent feasible, when determining the UA for a project with multiple funding sources. The acceptable methods include, but are not limited to:

**1. HUD Utility Schedule Model:** The HUSM enables users to calculate utility schedules by housing type after entering utility rate information (tariffs). This model is based on climate and survey information from the U. S. Energy Information Administration of the Department of Energy and it incorporates energy efficiency and Energy Star data. This model is allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(4)(D).

The HUSM and use instructions can be accessed on HUD User at <https://www.huduser.gov/portal/resources/utilallowance.html>. The HUSM is available as either a spreadsheet model in MS EXCEL or a web-based model on HUD User at <https://www.huduser.gov/portal/datasets/husm/uam.html>. During {2016?}, HUD will deliver a web-based training on the use of the HUSM and post the recording on the HUD Resource Exchange as an additional resource for PJs.

**2. Multifamily Housing Utility Analysis:** In 2015, HUD published Multifamily Notice H-2015-4 to provide instructions to owners and management agents for completing the required utility analysis. This analysis is also used for the USDA Rural Housing Service program and allowed for LIHTC projects per IRS regulations at 26 CFR 1.42-10(b)(3). HOME PJs may use the methodology from the notice, including the required baseline utility analysis; the optional factor-based utility analysis; and, the utility analysis sample size.

**3. Utility Company Estimate** (26 CFR 1.42-10(b)(4)(B)) – A PJ may establish or approve a UA based on estimates obtained from a local utility company for each of the utilities used in the project. IRS regulations state that the estimate must be obtained in writing and must be based on the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located.

**4. LIHTC Agency Estimate** (26 CFR 1.42-10(b)(4)(C)) – Under IRS regulations, the tax credit allocating agency estimate entails two options:

1) an agency estimate that is a prospective projection of utility costs based on site and building characteristics, and

2) an actual usage methodology. If a project is receiving both HOME and LIHTC funding, a PJ may coordinate with the LIHTC agency to obtain a project-specific agency estimate or may accept a UA approved by the LIHTC agency based on its actual usage methodology.

**5. Energy Consumption Model (Engineer Model)** (26 CFR 1.42-10(b)(4)(E)) – A PJ may establish or approve a UA based on an energy and water and sewage consumption and analysis model (energy consumption model) prepared by a properly licensed engineer or a qualified professional. IRS regulations require that such professionals be independent from the property owner and they specify the building factors that must be included in the model.

### **Multifamily Housing Utility Analysis Methodology**

#### **Baseline Utility Analysis –**

If a PJ uses the Multifamily Housing analysis, a baseline utility allowance must be established every three years using the required sample size. For the two years after the baseline is established, PJs have the option to perform the factor-based utility analysis described below. A baseline utility analysis consists of the following steps:

- Request utility data from either the utility company of the tenant household for at least the number of units determined by the sample size methodology. This must be done for each bedroom size at the property. If the property consists of multiple identical buildings (or buildings that are substantially similar), then the sampling may be performed at the property level (encompassing all buildings on a site) for each bedroom. If the buildings are not identical, the sampling must be done for each bedroom size for each building.
- Determine the average utility cost for each bedroom size without removing any units from the analysis beyond those excluded from the sample size as indicated in the sampling instructions below. Do not remove the highest or lowest utility cost household when determining the average.

A sample format for utility allowance submissions, which includes built-in formulas to average utility costs for each unit size, can be found as Attachment A to Notice H-2015-4. In addition, HUD recognizes the difficulties associated with obtaining utility data from utility companies and tenant households. To assist in obtaining the required sample size, a sample tenant release form is included as Attachment B to Notice H-2015-4.

**Factor-Based Utility Analysis –** If a PJ has calculated a baseline utility allowance, then the PJ may use a factor-based utility analysis for the following two years. The baseline utility allowance must be recalculated every three years. To conduct a factor-based utility allowance, the PJ will adjust the baseline utility allowance amounts for each bedroom size and each utility at the property by a state-specific increase factor, the Utility Allowance Factor (UAF) provided by HUD. The UAF, which can be found on the HUD User website, is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil/propane for residential consumers that is published by the U. S. Energy Information Administration.

After completing the property's utility analysis under the factor-based utility analysis method, the adjusted utility allowances should be compared to the paid utilities over the previous twelve months. If a PJ determines that the results indicate a significant disparity between the two, a baseline analysis should be completed to ensure that the allowances provided are accurate.