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utility allowance policy for housing tax credit and multifamily loan developments

CHFA Asset Management

Effective 05.01.2022

This policy outlines the Colorado Housing and Finance Authority's (CHFA's) updated Utility Allowance Policy (the "Policy") regarding the ways in which utility allowances and gross rents are determined for Housing Tax Credit (LIHTC) and CHFA Multifamily Loan properties where residents pay for their own utilities. CHFA's policy is based on the applicable federal statute (IRC Section 42(g)(2)(B)), federal regulations (26 CFR Section 1.42-10), and various guidance published by the Internal Revenue Service.

Gross rent definition

The Internal Revenue Code and Code of Federal Regulations define "gross rent" as the total of resident-paid rent plus a utility allowance and any non-optional fees. The utility allowance is used to cover any utilities a household is required to pay, with the exception of telephone, cable, or internet (unless telephone, cable, or internet service is not optional). Gross rents for Housing Tax Credit developments are in compliance when the appropriate utility allowance is included and the total does not exceed the maximum rent based on unit size and the applicable Multifamily Tax Subsidy Program income limits (refer to CHFA's LIHTC and Multifamily Loan Income Limits and Maximum Rent Tables by year).

Owner obligation to review annually

Owners are required to obtain and analyze a utility allowance schedule from their elected source and demonstrate that the basis on which utility allowances have been established has been reviewed at least once during each calendar year. The review must consider any changes to the building, such as energy conservation measures, that affect energy consumption and changes in utility rates.

Property owners must document their review on an annual basis and update allowances according to this Policy.

Building owners may choose to calculate new utility allowances more frequently than once per calendar year, provided the owner complies with the requirements of this Policy, including resident notification requirements.

Reportable noncompliance

For Housing Tax Credit developments, failure to properly calculate utility allowances and charging gross rents that exceed the maximum rent allowed are both considered reportable noncompliance by the IRS and will result in a loss of tax credits. Once a LIHTC unit is out of compliance with the rent limit, it ceases to be a low-income unit for the remainder of the owner's tax year.

For CHFA Multifamily Loan developments without Housing Tax Credits, failure to properly calculate utility allowances and charging gross rents that exceed the maximum rent allowed may result in suspension of reserve withdrawals, a prohibition of any modification to existing financing terms, disqualification for future CHFA financing, and/or legal action.

Utility allowance sources required by property type

property type	utility allowance source
Rural Housing Services (RHS) properties, or any building in which any resident receives Rural Housing rental assistance, operating in combination with Housing Tax Credits and/or a CHFA Multifamily Loan	Use the project-specific utility allowances approved by RHS (i.e., USDA Rural Development)
HUD-regulated properties (including project-based Section 8 and RAD conversions) operating in combination with Housing Tax Credits and/or a CHFA Multifamily Loan	Use the applicable utility allowance required by HUD
All other properties: Housing Tax Credit and/or CHFA Multifamily Loan developments that are not assisted by USDA Rural Development (Rural Housing Services) or regulated by HUD (project-based Section 8)	Utility allowances for rent restricted units may be determined using one of the following options: 1. Applicable Public Housing Authority Schedule 2. Actual Usage and Rate Estimate 3. HUD Utility Schedule Model 4. Energy Consumption Model

Options for all other Housing Tax Credit and/or CHFA Multifamily Loan developments (i.e., not assisted by USDA or regulated by HUD)

Utility allowances for rent restricted units may be determined using one of the following options.

Click the links below for detailed information on each option.

Option 1: Applicable Public Housing Authority (PHA) Schedule

Option 2: Actual Usage and Rate Estimate

Option 3: HUD Utility Schedule Model

Option 4: Energy Consumption Model

Addendum: Additional Information for Options 2, 3, or 4

Households with HUD Section 8 tenant-based vouchers

For individual units assisted with HUD Section 8 tenant-based vouchers, owners must use the utility allowance schedule issued by the PHA that administers the specific household's voucher. For example, if the property use the local PHA schedule and the local PHA is not the voucher administrator for a particular unit, the administering PHA's utility allowance must be used to calculate gross rent and complete that unit's Tenant Income Certification (TIC), instead of the schedule applied to the property.

Utility allowance source changes

Changing from one utility allowance source to another source requires written approval by CHFA prior to implementation. Please contact your Program Compliance Officer (PCO) in writing for approval. The request must include the reasons for the change and an explanation of how it will impact residents.

Changing to or from owner-paid utilities

Changing from owner-paid utilities to resident-paid utilities, and vice versa, requires written approval by CHFA prior to implementation. Please submit a written request to your PCO for approval. The request must include the reasons for the change and an explanation of how it will impact residents. Additional information, including a current consumption analysis, summary of outreach to residents and education efforts to reduce consumption, etc. may be required.

Utility allowance updates (the 90-day period)

Under regulation 26 CFR §1.42-10(c), if the applicable utility allowance changes as part of the annual update, the new utility allowance must be used to calculate gross rents no sooner or later than 90 days after the change takes effect. This is referred to as the "90-day period." In other words, when the utility allowance changes, the owner must demonstrate that the new utility allowance was not implemented and used to calculate gross rents for existing LIHTC households until the first day immediately following the 90-day period.

The 90-day period begins on the effective date of the new utility allowance schedule (as defined below) and is applicable to all Housing Tax Credit and CHFA Multifamily Loan properties where residents are required to pay utilities. This requirement is applicable throughout the extended use period (as defined in in the development's LURA). As part of regular Housing Tax Credit and CHFA Multifamily Loan compliance reviews, Program Compliance Officers review utility allowance schedules and Tenant Income Certifications to ensure compliance with the 90-day period.

Exceptions – CHFA permits two exceptions to the 90-day period.

- When the utility allowances increase resulting in a required decrease in resident-paid rents –
  Since a rent decrease benefits residents, any decrease in rent due to a change in utility allowance may be implemented before the end of the 90-day period. This exception does not apply to an increase in resident-paid rent.
- For new households who move into the development during the 90-day period, management may apply the new allowances on the move-in certification.

Implementation date

Except as noted above, updated utility allowances must be implemented on the first day following the 90-day period. For example, if the new utility allowance schedule effective date is January 1, 2022, new allowances must be implemented and used to calculate gross rent no sooner or later than April 1, 2022.

Please note: Gross rents are to be changed the first day of the month following the 90-day period. Therefore, 90 days may not be exact.

Failure to implement updated utility allowances and adjust rents timely could cause gross rents to exceed the applicable maximum rent and lead to reportable noncompliance.

New developments

Owner's obligation to review annually

To bring financial stability to a new project during the beginning of its operations, owners are not required to review or update utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days, or at the end of the first year of the credit period, whichever is earlier.

Utility allowance sources permitted during Housing Tax Credit application process

New developments applying for Housing Tax Credits that are not assisted by Rural Development or regulated by HUD must rely on utility allowances from one of the following three sources: Applicable Public Housing Authority, HUD Utility Schedule Model, or Energy Consumption Model. Requests to change to an Actual Usage and Rate Estimate may be submitted to the assigned PCO after one year of occupancy, when 12 months of actual usage data are available.

Applicants relying on the HUD Utility Schedule Model or the Energy Consumption Model:

- Must submit a request for preliminary approval, including all required documents and fees outlined in this policy, to CHFA's Multifamily Program Compliance department at least 45 days prior to the Housing Tax Credit application submission date.
- If the Housing Tax Credit application is approved, the owner must submit an updated request for final approval, including all required documents and fees outlined in this policy, to CHFA's Multifamily Program Compliance department between 30 and 60 days before the property begins leasing.

Excluded utilities

Cable or satellite television, telephone, and internet costs that are optional are not included in utility allowance calculations.

Subject to the sub-metering discussion below, only utility costs paid by the resident(s) (other than the optional utilities noted above) and not by the owner are included in the utility allowance calculation.

Sub-metering

If the cost of a particular utility for a residential unit is paid pursuant to an actual consumption sub-metering arrangement, then that cost is treated as being paid directly by the household and not through the building owner. For

RHS-assisted buildings, 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 households in rent-restricted units, or to the extent that no RHS or HUD rules govern pursuant to the foregoing sentence, the following requirements apply.

1. The billed amount must reflect the unit's actual consumption of the utility;
2. The utility rates charged to residents in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owner for that utility;
3. If building owner charges residents a fee for the administrative cost of sub-metering, the fee will not be considered gross rent as long as the fee does not exceed an aggregate amount per unit of $5.00 per month; and
4. If sewerage charges are on a combined water and sewerage bill and are based on the household's actual water consumption determined with a sub-metering system, then the household's sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Ratio utility billing system (RUBS)

A RUBS is a system in which the owner pays for the property's utilities and bills each household for their estimated portion of the cost. The estimate of each unit's monthly consumption is made using a formula based on number of household members, unit square footage, etc. While IRS regulations do not prohibit the use of RUBS for Housing Tax Credit properties, the owner must include the actual monthly amount charged to the household as a non-optional fee to calculate gross rent. In other words, an owner using a RUBS may not use a utility allowance to calculate gross rent.

Record retention requirements

The property owner is responsible for the accuracy of all data submitted and is responsible for ensuring their Housing Tax Credit properties remain in compliance with all Section 42 requirements. The owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records. At all times, a current utility allowance must be available for review and inspection per the record retention requirements.

Resources and references

- 26 CFR § 1.42-10: Treasury regulation regarding utility allowances
- IRS 8823 Audit Technique Guide, Chapter 18: Detailed guidance re utility allowance options
- Internal Revenue Bulletin 2016-12: Summarizes final and temporary regulations amending LIHTC utility allowance regulations
- Internal Revenue Bulletin 2009-44: Clarification regarding sub-metering
- 26 USC § 267(b) and 707(b): Internal Revenue Code restriction on relationship between property owner and Qualified Professional engaged to complete Energy Consumption Model

Option 1: Public Housing Authority (PHA) Schedule

Source information	Owners using this option must obtain the applicable utility allowance schedule published by the PHA serving the jurisdiction where the property is located. As of May 1, 2022, CHFA considers the Colorado Department of Local Affairs-Division of Housing (DOLA) schedule to be an applicable PHA schedule for all counties in Colorado. Owners using the DOLA schedule are no longer required to demonstrate whether the schedule has been adopted by the local PHA.
Effective date	The date listed on the utility allowance schedule. • If a utility allowance schedule indicates January 2022, the effective date is January 1, 2022. • In cases where the PHA publishes the schedule before its listed effective date, the owner may begin the 90-day period on the publish date. • In cases where the PHA delays publishing a new schedule until after its listed effective date, the owner will begin the 90-day period when the PHA makes the new schedule available. • For CHFA compliance reviews, the owner should keep a record of the date when the PHA made the schedule available.
Resident notification	Resident notification during the 90-day period is not required for the PHA schedule.
CHFA review and approval	CHFA approval of the annual update is not required for the PHA schedule.

Option 2: Actual Usage and Rate Estimate

Source information	This utility allowance estimate is based on property-specific historical consumption data provided by the local utility company and current utility rates. While the federal regulation calls for the state housing credit agency to prepare the utility allowance estimate under this option, CHFA has delegated responsibility to prepare the estimate to the owner.
Effective date	The date when the building owner received the building's 12-month consumption data in writing from the utility company.
Resident notification	When Actual Usage and Rate Estimate utility allowances change, the owner is required to make the new allowances available to all residents at the beginning of the 90-day period. Owners may make new allowances available by posting the new schedule in a common area or by delivering them to each household in person or by mail.
CHFA review and approval	Required annually. When requesting CHFA's approval, the owner must submit documentation in writing to the PCO. Allow 14 business days for review and approval.
Documentation and fee to submit with annual review and approval request	• Owner Certification of Utility Allowance Estimates • Actual usage data • Utility company documentation of current rates • Calculation spreadsheet • Review/processing fee: $125.00
Calculation requirements	• Owner must obtain actual usage data and current utility rates from the applicable local utility provider(s) for the building. • Usage data must cover a 12-month period ending no earlier than 60 days prior to the date when the owner received the data from the utility company (i.e., the new schedule's effective date). Refer to sample timeline in the Addendum. • Usage data must include only units that were continuously occupied during the 12-month period (i.e., for at least 50 weeks).

	• Data is required for at least 25 units, representing each bedroom size and geographically dispersed across the property, or for all units if the property has fewer than 25 units. • The owner must itemize the monthly usage by unit into a spreadsheet, including building address, unit number, bedroom size, and square footage. Once average usage by unit size is calculated, the owner must apply current utility rates to the average consumption to determine the utility allowance for each unit size. • The utility rates used to compute the estimates must be the rates in place no more than 60 days prior to the date when the owner received the data from the utility company (i.e., the new schedule's effective date).
Costs	The owner must pay for all costs incurred in obtaining utility allowance estimates and providing notification to both CHFA and building residents. This cost cannot be passed onto the residents.
New developments	Newly constructed or renovated buildings with less than 12 months of usage data must wait until 12 months of actual data are available before using the Actual Usage and Rate Estimate option.

Option 3: HUD Utility Schedule Model

Source information	HUD Utility Schedule Model (HUSM) estimates are based on national data on energy characteristics of housing, usage, and demographics, on local weather data, and on local utility rates and property-specific information entered by the owner into the model. Information regarding this model can be found at: www.huduser.gov/portal/resources/utilallowance.html.
Effective date	The date entered as the "Form Date" on the Location spreadsheet of the Utility Schedule Model. The same effective date will also be reflected on the Form 52667, Allowances for Tenant-furnished Utilities and Other Services.
Resident notification	When HUSM allowances change, the owner is required to make the new allowances available to all residents at the beginning of the 90-day period. Owners may make new allowances available by posting the new schedule in a common area or by delivering them to each household in person or by mail.
CHFA review and approval	Required annually. When requesting CHFA's approval, the owner must submit documentation in writing to the PCO. Allow 14 business days for review and approval.
Documentation and fee to submit with annual review and approval request	• Owner Certification of Utility Allowance Estimates • HUD Utility Schedule Model report (complete version), including Form 52667 • Utility company documentation of current rates • Review/processing fee: $2.00 per low-income unit (with a minimum fee of $50.00)
Calculation requirements	The utility rates entered by the owner into the HUSM must be no older than the rates in place 60 days prior to new schedule's effective date.
Costs	The owner must pay for all costs incurred in obtaining utility allowance estimates and providing notification to both CHFA and building residents. This cost cannot be passed onto the residents.

New developments	Housing Tax applicants must submit a request for preliminary approval, including all required documents and fees at least 45 days prior to the LIHTC application submission date. If the LIHTC application is approved, the owner must submit an updated request for final approval, including all required documents and fees, between 30 and 60 days before the property begins leasing.

Option 4: Energy Consumption Model

Source information	Under 26 CFR § 1.42-10(b)(4)(ii)(E), a building owner may calculate a utility allowance using an energy and water and sewage consumption analysis model (Energy Consumption Model).
Effective date	The date of the engineer's Energy Consumption Model report, if the report is dated the first day of the month. If the report date is different than the first day of the month, the first day of the following month will be used as the effective date. Example: Energy Consumption Model report is dated November 5, 2022. December 1, 2022, is the effective date of the new utility allowance schedule as well as the first day of the 90-day period. Any changes to utility allowances and resident-paid rent will be implemented on March 1, 2023.
Resident notification	When Energy Consumption Model allowances change, the owner is required to make the new allowances available to all residents at the beginning of the 90-day period. Owners may make new allowances available by posting the new schedule in a common area or by delivering them to each household in person or by mail.
CHFA review and approval	Required annually. When requesting CHFA's approval, the owner must submit documentation in writing to the PCO. Allow 14 business days for review and approval.
Documentation and fee to submit with annual review and approval request	• Owner Certification of Utility Allowance Estimates • Energy Consumption Model report (complete version) • Utility company documentation of current rates • Engineer's Certification • Copy of the engineer's license • Review/processing fee: $2.00 per low-income unit (with a minimum fee of $50.00)

Calculation requirements	• The model must, at a minimum, take into account specific factors including, but not limited to: unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building, location, and available historical data. • The model estimates must be prepared by a properly licensed engineer. Models prepared by a "qualified professional" are not permitted by CHFA. • The utility rates used for the Energy Consumption Model must be no older than the rates in place 60 days prior to new schedule's effective date.
Costs	The owner must pay for all costs incurred in obtaining utility allowance estimates and providing notification to both CHFA and building residents. This cost cannot be passed onto the residents.
New developments	Housing Tax Credit applicants must submit a request for preliminary approval, including all required documents and fees at least 45 days prior to the LIHTC application submission date. If the LIHTC application is approved, the owner must submit an updated request for final approval, including all required documents and fees, between 30 and 60 days before the property begins leasing.

Addendum: Additional information for Options 2, 3, or 4

When to begin your data collection process

To comply with data collection and resident notification requirements, it is recommended to begin the data collection and/or model preparation process at least 30 to 60 days prior to your annual utility allowance schedule effective date.

Sample timeline for data collection, resident notification, and CHFA approval

utility allowance schedule effective date: june 1, 2022	
April 1, 2022 – May 31, 2022	Option 2: Begin obtaining utility data covering the previous 12-months (e.g., April 1, 2021, through March 31, 2022). Options 3 & 4: Begin preparing the HUSM or EC model. Calculate new utility allowances. Submit request to review new allowances to CHFA PCO. CHFA notifies owner of review completion, generally within 14 business days of receipt of a complete request. Note: usage data and utility rates used to compute new allowances must be no older than 60 days prior to the new schedule's effective date.
June 1, 2022 – August 31, 2022 (approximately 90 calendar days)	Owner notifies all residents of new utility allowances (the 90-day period).
June 1, 2022	Effective date of the new utility allowance schedule (see effective date definitions in policy)
September 1, 2022	Owner implements new utility allowances.
Each April 1 in subsequent years	Utility allowance schedule must be reviewed by the owner.

CHFA review, approval, or denial of utility allowance schedules

Owners using Options 2, 3, or 4 who submit complete and accurate information, including all supporting documents, the Owner Certification of Utility Allowance Estimates, and the applicable processing fee, to the PCO will receive notification of the approval or denial within 14 business days of receipt of the information. Note that owners must notify all rent-restricted residents of any proposed utility allowance change at the beginning of the 90-day period, which will be before CHFA's review.

CHFA staff may deny utility allowance review requests if:

- the owner fails to provide complete and accurate information and fees;
- the subject property is not eligible;
- utility costs other than those paid directly by the resident are included;
- optional costs, such as cable or satellite television, telephone, and internet, are included; or
- the owner fails to submit the Owner Certification of Utility Allowance Estimates form.