



# Conquering LIHTC Utility Allowances

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In the first article of this series, we discussed the gross rent requirements applicable to the LIHTC program as well as the Utility Allowance options found in Treasury Regulation 1.42-10. In the second article, we discussed the impact of other housing programs funding the project as it relates to Utility Allowances. In the third installment of this series, we will discuss the utilization of the Public Housing Authority (PHA) Utility Allowance Schedule.

## When Is an Owner Permitted To Use the PHA Utility Allowance?

As previously mentioned, if a project receives assistance from a Rural Housing Service (RHS) program through Rural Development (RD), the Utility Allowance for all LIHTC units in the project must be determined by using the method required by RD.

If a LIHTC building does not receive RHS assistance but is a HUD-regulated building, the applicable HUD Utility Allowance is to be used for all LIHTC units in the building.

If a property is not RD assisted or HUD regulated, one Utility Allowance option that owner/agents may use is the Public Housing Authority (PHA) Utility Allowance.

HUD allows PHAs to decide which methodology to use in establishing allowances. Typically, one of two methods is used:

Allowances for Tenant-Furnished Utilities and Other Services		U.S. Department of Housing and Urban Development Office of Public and Indian Housing		OMB Approval No. 2577-0169 (exp. 04/30/2018)		
See Public Reporting Statement and Instructions on back						
Locality		Unit Type		Date (mm/dd/yyyy)		
Utility or Service	Monthly Dollar Allowances					
	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR
Heating	a. Natural Gas					
	b. Bottle Gas					
	c. Oil / Electric					
	d. Coal / Other					
Cooking	a. Natural Gas					
	b. Bottle Gas					
	c. Oil / Electric					
	d. Coal / Other					
Other Electric						
Air Conditioning						
Water Heating	a. Natural Gas					
	b. Bottle Gas					
	c. Oil / Electric					
	d. Coal / Other					
Water						
Sewer						
Trash Collection						
Range/Microwave						
Refrigerator						
Other - specify						
<b>Actual Family Allowances</b> To be used by the family to compute allowance. Complete below for the actual unit rented.		Name of Family		Address of Unit		
Number of Bedrooms		Utility or Service		per month cost		
		Heating		\$		
		Cooking				
		Other Electric				
		Air Conditioning				
		Water Heating				
		Water				
		Sewer				
		Trash Collection				
		Range/Microwave				
		Refrigerator				
		Other				
		<b>Total</b>		<b>\$</b>		
Previous editions are obsolete						
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form HUD-52667 (04/15) ref. Handbook 7420.8						

- Consumption-based methodology
- Engineering-based methodology

To use the PHA Utility Allowance schedule, the owner/agent must obtain the PHA Utility Allowance schedule HUD-52667. Once the schedule is acquired, the owner/agent will need to determine the Utility Allowance for each unit size based on the source (i.e., for heating; natural gas, electric or coal, etc.) for each type of utility that will be paid by the tenant. It should be noted that the cost of the range and refrigerator should be included only in the Utility Allowance calculation if the refrigerator and/or range is provided by the tenant.

### **When Is an Owner Required To Use the PHA Utility Allowance?**

If a property is not RD assisted or HUD regulated, and an applicant or tenant has a tenant-based Section 8 voucher, the owner/agent must use the PHA Utility Allowance, even if the owner is using a different Utility Allowance method (i.e., engineer model) for all other units. This is required even if the PHA Utility Allowance is less than the Utility Allowance used for other units.

#### **Example – Required Use of PHA Utility Allowance**

Gross Plaza Apartments is a LIHTC building that is not RD assisted or HUD regulated. The building owner determined the Utility Allowance using estimates from local utility companies, which determined that the Utility Allowance for a one-bedroom unit is \$112.

An applicant with a Section 8 voucher from the local housing authority will be moving into a LIHTC unit. The Utility Allowance for a one-bedroom unit using the PHA Utility Allowance schedule is \$120. The owner/agent must use the UA determined by the PHA when determining rent compliance.

### **Timeline for Implementing New PHA Utility Allowance**

Once a PHA publishes an updated Utility Allowance Schedule, the owner/agents have 90 days to get the new Utility Allowance implemented. For owners/agents using this method, it is critical to have a system in place to check with the PHA for any updates to the UA schedule.

Failure to get the Utility Allowance implemented within the required time could have dire consequences if the increase results in the overcharging of tenant rent.

## Example – Rent Noncompliance

Gross Manor Apartments is a LIHTC building that is not RD assisted or HUD regulated. All units are one-bedroom units. The owner/agent utilizes the PHA Utility Allowance for all of the LIHTC units. Based on the 2019 PHA Utility Allowance schedule, the Utility Allowance for a one-bedroom unit is \$100.

The maximum rent for a one-bedroom unit at Gross Manor is \$925, and the owner charges a tenant rent of \$825. On April 1, 2020, the PHA published an updated UA schedule. The owner of Gross Manor was not aware of the updated UA schedule and did not get the UA allowance implemented until Nov. 1, 2020. As the UA increased to \$102, the owner overcharged rent for all LIHTC units in the building.

Even if the owner refunds the LIHTC tenants the overcharged rent of \$2, the units are still considered out of compliance for the remainder of the owner's tax year.

## When Is an Owner Prohibited From Using the PHA Utility Allowance?

There is no IRS regulation that prohibits projects that are not RD assisted or HUD regulated from using the PHA Utility Allowance. However, if the project also has units that are HOME assisted through the HOME Investment Partnership Act, there are some HOME restrictions regarding Utility Allowance to be aware of.

HUD published a final rule for the HOME program in 2013, which had major impacts on certain areas of the program, one of these being Utility Allowances. The Final Rule prohibits the PHA Utility Allowance from being used for projects that were allocated HOME Funds on or after Aug. 23, 2013. The Final Rule also required Participating Jurisdictions (PJ) to establish maximum monthly allowances for utilities for HOME-assisted units.

The PHA Utility Allowance prohibition can pose some compliance challenges for LIHTC units that were also allocated HOME funds on or after Aug. 23, 2013, when such units are occupied with voucher holders. In these cases, the owner/agent must use the PHA Utility Allowance when determining gross rent compliance with the LIHTC program and use the Utility Allowance required by the PJ when determining HOME rent compliance.

**Example:**

LIHTC Rent & Utility Allowance

- Max LIHTC rent for a 60% one-bedroom unit is \$950
- PHA Utility Allowance for one-bedroom is \$100

HOME Rent & Utility Allowance

- Max High-HOME rent for a one-bedroom unit is \$1,035
- HOME Utility Allowance is \$125

Tenant Rent Info

- Tenant Portion of Rent: \$550
- Tenant-Based Subsidy: \$350

**LIHTC Gross Rent**

Tenant Rent: \$550

**Utility Allowance: \$100**

**Gross Rent: \$650**

**HOME Gross Rent**

Tenant Rent: \$550

Subsidy: \$350

**Utility Allowance: \$125**

**Gross Rent: \$1,025**

**Note:** Some Housing Finance Agencies interpret the definition of HUD-regulated buildings to include buildings that contain HOME-assisted units. Under such an interpretation, the Utility Allowance determined by the PJ would be the Utility Allowance used for LIHTC units in the building.

Please make sure to check out the next article in this series regarding Utility Company Estimate or Agency Estimate.

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