

Utility Allowance Procedures for LIHTC Properties

Background

Owners of properties financed with Low Income Housing Tax Credits (LIHTC) must limit rents and incomes to no more than 60% of the Area Median Gross Income (AMGI) numbers published annually by HUD. Most Owners elect percentages below 60% AMGI, ranging from 30% to 60% of AMGI.

Owners must include the cost of all resident-paid utilities in the gross rent charged. To do this, they must obtain annual utility cost estimates for all buildings in their LIHTC housing property. Owners may obtain annual allowances from the local Public Housing Authority or they may obtain an estimate from the local utility company based on buildings with similar size and construction to buildings in the property. The same utility cost estimate numbers apply to the maximum gross rent limit elected by the Owner and must therefore be deducted from that limit to obtain the net rent that can be paid by residents.

Problems with Current Utility Allowance Estimate Methods

Public Housing Authority-published allowances often do not reflect actual usage of LIHTC properties. This is because they base costs on an average that includes older, energy-inefficient properties that skew costs upward. As a result, Owners are forced to use high utility amounts and adjust rents accordingly. In recent years, Washington state AMGI income and rent limits have increased slowly, if at all, while utility costs have increased dramatically. This has resulted in Owners needing to, in some cases, actually lower rents to remain under the gross rent limit – resulting in the potential for serious negative cash flow issues that affect the long-term viability of an LIHTC property.

Owners have turned to utility company estimates, which have been problematic as well. Owners must gather extensive data that demonstrates the energy-efficiency of their buildings, and then obtain letters from utility companies endorsing the proposed rates. Many utility companies have complained and even refused to issue letters because they do not have the staff to review Owner submissions.

Regulatory Change

The IRS issued a final utility allowance regulation, effective July 29, 2008, which amends Section 1.42-10 of the Code. The final regulation outlines eight options for the Owner to obtain utility averages, depending on the type of building and other factors. The eight Methods are described below. Note that **any change to the utility allowance Method used at a property must be approved by WSHFC staff prior to implementation.**

Utility Allowance Methods

Methods 1-4 are the traditional Methods and require minimal review by WSHFC staff because IRS regulations authorize other agencies to evaluate and certify the accuracy of published numbers. Before approving a switch to one of these Methods, WSHFC staff will verify that the proposed Method is applicable to the funding at the property and that the documentation submitted is sufficient.

Methods 5-8 require WSHFC staff to perform a certain level of due diligence to ensure accuracy of Owner-submitted data. Staff must selectively audit Owner submissions. We will rely on Owner certifications, third-party professional certifications, and will selectively audit submissions by comparing estimates to actual usage data. Note that **Methods 5-8 require the Owner to submit a fee and complete documentation for WSHFC staff review and to respond promptly to requests for additional data during any review period.**

1. **Rural Housing Service Properties.** Buildings receiving assistance from RHS must use the allowances provided by RHS for all rent restricted units in the building.
2. **HUD Regulated Properties.** Buildings that receive HUD rental assistance or are required to have rents and utility allowances reviewed annually by HUD must use the HUD provided utility allowance for all rent restricted units. If buildings are restricted by both HUD and RHS, the RHS numbers are used for those buildings.
3. **Local Utility Company Estimate.** An Owner or any resident may obtain an estimate in writing from the local utility company that offers services to that building, provided the estimate includes all types of utilities charged for the building. The estimate must be provided on the utility company's letterhead, be dated and signed by a representative of the utility company, reference the property, include each size unit at the property, and document that the estimate is based on 12 months of usage at the current utility rates, including any applicable taxes and fees.
4. **Public Housing Authority Estimates.** This is the most common utility estimate Method used by tax credit financed properties that are not regulated by HUD or RHS. Most PHAs in our state publish estimates that are readily available and easy to use. However, these numbers are often uncharacteristically high for energy-efficient buildings.
5. **Owner Estimate, Similar Buildings.** An Owner may submit proposed utility allowances for each building in a property to WSHFC staff based on buildings of similar size and construction in the geographic area of the building(s). The estimate must take into account local utility rates, property type, climate and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. This estimate must be completed by an independent qualified professional, approved in advance by WSHFC staff. WSHFC staff will request a sampling of actual bills to compare to the estimate as part of the review process.

6. **Owner Estimate, Actual Usage Data.** An Owner may propose utility allowances for each building in a property to WSHFC based on average actual usage data and rates for the building(s). In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the Owner may use twelve-month consumption data from buildings of similar size and construction in the geographic area of the building(s). WSHFC staff will request a sampling of actual bills to compare to the estimate as part of the review process. Owner-specific instructions for this Method are contained in this Appendix and a sample and template are included in an Attachment.
7. **HUD Utility Schedule Model.** An Owner may calculate a utility estimate using the HUD Utility Schedule Model found at <http://www.huduser.org/datasets/lihtc.html>. Owners who use this model will need to document to WSHFC staff the source and content of all factors entered into the model. WSHFC staff will request a sampling of actual bills to compare to the estimate as part of the review process. In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the Owner may use this Method with the agreement that an audit will be done after a year of operations and refunds will be issued if actual usage proves the estimate was too low.
8. **Energy Consumption Model.** An Owner may calculate a utility estimate using an energy and water sewage consumption analysis model. The model must take into account factors including unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The estimate must be calculated by an independent licensed engineer or qualified professional approved by WSHFC. WSHFC staff will request a sampling of actual bills to compare to the estimate as part of the review process. In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the Owner may use this Method with the agreement that an audit will be done after a year of operations and refunds will be issued if actual usage proves the estimate was too low.

Submitting Requests

A request to switch to Method 1, 2, 3 or 4 should be submitted via email to the Compliance Officer assigned to the property. This request can come from the Owner or Property Manager.

A request to switch to Method 5, 6, 7 or 8 **must be submitted in writing (via email or postal mail) to the Division Manager.** This request can come from the Owner or Property Manager. The initial request submission must include the *Owner Utility Estimate Checklist* (see Attachment to this Appendix), the *Owner Certification of Utility Estimate* (see Attachment to this Appendix), a check for the review fee, and all supporting documentation.

Methods 5 and 8 require WSHFC to approve, in advance, the independent engineer or qualified professional who completes the analysis. Owners wishing to use these Methods must submit complete documentation demonstrating the expertise in completing utility calculations of the professional to the Division Manager prior to start of work. Submissions must include all applicable items listed on the *Owner Utility Estimate Checklist* (attachment to this Appendix). Methods 6 and 7 do not require the Owner to hire a qualified professional.

Methods 5 through 8 must be reviewed by WSHFC staff and are based on twelve continuous months of data. The proposed new rates must be available to residents for comment 90 days before implementation. Information must be submitted to WSHFC at least 90 days prior to implementation but no more than 150 days. Data must be no more than 60 days old when submitted to WSHFC for review.

For *all* Methods, the Owner must provide sufficient documentation to WSHFC staff, in the manner requested by staff, to support calculations.

NOTE:

- Ideally, changes in utility allowances should be made effective January 1st to coincide with the annual reporting year.
- *All final allowance amounts must be rounded UP to the next whole dollar.*

Submitting Requests on Newly Placed-In-Service (PIS) Properties

Owner estimates using Method 6 must be based on the most recent 12-month period available (no more than 2 months old at submission). For newly PIS properties, the 12-month period cannot begin until at least 90% of all units in the project have been leased. For new buildings the Owner may submit consumption data from another property for the twelve month period on units of similar size and construction in the geographic area of the buildings.

For new projects wishing to use Methods 5, 7 or 8, WSHFC staff will request a sampling of resident usage to measure against the utility calculations once the project has been at 90%+ occupancy for at least one year.

Review Fees

For WSHFC to review requests for Methods 5 through 8, Owners must pay a non-refundable fee of \$3 per low-income unit in the project, or \$100, whichever is greater, along with the initial submission paperwork. **WSHFC will not begin our review process until we receive payment from the Owner.** For Method #6 only, additional fees will be assessed during the Consumption Usage Review years (every fourth year), at the same rate. For all Methods, no fees will be due during Annual Adjustment Review years. *Fees are subject to change without prior notice.*

Approvals, Denials and Denial Review

Owners that submit complete and accurate information will receive a letter from the Division Manager approving the Owner Utility Estimate within 30 days of receipt. Questions or requests for additional information will be emailed to the Owner and Property Manager within 30 days of request submission. Owners who do not receive an approval letter or email request within 30 days should contact the Division Manager. Non-receipt of an approval letter or email request is not considered evidence of WSHFC approval.

For Methods 5-8 the proposed utility allowance changes must be made available to residents for comment 90 days prior to implementation. Residents who do not believe the allowances represent

appropriate averages, must submit copies of bills to their Resident Manager for review – which must be immediately copied by property management staff and sent to the Division Manager.

Once approved, the Owner must provide a minimum of 30 days notice to residents in writing of any change to resident-paid rent. Approved utility allowance calculations must be updated annually. WSHFC staff may request additional information to complete their evaluation. If additional information is required, the approval may be delayed or denied. If denied, the Owner will receive an email from the Division Manager describing reason for denial. The Owner must then submit the most current Public Housing Authority estimates for the project within thirty days of denial and implement any changes based on those allowances within 90 days.

Commission staff may deny a request to use an Owner Utility Estimate for any of the following reasons:

1. The project is excluded from applying for any conditions described in *Projects Excluded* paragraph below.
2. The Division Manager determines that information submitted is incomplete or insufficient to accurately determine allowances.

The Owner may request a review of any denial by the Division Director. The decision of the Division Director will be final and not subject to further appeal.

Projects Excluded from Submitting Owner Estimate Requests

Properties meeting any of the following conditions are not eligible to submit Owner Utility Estimates.

1. Properties with uncorrected noncompliance issues as determined by the Commission.
2. HUD and RD regulated properties. These properties are required to use estimates approved and provided by HUD and RD.

Changes to these Procedures

These procedures are subject to change at any time by the Commission based on staff experience and/or Commissioner guidance. These procedures may also be suspended or amended based on additional IRS clarification, guidance or changes to regulations.

Process for Updating Allowances in Ensuing Years

After the initial utility allowance review is completed and approved by the Commission, ensuing Annual Adjustment Reviews (AAR) are completed by the Owner and reviewed by Commission staff upon submission. For the Annual Adjustment Review, Owners collect the current utility rates, fees and taxes. Owners then apply the current rates to the baseline average consumption usage factor, by bedroom size, established at the initial utility allowance review (or the CUR year, for Method #6). These updated allowances must be posted for resident review and submitted to the Commission for approval 90 days prior to implementation. Once approved, the Owner must provide a minimum of

30 days notice to residents in writing of any change to resident-paid rent. No fee is due for Commission review during the AAR years.

Special Instructions for Method #6

For Method 6, following initial approval, Owners will complete Consumption Usage Reviews (CUR) every fourth year. During the CUR year, the Owner collects data on actual resident usage for each continuously occupied unit in the property for the previous 12-month period and re-establishes usage averages by bedroom size and by building type. All items required for the initial approval must be submitted again, including the review fee. For purposes of this review, continuous usage shall be at least 50 of 52 weeks in the most recent 12-month period. If the sample size is insufficient using this criteria, Owners should contact the Division Manager for further guidance. Alternate years follow the Annual Adjustment Review procedures described above. See specific instructions for Method #6.

Example Timeline (for Methods 5-8)

Initial Utility Allowance Change Request

April 1, 2011– Owner submits request for WSHFC to approve Qualified Professional (QP), if applicable.

June 1, 2011– Owner receives confirmation to use QP from WSHFC.

August 1, 2011 – Owner or QP begin analysis of previous 12 months’ consumption data and/or other relevant information, depending on chosen Method. This data will serve as a base year for subsequent annual adjustments.

September 15, 2011– Owner completes analysis, posts proposed utility allowance changes in main office in prominent location for resident review, and submits to WSHFC for review.

October 15, 2011– WSHFC requests additional information from Owner .

November 15, 2011– Owner receives approval for new allowances from WSHFC.

December 1, 2011– Owner notifies any residents in writing of rent increases to be effective January 1, 2012

January 1, 2012– Owner uses new allowances and makes any corresponding rent changes at property.

Annual Adjustment Review year

October 1, 2012– Owner evaluates current utility company rates and calculates any necessary adjustment to utility allowances by multiplying rates by the base year usage figures and adding in applicable taxes and fees. Owner posts proposed utility rate changes in main office in prominent location for resident review and notifies assigned Compliance Officer by email of rate changes to be effective January 1, 2013. Receives email confirmation within 30 days to proceed by Compliance Officer, unless clarifying information is required.

December 1, 2012 – Owner notifies any residents in writing of rent increases or decreases to be effective January 1, 2013.

January 1, 2013– Owner uses new allowances and makes any corresponding rent changes at property.

Annual Adjustment Review year

2014 – same as 2013 – rate adjustment only, based on current utility company rates and base year information.

Specific Instructions – Actual Usage Data, Method #6

When requesting to use this Method, Owners must provide **actual utility company usage data** to support the proposed annual utility estimate for a particular project. The Owner must obtain copies of actual usage data/summaries from the utility company, by unit, for each unit in the project that was continuously occupied for the most recent full 12-month period. If the Owner can document/certify that the utility company will not provide copies of actual usage, copies of utility bills received directly from residents are acceptable. “Continuously occupied,” for purposes of this estimate, includes all units that were occupied during the 12-month period for at least 50 of the 52 weeks. The Owner must obtain written authorization for residents prior to collecting consumption data from utility companies or from residents.

The Owner must itemize monthly usage by unit in a spreadsheet and calculate averages by bedroom size. Averages must include **both** the total average monthly cost to residents for the utility (including all taxes and fees) and the average number of kilowatts/usage per month, by bedroom size. See Attachment for sample and spreadsheet template. All units with the same number of bedrooms should be included in one average, regardless of the square footage (i.e., all one-bedroom units in one average) .If a project has significant variances in square footage among a single bedroom size, e.g., 10 1 bedroom units with 5 units at 500 square feet, and 5 units at 800 square feet, the Owner should contact the Division Manager to discuss their calculation methodology.

Properties with similar type buildings may calculate one average for each bedroom type encompassing all buildings. Properties with different building types (townhouses vs. multi-story buildings for instance) or with different heat sources, must calculate separate averages for each building type and each utility source.

For any units not included in the average, the Owner must submit the reason for exclusion – e.g., the units were not continuously occupied for the previous 12-month period.

The Owner must certify that all data and calculated estimates are complete and accurate. The Owner must also certify that all units included in the average are separately metered and billed to the resident for that utility source. For example, water usage may not be billed to the resident unless the unit is separately metered and billed directly to the resident for their specific unit.

Sample Project – Actual Usage Data, Method #6

To illustrate how this applies to a sample project, consider the following facts:

Sunnyside Landing Apartments

101 Units, 100 low-income and 1 Common Area Unit

10 buildings: buildings #1-9 contain four units each; building #10 contains 54 units.

All buildings have 1 & 2 bedroom units.

9 buildings (fourplexes) have Gas Heat and Electric Appliances

1 building (Building 10) has all Electric Heat and Appliances

Property Places-in-Service: 05/30/10

Property reaches 90% lease up: 09/30/10

Example Timeline (for Method 6)

Initial Utility Allowance Change Request

October 15, 2011 – Owner obtains data from utility company covering 10/1/10 – 9/30/11 and begins analysis. This data will serve as a base year for two more years of adjustments.

October 31, 2011– Owner completes analysis, posts proposed utility allowance changes in main office in prominent location for resident review, and submits to WSHFC for review.

November 15, 2011– WSHFC requests additional information from Owner .

November 30, 2011– Owner receives approval for new allowances from WSHFC.

January 1, 2011– Owner notifies any residents in writing of rent increases to be effective February 1, 2012

February 1, 2012– Owner uses new allowances and makes any corresponding rent changes at property.

Annual Adjustment Review year

November 1, 2012– Owner evaluates current utility company rates and calculates any necessary adjustment to utility rates. Owner posts proposed utility rate changes in main office in prominent location for resident review and notifies assigned Compliance Officer by email of rate changes to be effective February 1, 2013. Receives email confirmation within 30 days to proceed by Compliance Officer, unless clarifying information is required.

January 1, 2012 – Owner notifies any residents in writing of rent increases or decreases to be effective February 1, 2013.

February 1, 2013– Owner uses new allowances and makes any corresponding rent changes at property.

Annual Adjustment Review year

2014 – same as 2013 – rate adjustment only, based on current utility company rates and base year information.

Consumption Usage Review year

2015 - Complete analysis and initial submission required again based on 12 months of data.

CUR numbers used: 2/1/12 – 1/31/13

AAR, year 1, numbers used: 2/1/13 – 1/31/14
 AAR, year 2, numbers used: 2/1/14 - 1/31/15
 CUR numbers used: 2/1/15 – 1/31/16

CUR establishes the following:

Buildings #1-9:
 Cost/Mo. (Gas) Avg. KWH usage/Mo. (Gas)
 1BR \$21 220KW = 9.5 cents per KW
 2BR \$36 340KW = 10.6 cents per KW

Cost/Mo. (Elec) Avg. KWH usage/Mo. (Elec)
 1BR \$18 180KW = 10 cents per KW
 2BR \$29 260KW = 11.15 cents per KW

Building #10
 Cost/Mo. (Elec) Avg. KWH usage/Mo. (Elec)
 1BR \$41 480KW = 8.5 cents per KWH
 2BR \$55 620KW = 8.9 cents per KWH

Utility Allowances to be used based on above data for CUR year are as follows:

Buildings #1-9
 1BR \$39 per month
 2BR \$65 per month

Building #10
 1BR \$41 per month
 2BR \$55 per month

AAR establishes the following:

Owner obtains new average annual utility costs for the past 12-month period and applies those rates to previous usage figures established during the CUR year.

Buildings #1-9
 CUR Usage (Gas) Cost/KWH (new rates)
 1BR 220 KWH 9.9 cents per hour = \$21.78 per month
 2BR 340 KWH 10.9 cents per hour = \$37.06 per month

Buildings #1-9
 CUR Usage (Elec) Cost/KWH (new rates)
 1BR 180 KWH 10.5 cents per hour = \$18.90 per month
 2BR 260 KWH 11.6 cents per hour = \$30.16 per month

Building #10
 CUR Usage (Gas) Cost/KWH (new rates)
 1BR 480 KWH 9.2 cents per hour = \$44.16 per month
 2BR 620 KWH 9.6 cents per hour = \$59.52 per month

Utility Allowances to be used - based on above data for AAR year-are as follows (monthly amounts are rounded up to the nearest dollar):

Buildings #1-9

1BR \$41 per month

2BR \$68 per month

Building #10

1BR \$45 per month

2BR \$60 per month

Attachments: (See Website)

<http://www.wshfc.org/managers/ManualTaxCreditIndex.htm>

- A. WSHFC Owner Utility Estimate Checklist (DOC)
- B. WSHFC Owner Certification of Utility Estimate (DOC)
- C. Utility Allowance Spreadsheet (EXCEL)