

Utility Allowance Procedures for LIHTC Properties

Background

Low-Income Housing Tax Credit (LIHTC) property owners must include the cost of all Resident-paid utilities to a third-party utility provider based on Resident usage in the gross rent charged to Residents. To do this, Owners must obtain a utility cost allowance for all buildings in their LIHTC property. The applicable utility allowance must then be deducted from the applicable Maximum Tax Credit Rent Limit to determine the maximum rent that can be paid by a Resident.

FOR NEW PROJECT APPLICANTS

The Commission encourages new or rehabbed projects to consider the use of energy consumption-based utility allowances to accurately reflect resident energy/utility usage in more energy-efficient projects. While the Commission no longer incentivizes this option through application points, we continue to promote the implementation of energy consumption-based utility allowances where appropriate.

A. ENERGY CONSUMPTION MODEL:

Applicants wishing to use the Energy Consumption Model must submit documentation of the proposed qualified third party engineer and the plan for using the model. The third-party engineer must be approved by the Commission prior to submitting the application. Their plan must identify the utilities to be modeled (electricity, natural gas, water, wastewater), the platform of the model, and the methodology to be used in the model. Regardless of what utilities are covered under the energy consumption model, the total utility allowance amounts for the project must include all utility costs borne by the Residents. At a minimum, the energy consumption model must address electricity. Applicants are encouraged to use the energy consumption model for natural gas (if applicable), water and wastewater.

B. ACTUAL USAGE ESTIMATE MODEL:

Applicants wishing to use the Actual Usage Estimate Model must submit documentation of Resident utility usage and the completed Actual Usage Model forms from the Commission's website (<http://www.wshfc.org/managers/ManualTaxCreditIndex.htm#O>). If the applicant is using a third party engineer to complete the analysis, the engineer must be approved by the Commission prior to submitting the application. Regardless of what utilities are covered under the actual usage model, the total utility allowance amounts for the project must include all utility costs borne by the Residents. At a minimum, the actual usage model must address electricity. Applicants are encouraged to use the model for natural gas (if applicable), water and wastewater.

The utility allowance amounts resulting from either of the above models may be used in the development of the application but are not required. If a project is selected to receive a LIHTC allocation, the applicant will be expected to use the results of the energy consumption or actual usage estimate model for project underwriting. **Note: The models and resulting utility allowance calculations submitted as part of a LIHTC application will not be formally reviewed or approved by Commission staff at the time of application.** The applicant must submit proposed

utility allowance amounts resulting from the energy consumption or actual usage estimate model for review and approval by Commission staff, in accordance with this Appendix, between 90 and 120 days before the expected Placed-in-Service date for the first project building (for new construction) or the start of the initial credit period for acquisition and rehabilitation projects.

Projects Excluded from Submitting Alternate Method Utility Allowance Requests

Properties meeting any of the following conditions are not eligible to submit energy consumption, HUD Utility Schedule model or actual usage-based utility allowance 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 provided or approved by HUD or RD.

Note that these prohibitions apply to new projects as well as existing properties.

Benefits of Using More Accurate Utility Allowances

Utility allowances published by a Public Housing Authority (PHA) might not reflect actual usage at individual LIHTC properties. PHA allowances base costs on a portfolio average of utility usage at typically older, energy-inefficient properties. As a result, Owners may need to reduce rents due to inflated utility allowances. In some cases, this can result in potential negative cash flow issues that affect the long-term viability of their LIHTC property.

Any change of utility allowance method used at a property must be approved by Commission staff prior to implementation.

Available Utility Allowance Methods

For the following four methods, WSHFC does not require a separate utility allowance review or review fee prior to implementation. Utility allowance schedules/documentation for these methods should be included in the annual report package submitted yearly for each covered property.

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 regularly 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 may obtain an estimate in writing from the local utility company that offers services to that 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. *If the utility company does not have data on unit sizes*, the Owner may provide the bedroom size for each unit to the utility company for use in developing the estimates.

4. Public Housing Authority Estimates. This is the most common utility allowance Method used by LIHTC properties. Most PHAs in Washington publish estimates that are readily available. Links to PHA utility allowance schedules are available on the WSHFC website at <http://www.wshfc.org/managers/utility.htm>.

For the following methods, the Commission requires a review fee to be paid *prior* to review and approval of the proposed method. **Once the initial utility allowance estimate has been reviewed by the Commission, there is no fee associated with subsequent yearly adjustments based on utility rate changes.** If a third party is used to produce the estimates, the party must be approved by the Commission prior to engagement.

5. Owner Estimate, Similar Buildings. This is no longer a separate method and is included within the Actual Usage Estimate and Energy Consumption Model methods.

6. Actual Usage Estimate. An Owner may propose utility allowances for each building in a property based on average actual usage data and local utility company rates for the building(s). Using average usage data (kilowatts, therms, or gallons) provided by the local utility company for each unit, the Owner may calculate an average utility estimate for each unit size. The Owner must use data from a minimum number of units of each bedroom size to develop the utility allowance for that unit size (see Attachment C for details). If the project includes multiple buildings, the Owner must use consumption data from units in each building. Owners with less than 12 months of consumption data may use data from a similar building until 12 months of consumption data is available. At that point, the Owner must submit a request to the Commission to change the utility allowance estimate based on actual usage at that building or to use another method.

Owners intending to use this method are expected to carefully review *Attachment C - Actual Usage Estimate Guidance* at the end of this Appendix and complete *Attachment D – Utility Allowance Spreadsheet*. Note: If the utility rates vary by season please contact the Commission for an alternate *Utility Allowance Spreadsheet*.

7. HUD Utility Schedule Model. An Owner may calculate a utility allowance using the HUD Utility Schedule Model, found at <http://www.huduser.gov/portal/resources/utilallowance.html>. Owners who use this model will need to document the source and content of all factors entered into the model. This estimate may be produced by the Owner or a licensed, professional third party.

8. Energy Consumption Model. An Owner may provide a utility allowance 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 utility estimate should also take into account property type, climate and degree-day variables by region in the State and local

utility rates. This estimate **must be calculated by an independent licensed engineer or other qualified third party approved by the Commission.**

Alternately, the third party may base the model on the characteristics of a property with existing buildings of similar size and construction in the geographic area of the building(s). To use a similar building model, the Owner or third party must document that the two buildings have substantively similar characteristics.

Submitting Alternate Utility Allowance Model Requests on Newly Placed-In-Service (PIS) Properties

Owners must use Methods 1, 2, or 4 (as applicable) until the Commission has approved the use of an alternate method.

How to Change or Update a Utility Allowance

- A request to switch to Methods 1, 2, 3 or 4 should be submitted via email to the Portfolio Analyst assigned to monitor the property. This request can come from the property Owner or property Manager.
- All alternate utility allowances derived by Methods 3, 6, 7 or 8 must be updated within 12 months of the previous utility allowance effective date, to account for current utility rates. If there has been no change in rates, the Owner must provide documentation of no change. Utility allowances based on PHA schedules must be implemented within 90 days of the PHA's effective date.
- A request to use **Methods 6, 7, or 8 must be submitted via email to our third-party utility allowance consultant, ArchEcology, LLC, at uasubmissions@archecology.com.**
 - This request must come from the property Owner. The initial request submission must include the following:
 1. *Owner Utility Estimate Checklist* (see Attachment A to this Appendix).
 2. *Owner Certification of Utility Estimate* (see Attachment B to this Appendix).
 3. All supporting documentation

Note: All final estimate amounts must be rounded UP to the next whole dollar.
- The Check for the review fee (see **Review Fees** section below) should be mailed to the AMC Division Manager at WSHFC, 1000 2nd Avenue, Suite 2700, Seattle, WA 98104. The check should clearly state property name, property OID, and 'Utility Review Fee' on the payment stub.
- Once a property has been approved for an alternate allowance (Method 6, 7 or 8), a switch back to the local PHA allowance (Method 4) can only be made at the 12 month anniversary

date for the allowance. Should an Owner wish to later switch back to the alternate utility method they would need to start the approval process over and pay a new review fee. Changes back to an alternate utility allowance schedule are not allowed for five (5) years.

- If the Owner is using a third party to calculate the estimate (Actual Usage, HUD Utility Schedule Model, Energy Consumption method), **the Commission must approve the third party in advance of the Owner submitting the estimate request.** To obtain approval, the third party must:
 1. Submit a response to the Commission's Request for Qualifications – Energy Modeling Consultants (RFQ), available on our website at: <http://www.wshfc.org/energy/rfqEnergyConsultingModeling.pdf>; **or**
 2. Have already submitted a response to the RFQ and be included on the Commission's Approved Roster of Energy Modeling Consultants.
- In all situations, the Owner must provide sufficient documentation to Commission staff, in the manner required by staff, to support calculations.
- **All utility usage data and utility rates used to calculate the estimate must be no more than 60 days old when submitted to the Commission for review.** This requirement is part of the IRS utility allowance legislation and cannot be waived.
- When changing or updating utility allowances based on Methods 6, 7, or 8, the Owner must make the proposed amounts available to Residents for comment **90 days before implementation** (i.e., the effective date of the proposed rates and any resulting change in rents). Information must also be submitted to the Commission 90 days prior to the implementation date.
 - Note: If a Resident notice is not issued 90 days before the proposed effective date for an initial submission, the initial effective date may be delayed until the 90 day period has expired. If a Resident notice is not issued 90 days before the anniversary date of a UA renewal and the UA decreases (allowing for a rent increase), the rent increase may not be implemented until the 90 day period and Resident notice of rent increase have expired. If the UA increases (requiring a rent decrease if charging maximum rent), the corresponding rent decrease must be instituted by the UA anniversary date. If a delay in the UA submission causes any Resident to pay rent in excess of the Tax Credit maximum rent limit this will constitute material noncompliance (Federal and/or State depending on the income set-asides affected) and the Owner will be required to reimburse residents for any overage.

Example Timeline:

Better Housing Group recently implemented major energy efficiencies at Happy Valley Apartments. Now BHG wants to change their utility allowance estimate for the property from the local PHA estimate to an energy consumption model estimate. They want to make the new utility allowance effective as of January 1, 2016. In August 2015, BHG contacts WSHFC staff requesting approval of their proposed third party vendor, Energy Savers Inc. BHG submits the

required documentation and WSHFC approves ESI to complete the energy consumption estimate for BHG.

ESI completes their analysis in September 2015, applying the most current utility company rates to their usage estimates. BHG issues a written notice to all Happy Valley residents on October 1, 2015, notifying them of the revised utility allowance amounts with the effective date of January 1, 2016.

On October 1, 2015, BHG submits all required documents and a check for required fees to WSHFC's Asset Management & Compliance Division Manager. WSHFC reviews the utility estimate change proposal and returns approval to BHG in writing prior to November 2, 2015. BHG's new utility allowance estimate will be in place from January 1, 2016 through December 31, 2016. BHG will need to issue any applicable rent change notices as required by state law.

During September 2016 (and every year thereafter), BHG reviews the estimate – if local utility company rates have changed, BHG must apply the new rates to the usage estimate and reissue a 90 day notice to their residents as of 10/1/2016. The adjusted utility allowance then becomes effective January 1, 2017. At the time BHG issues the 90 day notice to their residents, they must also send a copy of the notice with the revised utility allowance amounts to WSHFC for review and approval. However, once the initial usage estimate has been reviewed by WSHFC, there is no fee associated with subsequent yearly adjustments based on utility company rate changes.

Review Fees

For initial review and approval of Methods 6, 7 and 8, the Commission requires Owners to pay a non-refundable fee of \$3 per low-income unit in the project, or \$100, whichever is greater.

ArchEcology will not begin the review process until payment from the Owner is received by the Commission. As previously noted, no fees will be required in subsequent years to process annual renewals using the same method. ***Fees are subject to change without prior notice.***

Approvals, Denials and Denial Review

Owners who submit complete and accurate information will receive a notice from ArchEcology on behalf of the Commission approving the Owner's utility allowance within 30 days of receipt. Questions or requests for additional information will be emailed by ArchEcology 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 ArchEcology. Non-receipt of an approval letter or email request is not considered evidence of Commission/ArchEcology approval.

Residents have the right to question approved utility estimates. Residents who do not believe the estimate represents appropriate utility usage must submit copies of their bills to their Resident Manager for review.

If the Commission/ArchEcology denies the Owner's request, the Owner will receive an email from either the Commission or ArchEcology describing the reason for denial. The Owner must then

submit the most current local Public Housing Authority estimates for the project within 30 days of denial and implement any changes based on those allowances within 90 days.

Commission staff may deny a request to use a specific utility allowance for the following reasons:

1. The project is excluded from applying for any conditions described in ***Projects Excluded*** paragraph (or otherwise discovered at the time of our review) at beginning of this Appendix.
2. ArchEcology determines that information submitted is incomplete or insufficient to accurately determine allowances.

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

Failure to use the Commission approved or mandated utility estimate at a property may result in material noncompliance reportable to the IRS. In the case of either Federal or State noncompliance, the Commission may impose additional requirements or restrictions on the Owner prior to approving any new LIHTC allocations or bond issuances.

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.

The following associated Attachments are available on our website on the *Tax Credit Compliance Manual* web page, under the *Appendix O* section:

- A. *WSHFC Owner Utility Estimate Checklist* (Methods 6-8)
- B. *WSHFC Owner Certification of Utility Estimate* (Methods 6-8)
- C. *Actual Usage Estimate Guidance* (Method 6 only)
- D. *Utility Allowance Spreadsheet* (Method 6 only – Excel file)