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to: Owners and Management Agents of Tax Credit Developments

from: Mark Feilmeier, Manager, Program Compliance, Asset Management

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subject: **IRS Treasury Regulation 1.42-10 Utility Allowances**
(26 CFR, Part 1)

cc:

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Published 7.29.2008 in the Federal Register for immediate effect, the IRS issued the final regulation update for utility allowances, changing the way rents are adjusted on Low Income Housing Tax Credit (LIHTC) properties where residents pay for their own utilities. This memorandum provides an explanation of the changes to the 2008 IRS regulations and CHFA's policy related to these changes.

Below you will find a link to the Utility Allowance regulation update.
Utility Allowance Final Regulation Update:

<http://edocket.access.gpo.gov/2008/pdf/E8-17268.pdf>

background

Properties financed with Low Income Housing Tax Credits (LIHTC) calculate rents to include a utility allowance for resident-paid utilities. Owners had the option of obtaining annual allowances from the applicable Public Housing Authority (PHA) or from estimates provided by the local utility company based on actual usage.

policy restrictions

The methods the IRS has traditionally allowed owners to use to estimate resident utility costs often did not reflect actual usage of LIHTC properties and often overstated the allowances. This model often reduced the gross rent received by owners putting the financial viability of many LIHTC properties at risk.

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ratio utility billing system (RUBS)

IRS regulations effectively ends the ability of owners to use a utility allowance if they employ a ratio utility billing system (RUBS) in their building. Owners that are using such a system will now have to discontinue the use of a utility allowance and not bill the tenants for the costs of utilities. Owners will have to pay the utilities but may charge full gross rents to the tenants based on the current rent and income limits provided by CHFA.

sub-metering system

The utility rates charged to tenants for sub-metered utilities must be limited to the utility company rates paid by the building owner or their agent. Tenants are charged based on actual consumption for their unit only.

The IRS has also agreed to permit a reasonable fee for the administrative costs associated with third party billing services not to exceed \$5.00 per unit per month, unless state law provides additional restrictions.

Owners will have to carefully track and keep records on a monthly basis of what is billed for each LIHTC household to ensure that the sum of the charge does not exceed the maximum permitted tax credit gross rent amount.

new irs regulations

The 2008 IRS regulations increased the sources of data owners can use to calculate resident-paid utilities. Under the old policy, owners could use either:

- Utility allowance estimates provided by local applicable PHA, or
- Utility company actual figures offering service to subject property.

Under the new rule, owners have the additional option of using:

- Estimates produced by a new HUD utility modeling program. HUD has developed a Utility Schedule Model that enables the user to calculate utility schedules by housing type after inputting utility rate information. The IRS has approved the use of this model to determine utilities for its Low Income Housing Tax Credit program.
- Certified engineering studies to estimate utilities (such models can also include water and sewer costs).



CHFA's policy will be to provide owners and agents with as much flexibility to accurately determine equitable utility allowances for their respective properties under the current regulations provided in the Treasury Regulations 1.42-10 (26 CFR, Part 1).

Option 1: Local PHA Utility Allowance Model

Owners may obtain annual allowances from the applicable Public Housing Authority (PHA).

Option 2: Utility Company Model

Estimates based on actual utility company data. Owners may submit a written request to the CHFA Asset Management Officer assigned to their property requesting to use this option. Owners must obtain copies of actual usage data from the applicable utility company for each unit in the project continuously occupied for the most recent 12-month period. The owner must itemize the monthly usage by unit into a spreadsheet including building, unit size, and square footage, then average by unit type. Newly constructed or renovated buildings with less than 12 months of data may use units of similar size and construction characteristics within the same geographical area of the subject property.

Option 3: Energy Consumption Model

Estimates from utility consumption must be calculated by a properly licensed electrical or mechanical engineer, not related to the building owner as referred to in section 267(b) or 707(b). Owners may submit a written request to the CHFA asset management officer assigned to their property requesting to use this option. Such utility consumption models must include specific criteria, but not limited to, building orientation, design characteristics, location, materials, unit size, mechanical systems, appliance, and other applicable "green" initiatives. Newly constructed or renovated buildings with less than 12 months of data may use units of similar size and construction characteristics within the same geographical area of the subject property. Submissions must include all supporting documentation of the engineer's calculations and copy of engineer's current license.



Option 4: HUD Utility Schedule Model

Estimates based on information entered by owner into the HUD Utility Schedule Model. The HUD Utility Schedule Model is a tool that provides Location and Heating Degree Data that requires input to the model. Using a zip code function, the data provided may be downloaded in MS Excel, and then copied into the HUD Utility Schedule Model. Information regarding the use of this model can be found at <http://www.huduser.org/datasets/lihtc.html>.

please note

HUD-subsidized and RD-regulated properties are excluded from submitting owner utility estimates and must use the applicable estimates approved and provided by HUD and RD.

review, approval, or denial of owners estimates

Owners that submit complete and accurate data and the applicable processing fee to the asset management officer will receive notification of the approval or denial within 60 days of receipt of the information.

Once CHFA approval is granted, the owner must provide CHFA and all residents with a minimum 60-day written notice of any changes in rent and changes to the utility allowance must be implemented within 90 days. Copies of the written notice must be provided to CHFA before implementation of any changes.

CHFA staff may deny owner estimate submissions if:

- the owner fails to provide complete and accurate information;
- the subject property is not eligible;
- the owner includes utility costs other than what is paid directly by the resident;
- the owner includes costs such as cable or satellite television, telephone, and internet into the utility allowance calculations;
- the owner fails to submit certification of utility estimates; or
- the property has uncorrected noncompliance issues as determined by CHFA.



excluded costs

Cable television, telephone, and internet costs are specifically excluded from utility allowance calculations.

Only utility costs paid directly by the resident(s) and not by or through the owner are included in the utility allowance calculation.

Unit gross rents include the applicable utility allowance.

please note

- For owners who elect to use option 3 or 4, any new utility allowances increased or decreased by \$5.00 or more from previous year's calculation must be accompanied by an explanation with your submission.
- A \$2.00 per low income unit processing fee will apply to all owner estimate submissions. Minimum \$50.00 processing fee applies. No processing fee will be charged for the selection of option 1 (PHA estimates) or option 2 (utility company actual estimates).
- Property Owner is responsible for all costs incurred in obtaining utility allowance estimates and providing them both to CHFA and building residents.
- Property owner must submit utility allowance calculations on an annual basis and updated accordingly regardless of any change to utility rates.
- Property owner is responsible for the accuracy of all data submitted and is responsible for ensuring their LIHTC properties remain in compliance with all Section 42 requirements.
- Property Owner must sign an Owner Certification of Utility Estimate Accuracy.
- Property owner must retain any utility consumption estimates and supporting data as part of the taxpayer's record.

As mentioned above, this memorandum is only a summary of recent policy changes. Additional information regarding any further policy changes will be provided as necessary. If you have any questions, please contact your Asset Management Program Compliance Officer.



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**Owner Certification of Utility Estimate
(Not applicable for Section 8, Rural Development or Option 1)**

Project Name: _____

I, _____, certify that the documentation provided in this submission is complete and accurate regarding actual utility costs associated with the above named project. I understand that CHFA may require additional information to support the estimates provided herein. In addition, I certify:

1. All units in the project are listed in the submission or an explanation provided as to a units absence.
2. The estimates provide include only continuously occupied units in the project for a twelve (12) month period, January 1st through December 31st of the prior year.
3. I am the authorized signator for the above named project and have personally reviewed the documentation for this estimate.

Studio _____

1 BR _____

2 BR _____

3 BR _____

4 BR _____

Based on the submitted documentation, I certify that all information is true and correct for the purpose of providing the monthly average utility estimates for the above named project:

Print Name

Title

Signature

Date