



Effective Date: June 15, 2010

Michigan State Housing Development Authority

Instructions for Calculating Utility Allowances for LIHTC Developments Actual Consumption Method (Agency Estimate)

On July 29, 2008 Treasury Regulation Section 1.42-10 was amended to add three additional methods for calculating utility allowances, for conventionally financed LIHTC projects. These instructions outline the procedures an owner of an LIHTC project must follow in order to request a utility allowance change using the Actual Consumption Method (Agency Estimate).

Overview

The Actual Consumption (AC) method of calculating utility allowances (UA) is based on the average usage and utility cost for a representative sample of continuously occupied units during the most current twelve month period.

To request a UA change using this method, owners/management agents must complete and submit the forms in MSHDA's Actual Consumption Data Certification Workbook. MSHDA must receive the following no later than 90 days prior to the proposed UA implementation date:

- UA Calculation forms
- UA Owner's Certification
- Utility company backup documentation
- Payment of Administrative Fee

Proposed utility allowances calculated using this method must be made available to all tenants in the building at the beginning of the 90-day period. During the 90-day period, MSHDA will review the documents and may request clarification or additional information. MSHDA Compliance staff must approve UA changes prior to implementation.

Ineligible Properties

Projects meeting any of the following conditions are not eligible to submit a utility allowance change request to MSHDA Compliance for the AC method.

1. The project has unresolved noncompliance issues (including but not limited to uncorrected 8823). Until such time as compliance deficiencies are remedied, the project cannot submit UA change requests under the AC Method.
2. The project is not able to provide twelve months of continuous utility usage data. New projects must use the PHA rates until one year of actual consumption data is available. If it is not possible to submit the required sample size containing units that meet the continuous occupancy standard due to high vacancies or other extenuating circumstances, the owner must utilize an alternative calculation method. If the required sample data is available for some, but not all of the unit types, please contact MSHDA Compliance for additional guidance.

3. The project is RHS assisted or HUD-regulated. These projects must continue to use the required utility allowance as defined in IRS Regulation IRS 1-42.10.
4. The project is MSHDA financed. These projects must submit actual consumption data to the assigned Asset Manager according to the established policies and procedures of MSHDA's Office of Asset Management. New construction projects must use the PHA rates until one year of actual consumption data is available.

Sample Data Requirements

- Owners/management agents must collect and submit sample data separately for each project.
- Resident Release Authorization Forms: Most utility companies require submission of tenant-signed release authorization forms prior to releasing account data. MSHDA's recommended form (Resident Release Authorization Form) is available on the MSHDA Compliance website.
- Projects with similar building types may calculate one average for each bedroom type found in 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.
- Units sampled must meet the definition of a Continuously Occupied Unit, which is a unit that has been occupied for at least 50 out of the 52 continuous weeks reported.
- The twelve-month sampling period must end no more than 60 days prior to submission of a completed request packet to MSHDA. The sampling period must be the same for entire sample.
- A sampling of at least 25% of each unit type is required, with a minimum of 5 units. If there are fewer than 5 units of that type, 100% sampling is required (3 units of one type = 3 units sampled).
- Units sampled should be a fair representation of the property, e.g., if a certain unit type is located in 8 different buildings, sample units are required from each of the 8 buildings, rather than from only 3 buildings. Also, the sampling must not contain a disproportionate number of small households vs. large.
- From year to year, different units/residents should be chosen whenever possible for the sample so there is a more accurate representation of the whole property.
- When a unit is chosen for the sample, all of the utilities that are paid directly to the utility company by the tenant must be reported for that unit. Lowest usage utilities cannot be cherry-picked from different units.

Eligible Utilities

- Allowance inclusions and exclusions are shown in the table below. See Notice 2009-44 for more detail.

Includes:	Excludes:
✓ Electricity	✓ Telephone
✓ Water/sewer	✓ Cable and Internet service
✓ Gas	✓ Any item that is a property expense paid with operating funds
✓ Trash pick-up	✓ Optional items not included in the eligible basis
✓ Any item tenant must pay in addition to rent including a range and/or refrigerator if not supplied by the owner	
✓ Taxes/fees paid directly to the utility company	✓ Fees charged by a third-party billing company

- A utility allowance, for all eligible tenant-paid utilities, must be included as part of the gross rent. If management requires residents to subscribe to certain excluded utilities, charges for those utilities are not included in the utility allowance calculation. However, such charges must be included in the gross rent calculation.

Submission Procedure

To request a UA change using the AC Method, owners/management agents must complete and submit the forms in MSHDA's Actual Consumption Data Certification Workbook. MSHDA must receive UA change requests no later than 90 days prior to the proposed UA implementation date. UA change requests must include the following:

- UA Calculation forms
- UA Owner's Certification
- Utility company backup documentation
- Payment of Administrative Fee

Forms are located on the MSHDA Compliance website link below:

http://www.michigan.gov/mshda/0,1607,7-141-8002_26576---,00.html

- Legible documentation must be submitted by mail or email (preferred method) along with the completed Consumption Data Certification Workbook for data verification.
- Usage printouts directly from the local utility company for the data period are acceptable.
- Each page must contain utility company name/information.
- Data from the utility company must include all fees and taxes so that the total monthly bill for each unit is easily determined, if the total is not listed on that page.
- Pages must also include unit type, unit number and tenant name or unit address.

- Copies of twelve months of actual tenant utility bills may be submitted as long as they include unit address, tenant name and unit type.

Administrative Fees

All requests for approval of utility allowances using this option **require payment of a fee of \$3 per unit in the property with a minimum of \$50 and a maximum of \$300** to be submitted at the time of the request. UA requests will not be reviewed until the required fee has been paid.

Notification Requirement

Treasury Regulation Section 1.42-10 requires that any utility allowances obtained under the Agency estimate option must be made available to all tenants in the building at the beginning of the 90-day period. Notice is required even if the rent will not change.

MSHDA Review

- MSHDA will review the entire submission for compliance with regulations and instructions. Please make sure the backup documentation is legible. MSHDA cannot approve a UA change if the backup documentation is incomplete, inadequate or not legible.
- MSHDA may request more information during the 90 day period, including but not limited to the following scenarios:
 1. If the data for a larger unit calculates the same or lower utility average cost as a smaller unit, MSHDA will ask for more information, perhaps a 50% sample size, to ensure a more accurate average.
 2. If the difference between the current UA and the proposed UA for a particular unit type appears extraordinary compared to the changes for the property's other unit types, MSHDA may ask for additional information to support and/or validate this discrepancy.
- Owners/Managers should receive a response from MSHDA within 45 days of package submission. If approval is not received within 45 days, please contact MSHDA Compliance. Non-receipt of an approval notice is not considered MSHDA approval.

Utility Allowance Implementation

- MSHDA-approved utility allowances will be effective for twelve months. The owner is responsible for submitting a new request, with the appropriate fee, at least 90 days before the expiration of the utility allowance in effect. Failure to do so, and/or failure to notify the tenants at least 90 days prior to a UA change will result in a finding of noncompliance.
- Approval of the utility allowance does not constitute a guarantee that the utility allowance is absolutely correct. If at any time it is determined that a utility allowance has been understated and, therefore, some or all of the units are not rent restricted under section 42(g)(2), MSHDA must report the noncompliance to the IRS on form 8823.
- Rent Adjustments:
 - Rent adjustments – must be in accordance with the respective lease agreement

- Rent decreases – must be implemented at the end of the 90 day period
- Rent increases – require a minimum of 30 days notice