



MSHDA Utility Allowance Policy and Procedures for LIHTC Developments: Preamble June 15, 2010

The Michigan State Housing Development Authority (MSHDA) is issuing this Preamble to provide owners and management agents of conventionally financed LIHTC developments with a better understanding of MSHDA's Utility Allowance (UA) Policy. The UA Policy includes two new UA methods which MSHDA is implementing effective June 15, 2010 (Actual Consumption Method and HUD Utility Model). This document also provides an overview of the forms and reference documents used in applying the new methods.

The UA Policy and the accompanying documents are the sole authoritative source for utility allowance policy and procedures for all conventionally financed LIHTC developments in Michigan. The Policy may also serve as a handy reference guide to clarify which utility allowance method is required for all MSHDA-financed and/or federally assisted multifamily rental developments with LIHTC. Please contact MSHDA Asset Management for detailed information regarding the Asset Management Utility Allowance Policy and procedures for MSHDA financed developments.

Introduction:

On July 29, 2008, the IRS published the long-awaited final utility allowance Regulations, which impacted the rents for Low Income Housing Tax Credit (LIHTC) properties with resident-paid utilities. The Regulations increased the types of utility data that owners may use to calculate resident-paid utility allowances by including three additional utility calculation methods (Agency Estimate-Actual Consumption Method, HUD Utility Model and Energy Consumption Method).

MSHDA is issuing a UA Policy and accompanying documents to implement two of the new methods (Actual Consumption Method and HUD Utility Model) in accordance with Final Treasury Regulations Section 1.42-10 (26 C.F.R. Part 1 Section 42 - Utility Allowances Regulations Update) effective May 2, 1994 and amended July 29, 2008. Each new method requires MSHDA's review, approval and the payment of an administrative fee per IRS Regulations.

Background Information:

To qualify as a LIHTC rent-restricted unit, the Internal Revenue Code requires that a qualified resident's gross rent must not exceed 30 percent of the applicable income limitation. Gross rent includes the cost of utilities, if utilities are paid directly by the tenant.

Problems with the Original UA Methods:

Prior to publication of the new UA Regulation, owners/management agents of conventionally financed LIHTC developments were limited to two options, PHA rates or estimates obtained from the local utility company. In the past, PHA rates have typically been higher than actual usage since they do not take into account the energy efficiency of newly constructed or rehabilitated properties and estimates from the local utility company have become increasingly difficult to obtain.

New UA Methods to Address Utility Allowance Problems

The new UA Regulations should result in allowances that more accurately reflect the improved energy efficiency of newer LIHTC properties and provide owners with other options when uncooperative utility companies are not forthcoming with the estimates.

The new methods are:

- Agency Estimates (Actual Consumption Method) – MSHDA implementation date June 15, 2010
- HUD Utility Model – MSHDA implementation date June 15, 2010
- Energy Consumption Method (Engineer Model)– Requires an engineering study from an agency-approved engineer or qualified professional (MSHDA currently does not have an approved list of engineers or qualified professionals at this time, therefore this method is not currently available)

MSHDA's PHA rates for 2010 utilize the HUD Utility Model which should more accurately reflect the average utility rates for each region across the State. However, this method does not account for different construction ages, different appliance and mechanical efficiency levels, and varying construction qualities unique to individual developments.

MSHDA UA Policy

In preparation for implementing these new processes, MSHDA participated in a number of conferences, trainings and discussions and participated in the sharing of best practices ideas with industry experts and State Housing Finance agency staff from across the nation. MSHDA also developed a cross-divisional Utility Allowance Team consisting of staff members from Compliance (Legal Affairs), Asset Management, Rental Development and Homeless Initiatives (RDHI) and Housing Voucher Programs with the goal of obtaining consistency in UA Policies and Procedures throughout the Authority whenever and wherever possible. Finally, MSHDA Compliance staff worked directly with several owners/management agents to test the proposed process and data collection spreadsheet with actual consumption data. While some Housing Finance Agencies have already implemented new processes/procedures for some or all of the allowable methods, many others are still struggling with the administrative burden and time consuming process of creating and monitoring these new complex processes within their resource limitations.

Utility Allowance Documents and Forms

- **Utility Allowance Policy for LIHTC Developments** – The policy consists of the following subparts: Summary of Final IRS Regulation, outline of utility allowance requirements by funding source, new methods MSHDA is implementing effective June 15, 2010, summary of methods, process overview for Agency Estimate (Actual Consumption Method and HUD Utility Model) and utility allowance administrative fees (applies only to new methods)
- **Utility Allowance Quick Reference Chart**
- **Utility Allowance Instructions for Agency Estimates (Actual Consumption Method)**
- **Consumption Data Certification Workbook**
 - Instructions
 - Consumption data collection spreadsheet
 - Utility Allowance Owner's Certification – Owner's certification of data accuracy

- **Resident Release Authorization Form** – provides resident’s authorization for utility company to release resident consumption data to owner/management agent

IRS and HUD Reference Documents

The following documents were utilized and relied on when MSHDA Compliance staff prepared the UA Policy and Procedures:

IRS Utility Allowance Regulations:

Treasury Regulations Section 1.42-10

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=60897a77f3aa6e576afe89369edad3ff&rqn=div8&view=text&node=26:1.0.1.1.1.0.5.83&idno=26>

IRS Notice 2009-44 (Sub-metered Utilities)

<http://www.irs.gov/pub/irs-drop/n-09-44.pdf>

Treasury Regulations

http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title26/26cfrv1_02.tpl

HUD Utility Model

The HUD model calculates different allowances, depending on when the project was built and where it is located.

<http://www.huduser.org/resources/utlmodel.html>

Draft Policy Comment Period:

MSHDA invited the general public, and specifically owners/management agents, to provide written and electronic comments and feedback during a 14 day comment period which began on May 17 and ended May 31, 2010. The final UA Policy and accompanying documents were issued on June 15, 2010. Active owner/management agent participation and communication was essential to that process.

Ongoing Policy and Procedures Review:

MSHDA anticipates an ongoing review of the UA Policy and Procedures will lead to further refinements and improvements. Please submit questions and comments by email to:

mshdacompliance@michigan.gov Include “UA Policy Comments” in subject line.

MSHDA Compliance Website Link

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