CHAPTER 4 - INCOME LIMITS, RENT RESTRICTIONS AND UTILITY ALLOWANCES

This Chapter of the Michigan LIHTC Compliance Manual contains a generic discussion as to how income limits, rent limits, and utility allowances are calculated for the LIHTC Program, the MSHDA Direct Loan Program, and the Pass-Through Program. For related discussions, see the following:

- Income Limits for Particular LIHTC Projects – This topic is discussed in detail in Chapter 1 (LIHTC Program).
- Income Amounts for Particular Tenants – This topic is discussed in detail in Chapter 3 (Qualifying Tenants for Restricted Units).

Section 4A - Income Limits

Part 400 Overview of Income Limits for LIHTC Projects

Maximum income limits for qualifying tenants depend on the minimum low-income set-aside election the owner has chosen. Qualifying tenants in projects operating under the "20/50" election may not have incomes exceeding 50% of area median income adjusted for family size. Qualifying tenants in projects operating under the "40/60" election may not have incomes exceeding 60% of area median income adjusted for family size. Special elections made by the owner in the application for tax credits must be maintained. (For information about special elections, see Part 832 (Deeper Targeting/Agency Covenants).

The U.S. Department of Housing and Urban Development (HUD) publishes median income information for each Michigan county or metropolitan statistical area (MSA) of the state on an annual basis. The LIHTC program uses the limits that HUD publishes for Multifamily Tax Subsidy Projects (MTSP). The HUD income publication includes amounts for various family sizes from one household member to eight household members at the Very Low-Income (VLI) Level, which is 50% of area median gross income (AMGI), as discussed further in Part 416 (Sample Income Limit Table).

Upon receipt of the annual income figures from HUD, MSHDA calculates and makes available to owners new annual income limits and corresponding rent limits for LIHTC projects. MSHDA uses HUD's Very Low-Income Level of 50% of the area median income adjusted for family size. To determine the income limits for the 60% income level, MSHDA uses the Very Low-Income Level and multiplies those figures by 1.2, as discussed further in Part 418 (Income Limits are Adjusted for Family Size). Owners/management of LIHTC projects must use only the MSHDA-published figures, which are posted on the MSHDA website. (Note: Projects with units that are assisted with more than one government source, such as Section 8, should use income limit figures that are most restrictive/lowest in order to achieve compliance with all of its different programs.) For information about the effective date of newly published income limits, see Part 414.

LIHTC regulations stipulate a maximum allowable income for a household to be eligible for occupancy in a restricted unit, but do not impose a minimum income requirement (as discussed in Part 420).

Part 402 Impact of HERA on LIHTC Income Limits

The Housing and Economic Recovery Act of 2008 (H.R. 3221 or "HERA" or Public Law 110-289) made statutory changes to how income limits are calculated for LIHTC projects. Following is a brief summary of the changes:

- The Section 8 income limits were the sole income limit that applied to LIHTC projects, from the inception of the LIHTC program until March 19, 2009, at which time HUD began publishing two sets of income limits – one for HUD Section 8 projects and another for Multifamily Tax Subsidy Projects (MTSP). This separation began with the publication of FY2009 median family income estimates and income limits.
- A Multifamily Tax Subsidy Project (MTSP) is a project financed through the LIHTC and/or tax exempt bond programs.
- For MTSPs, HUD issues two sets of income limits:
    - One set of income limits for HUD hold-harmless impacted projects, otherwise referred to as Impacted MTSPs; and
    - One set of income limits for Non-Impacted MTSPs.
- Impacted MTSPs are eligible to use "HERA Special" income limits.
- Changes in determining tenant income and rent limits for rural projects.

The impact of the HERA changes is as follows:

1) Some locations (either the county or the metropolitan statistical area) use different income limits (i.e. MTSP and HERA Special Rates) for different projects, based on the placed in service dates of the projects.
2) Projects with both LIHTC and HUD financing must comply with both the HUD Section 8 Income Limits and the MTSP Income Limits (or, if applicable, the HERA Special Rates).

For information about the history of the use of HUD Income limits for MTSPs, changes to income limits for MTSPs under HERA, HUD's income calculation methodology for MTSPs, and the HUD Hold Harmless policy, see the MTSP Income Limits Briefing Material published by the Policy Development and Research Office of HUD, which can be accessed at the following website address:

http://www.huduser.org/datasets/mtsp.html

Part 404 Which Income Limits to Use

There are three sets of income limits that are applicable to the LIHTC Program:

1. Multifamily Tax Subsidy Projects (MTSP) – discussed in Part 406.
2. HERA Special Rates – discussed in Part 408.
3. Non-metropolitan Income Limits – discussed in Part 410.

Placed In Service Date of Project

The appropriate income limit for a specific project depends on its location and the date it was placed in service (as discussed below). [The Multiple Building Project Election discussed later in this Part also impacts the determination of the applicable income limit.]

A. If the project was placed in service prior to 1/1/2009*:

► Use the greater of the HERA Special Rates (if there is one for the county), the 2009 MTSP, or current MTSP limits.

Most LIHTC projects were placed in service before 1/1/2009 and are eligible to use this option.

B. If the project was placed in service on or after 1/1/2009, but before 5/14/2010*:

► Use the 2009 or current MTSP limits, whichever is greater.

The project may NOT use the HERA Special limits.

C. If the project was or will be placed in service on or after 5/14/2010*:

► Use the current MTSP limits.

The project may NOT use the HERA Special limits.

If the income limits decreased from the limits in effect at the time of carryover allocation, the project must use the current income limits for determining tenant eligibility. However, rents can be calculated in accordance with the gross rent floor, as discussed in Part 434.

*Unless the project is located in a rural area and the owner elects (and is eligible) to use the National Non-metropolitan Median Income Limits, as discussed in Part 410.

Project vs. Building – Multiple Building Project Election: The income limits are applied on a project-wide basis, depending on how the project is defined based on the multiple building election (discussed in greater detail in Part 112) made on the IRS 8609 form(s).

- If the owner's response to question 8b on the 8609s indicated that a building was part of a multiple-building project, all of the buildings in that multiple-building project will use the income limit based on the date the **first building** was placed in service.
- If the owner's response to question 8b on the 8609s indicated the building was NOT part of a multiple building project (in other words, it was set up as though each building is its own project), each building will use the income limit based on the date that **particular building** was placed in service.

Part 406 Multifamily Tax Subsidy Projects (MTSP) Income Limits

Multifamily Tax Subsidy Projects (MTSP) Income Limits were developed to meet the requirements established by the Housing and Economic Recovery Act of 2008 (Public Law 110-289). The MTSP income limits are used to determine qualification levels as well as set maximum rental rates for projects funded with tax credits authorized under section 42 of the Internal Revenue Code (the Code) and projects financed with tax exempt housing bonds issued to provide qualified residential rental development under section 142 of the Code. The income limits for MTSP projects are separate from limits for HUD Section 8 projects, which are discussed in Part 412.

HUD publishes median income information for each Michigan county or metropolitan statistical area (MSA) of the state on an annual basis for the MTSP. This publication includes amounts for family sizes ranging from one to eight household members, under two sets of limits: (1) the Actual Income Limits and (2) the HERA Special Income Limits. All tax credit and tax exempt bond projects are eligible to use the Actual Income Limits posted each year.

Only MTSP projects that were in service in 2007 or 2008 (i.e., placed in service by December 31, 2008) are eligible to use the HERA Special Income Limits, which are discussed further in Part 408. Projects that were/are placed in service on or after January 1, 2009 will defer to the current year's Actual Income Limit, though once placed in service will be "held harmless" to any future decline in the Actual Income Limits.

The limits as published on the MSHDA website are organized in such a way that the owner/management agent simply uses the project's location (county or MSA) and placed in service date to locate the appropriate income limits.

Additional information, as well as the MTSP income limits can be accessed as follows:

http://www.huduser.org/datasets/mtsp.html

Part 408 HERA Special Rates / HUD Hold Harmless

HERA Special Rates are additional, higher income limits for MTSP projects that were "held harmless" and had their median gross incomes determined in 2007 or 2008, as specified in a provision of the 2008 Housing and Economic Recovery Act (HERA). HERA also codified the hold-harmless policy (which prevents income limits from declining from one year to the next) for MTSP projects. When a county is subject to HUD's Hold Harmless Policy, projects within the county will have two sets of income limits. If a project was placed in service prior to December 31, 2008, the "HERA Special" income limits must be utilized. For any projects placed in service in 2009 or later, the new current limits (also sometimes referred to as "Actual Income Limits") are to be used.

HERA defines projects eligible to use the HERA Special Rates as "Impacted MTSP Projects" or "Hold Harmless Impacted Projects", which are those that were in service in 2007 or 2008 and located in a HUD Hold Harmless Impacted Area.

An Impacted MTSP

An Impacted MTSP is any project with income limits determined in 2007 or 2008 under HUD's hold-harmless policy. A project qualifies as an Impacted MTSP only if it was placed in service before the end of 2008. A single building project qualifies as an Impacted MTSP if the owner placed the building in service before the end of 2008. A multi-building project qualifies as an Impacted MTSP if the owner placed its first building in service before the end of 2008. Remember that a multi-building project is defined on Line 8b of each building's 8609 form. A building is part of an Impacted MTSP only if is included in a project that had at least one building in service before the end of 2008.

For an ***acquisition/rehab project***, the owner places its acquisition credits in service on the date of acquisition and places the rehab credits in service for each building when completing its rehabilitation activities. A project qualifies as an Impacted MTSP if its acquisition credits were in service before 2009.

A Non-Impacted MTSP

Going forward, the income limits for each Non-Impacted project will not decline and will be held harmless at the highest level attained during its qualifying period. As long as the income limits for a county or metro area do not decline, all Non-Impacted projects in the area will use the same income limits. However, once an area (i.e. county or MSA) experiences a decrease in HUD's income limits, it will see LIHTC projects using various income limits and rent structures. HUD will publish historical data on income limits, but each owner should maintain a file documenting their project's income limits and rents since placing it in service.

Note the following:

- If a project was placed in service on or after January 1, 2009, it cannot use the HERA special rates. The project must use the current income limits for MTSP projects (discussed in Part 406).
- The HERA Special Rates do not apply to projects regulated or financed by HUD or to HOME-assisted projects or units. The HERA Special Rates apply to all other types of projects, whether new construction or an acquisition/rehabilitation, and to properties funded with tax-exempt bonds.
- Rent limits for projects that are eligible to use the HERA Special Rates are also calculated based on the HERA Special Rates and are posted on MSHDA's website.

Part 410 Income Limits for Projects Located In Rural Areas (National Nonmetropolitan Median Income)

[Note: As of 2008, since the current national non-metro income limit of $49,300 is lower than the income limits for each of the counties in Michigan, the national non-metro income limit **is not to be applied** to any LIHTC projects located in Michigan.]

H.R. 3221 states "The measurement of area median gross income applied for residential rental property located in certain rural areas is modified in the case of projects subject to the low-income volume limits. In the case of such properties located in rural areas (as defined in Section 520 of the Housing Act of 1949), the income targeting rules of low-income housing credit are applied by reference to the greater of the otherwise applicable area median gross income standard, or the na-

tional non-metropolitan median gross income." In other words, properties located in certain rural areas (as defined in Section 520 of the Housing Act of 1949) and financed with 9% tax credits may use the higher of the county median income or the national non-metropolitan area median income to calculate rents and income limits.

- Definition of Rural Area – Defined in Section 520 of the Housing Act of 1949. The USDA website provides information on determining if a particular project qualifies as rural. The website is http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do.
- Applies only to projects located in rural areas that are not financed with tax-exempt bonds.
- Applies only to projects financed with 9% tax credits. The change only applies to buildings receiving a tax credit allocation from the state's housing credit volume cap; and not to tax-exempt bond-financed buildings that receive credits without a credit allocation.
- Does not apply to buildings located in metropolitan areas.
- For the Fiscal Year 2008, the non-metro median income limit is $49,300 (which would then be adjusted for family size as discussed in Part 418).
- Does not apply to the HOME program.
- Rent amounts are also impacted by this provision. Rent amounts are calculated based on the income limit that applies to the project.

For other information related to projects located in rural areas, see Chapter 11 (More Information about Rural Projects).

Part 412 Section 8 Income Limits

HUD publishes Section 8 income limits for Section 8 projects. The Section 8 income limits are no longer used for LIHTC projects.

HUD continued to apply a hold-harmless policy to the now separately published Section 8 limits for 2009; however, HUD has indicated that beginning with FY2010, it will no longer hold harmless its Section 8 Income Limits. HUD released two sets of income limits for FY2010: One for HUD Projects and the other for MTSP Projects. The appropriate Section 8 income limits can be accessed as follows:

Section 8 Income Limit Data Set http://www.huduser.org/datasets/il.html

Projects with both LIHTC and HUD financing must comply with both the HUD Section 8 Income Limits and the MTSP Income Limits (or, if applicable, the HERA Special Rates).

Part 414 Effective Date of Income Limits and Annual Updates

As noted above, HUD has issued separate income limits and rents for LIHTC projects. The HUD income limits are the source documents that are used to derive the LIHTC maximum income limits and maximum rents. Pursuant to IRS Revenue Ruling 94-57, LIHTC property owners may rely on previously issued income limits and derived rent ceilings for 45 days after HUD releases new in-

come limits. This 45 day period began March 19, 2009 and ended May 2, 2009. After May 2, 2009 the attached income and rent limits must be used to determine income eligibility and maximum rent ceilings for program compliance purposes. The new rents established pursuant to these standards may be no greater than the stated maximum for program compliance purposes.

Part 416 Sample Income Limit Table

HUD publishes median income for the 50% AMI level (very low income) information for Michigan and for each individual county or metropolitan statistical area on an annual basis. For example, the income figures published for Alger County, effective 04/06/01, as adjusted for each household size, are as follows:

	1	2	3	4	5	6	7	8
30% AMI	$9,000	$10,260	$11,550	$12,840	$13,860	$14,880	$15,930	$16,950
40% AMI	$12,000	$13,680	$15,400	$17,120	$18,480	$19,840	$21,240	$22,600
50% AMI	$15,000	$17,100	$19,250	$21,400	$23,100	$24,800	$26,550	$28,250
60% AMI	$18,000	$20,520	$23,100	$25,680	$27,720	$29,760	$31,860	$33,900

For information about 80% AMGI, 125% AMGI, and 150% AMGI, see Chapter 11.

Note: The statewide median income (as opposed to the area median gross income) is/was used only for purposes of the LIHTC allocation application. The statewide median income is not applicable at all after the project is placed in service or at any time during the project's compliance period.

Part 418 Income Limits are Adjusted for Family Size

IRC § 142(d)(2)(B) and page 1172 of the "Blue Book"

Area median incomes are adjusted for family size in accordance with IRS and HUD guidelines. As shown in the table below, a family of four generally is treated as having low or moderate income if the family has an income of 50 percent or less of the area median gross income. (The table below is included for illustration only. The owner/manager should not calculate the income limits itself and should only use those figures published by MSHDA and posted on the MSHDA website.)

Family Size	Family income as a percent of area median gross income
1	The median figure is multiplied by .7 or 70%.
2	The median figure is multiplied by .8 or 80%.
3	The median figure is multiplied by .9 or 90%.
4	Uses the median figure (100% of the particular AMI level)

5	The median figure is multiplied by 1.08 or 108%.
6	The median figure is multiplied by 1.16 or 116%.
7	The median figure is multiplied by 1.24 or 124%.
8	The median figure is multiplied by 1.32 or 132%.

For example, the area median income for Northfield County is $40,000. Therefore, the 50% area median income for Northfield County is $20,000. The 4-person income limit is, therefore, $20,000. The income limits for other household sizes were as follows:

	1 person	2	3	4	5	6	7	8
50% AMI	$14,000	$16,000	$18,000	**$20,000**	$21,600	$23,200	$24,800	$26,400
	20,000 x .7	20,000 x .8	20,000 x .9		20,000x1.08	20,000x1.16	20,000x1.24	20,000 x1.32

For information about 80% AMGI, 125% AMGI, and 150% AMGI, see Chapter 11.

Part 420 Minimum Income Requirements

The LIHTC program sets only a maximum allowable qualifying income amount and does not set minimum requirements. An owner / manager may elect to set a minimum income for prospective and current tenants, however, such a requirement cannot be applied to prospective or current Section 8 tenants.

It is acceptable for an owner/manager to take into consideration sources of income (such as proceeds from student loans and withdrawals from savings accounts) that would not ordinarily be included as part of LIHTC income for the purpose of determining whether a non-Section 8 household meets the development's minimum income (and has the ability to pay the rent). These income sources, however, should not be listed on the LIHTC certification paperwork. For households with very low incomes, the owner/manager must include a note in the file indicating how the household intends to pay for rent and other living expenses. For example:

> *Mary resides in a LIHTC unit and has a monthly income of $300.00. The rent for her unit is $475.00 per month, which exceeds her monthly income. She has $40,000.00 in her savings account. The owner/manager should include a note in the tenant file indicating that Mary intends to withdraw funds from her savings account each month to pay the rent and her living expenses.*

For additional information regarding the prohibition against imposing minimum income requirements for Section 8 participants, see Part 542 (Discrimination against Section 8 and HCV Participants is Prohibited). For a discussion about co-signers and guarantors for persons who do not meet a development's minimum income or credit rating requirement, see Part 632 (Guarantors and Co-signers).

Section 4B - Maximum Gross Rent

Part 422 Maximum Gross Rent

IRC Sec. 42(g)(2)

"**Gross Rent**" means all amounts paid by a tenant for rent, determined by Section 42(g)(2) of the Code. If the tenant pays utilities directly, Gross Rent shall include any utility allowance prescribed by the secretary. The **maximum gross rent** means the rent for a Low-Income Housing Unit, including Utility Allowances, but excluding:

(1) any payments under Section 8 or any comparable rental assistance program;
(2) any fees for supportive services paid to the owner by a governmental assistance program or a tax exempt organization if that program or organization gives assistance for rent and the amount given for rent is not separable from the amount given for supportive services; and
(3) rental payments to the owner as far as an equivalent amount is paid under the RD program.

Note the following:

- The appropriate rent limit is calculated based on the income limits (i.e. **MTSP, HERA Special, or Rural**) being utilized by the LIHTC Project, as discussed in Part 404 (Which Income Limits to Use). However, as discussed in Part 434, the Gross Rent Floor Election, when triggered, may result in a higher allowable rent than that calculated based on the income limits.

- Unlike HUD subsidy programs, such as Section 8 and Section 236 in which tenants pay 30% of their income for rent, the amount of rent paid by a LIHTC resident is not necessarily based on the actual income amount of that particular household. LIHTC rents are not adjusted upward or downward when a resident experiences an increase or decrease in household income.

- The gross rent charged to the household cannot exceed the maximum allowable. The gross rent includes the tenant-paid out-of-pocket amount plus an allowance for tenant-paid utilities. Utility Allowances are discussed in Part 438.

- Maximum gross rent must include all **mandatory fees**, as discussed in Part 432 (Other Lease Fees and Charges to Residents of LIHTC Units).

- The maximum allowable rent that can be charged to a unit or household residing in a LIHTC project is governed by the Regulatory Agreement (see Part 164) for the project.

- Rent limits for Michigan LIHTC projects correspond to the income limit that is applicable to that tenant. For example, if the qualifying income level is 60% AMGI, then the rent must be restricted at or below that level as well.

- MSHDA-generated tables (published on the MSHDA website) must be used in determining the appropriate maximum allowable rent.

- Rental assistance from government-based programs is not included as part of gross rent. Rental Assistance is discussed in Part 476. RHS rental assistance and rent overages are discussed further in Part 478.

Part 424 Rent Limits Based on Number of People - Projects Allocated Credit in 1987, 1988, and 1989

Rent limits for LIHTC projects that were allocated tax credits in 1987, 1988, or 1989 determined gross rent based on the number of persons residing in the unit. {As of the effective date of this Compliance Manual, all projects that received allocations of credit during 1987, 1988, and 1989 have completed their required 15 years compliance period and are no longer in the LIHTC program}. Rent limits for all other projects are based on the number bedrooms in the unit, as discussed in Part 426.

Note: A few elderly or special needs projects that have MSHDA taxable or tax-exempt bonds have rent limits that are based on one person per unit. Owners/management agents of LIHTC projects that are subject to that MSHDA-financing requirement should comply with the rent limit that is lowest (i.e. most restrictive).

Part 426 Rent Limits Based on Number of Bedrooms Projects Allocated Credit after January 1, 1990

IRS Revenue Ruling 94-9

Projects receiving tax credit allocations after January 1, 1990 must be rent-restricted based on an imputed, not actual, family size. Family size is imputed based on the number of bedrooms in the following manner:

1. An efficiency (a unit that does not have a separate bedroom) – 1 individual; and
2. A unit that has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

For example:

	Income Limits (by household size)		
One Person	*Two Persons*	*Three Persons*	*Four Persons*
$10,000	*$15,000*	*$20,000*	*$25,000*

The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($20,000 x 30%) divided by 12 months equals $500]. The $500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying a two-bedroom unit.

Further, if the size of the household increases or decreases, the maximum allowable rent that can be charged for that unit does not change.

Part 428 Changes in Rent Limits and Rent Amounts

MSHDA will publish rent limits whenever HUD issues new income figures, which generally occurs once per year. If the rent limits for the county in which a project is located change in the middle of a lease term, and the maximum rent that can be charged goes down, the owner must reduce the rents of all low-income units to conform to the new limits, regardless of the lease terms. The development has 45 days to implement the new rent amount. In situations in which rent limits rise during the term of a resident's lease, the development must comply with Michigan Landlord Tenant Law, including Michigan's Truth in Renting Act, in order to raise the rent in the middle of a lease term. Further, as discussed in Part 430, some LIHTC projects that have been placed in service for less than three years are subject to a limit on the amount that a tenant's rent can be increased.

For related topics, see Part 434 (Gross Rent Floor Election) and Part 462 (Updating Utility Allowances). The MSHDA website is discussed in Part 202. Michigan Landlord Tenant Law is discussed in Part 570.

Part 430 5% Cap on Rent Increases for Residents

While rent increases for targeted units may be permitted from time to time as HUD publishes median income limits, rent increases for targeted units will be limited to not more than 5% for any resident household during any 12 month period. This 5% limit applies to LIHTC projects that received an allocation of tax credits in the year 2002 or later. This 5% cap applies only for the first three years of the development's operation, commencing from the placed in service date listed on the IRS 8609 forms. The 5% cap applies to the actual tenant-paid portion of rent. For example:

Sunshine Villas is a LIHTC project that was placed in service in January 2009. At that time, the maximum allowable rent for a three-bedroom unit was $500.00 and the utility allowance was $79.00, for a maximum allowable tenant-paid rent of $421.00. [Sunshine Villas is subject to the 5% cap until January 2012.]

The Smith household moved into a three bedroom unit at Sunshine Villas in March 2009, at which time the household's tenant-paid portion of rent was $400.00 and the utility allowance was $79.00, for a total gross rent of $479.00.

In April 2009, new rent limits were published for Sunshine Villas, for which the maximum allowable rent for a three-bedroom unit was $550.00. In April 2009, new utility allowances became effective for Sunshine Villas. The new utility allowance for a three-bedroom unit was $65.00.

In March 2010, the Smith household's one-year lease expired and Sunshine Villas required that a new lease agreement be signed. Sunshine Villas considered raising the Smith household's rent. The most that the household's tenant-paid portion of rent can be raised

to is $420.00, which is 5% greater than the household's previous tenant-paid rent of $400.00. (Note: the actual tenant-paid portion of rent is used in this determination, not the maximum allowable tenant-paid portion of rent.) Though the maximum allowable tenant-paid rent for 2010 would have been $485.00 based on the new income limits less the new utility allowance ($550.00 less $65.00), the Smith household's rent can not be increased to more than $420.00.

[Note, even if there hadn't been any increase in the rent limit or a decrease in the utility allowances (i.e. the January 2009 figures remained in effect) because the household's gross rent ($479.00) was less than the maximum allowable gross rent ($500.00), a rent increase for the Smith household would still have been permissible upon lease renewal, but, again, only up to $420.00 for the tenant-paid portion.]

Please beware that the Michigan Landlord Tenant Law possibly would prohibit any increases in the tenant-paid portion of rent during the middle of the Smith household's lease term, as discussed in Part 570.

Note: Rents and rent increases on projects financed under a MSHDA Direct Loan Program must be pre-approved by MSHDA's Office of Asset Management. These rents and increases may be subject to a cap on the permissible rent increase percentage, which could be for a longer period than the first three years of the development's operation and could possibly be in effect for the entire mortgage period or life of the project. See Chapter 11 for additional information about MSHDA Direct Loan Projects.

For a topic similar to the 5% cap on rent increases for residents, see Part 904 (The Three-Year Tenant Protection Period).

Part 432 Other Lease Fees and Charges to Residents of LIHTC Units

There are special rules for what is or is not counted as rent. Generally, rent includes any fees *required* (mandatory) for occupancy at the project. Charges for any mandatory amenities and/or services such as meals, laundry, and housekeeping must be counted as part of the gross rent for the units. In general, fees for facilities or services may be charged to residents in addition to gross rent only if:

- The cost of the facilities is not included in eligible basis*;
- The facilities or services are truly optional; and
- A reasonable alternative is provided.

*A building's *Eligible Basis* reflects its development cost: construction, rehabilitation, and acquisition, to the extent allowable under the LIHTC Program. Such costs may include: parking lots, parking garages, carports, swimming pools, playgrounds, gyms, libraries, common areas, cable and/or internet access, apartment hook-ups for washers and dryers, etc. Eligible basis is discussed in Part 118.

Customary additional fees, such as damage deposits and pet deposits (except assistance animals) are those that are normally charged to renters in multi-family housing projects located in the same

geographical area (i.e., county and abutting counties) as the particular LIHTC project. Customary fees are permissible as long as the amounts are reasonable (i.e. closely approximated to the expected cost of providing a particular service or conducting such things as a rental or criminal history background check) and if they are charged to all tenants, including market rate tenants. However, an eligible tenant cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Tenant Income Certification and obtaining third party verifications of income and assets. Charges for any mandatory amenities and/or services such as meals, laundry, and housekeeping must be counted as part of the gross rent for these units.

Following is a brief discussion of various types of on-going fees and per-usage charges:

- Application Fee. Permissible if customary and reasonable. However, no fee can be charged for the special paperwork (i.e. TIC, third party verifications, checklist, etc.) that is required to establish a tenant's eligibility to reside in a LIHTC unit. Rental applications are discussed in Part 614.

- Cable Television Fees. These fees may be charged as long cable television is optional and a resident can receive a television signal without cable. Further, if the sole potential source of the cable service is provided/controlled by the owner/management agent, the amount of the fee must be reasonable. Cable television is not included as part of the "utility allowance".

- Carports, Garages, Parking Spaces. If a fee is charged to each resident for a parking space, a reasonable alternative must be available to the resident, or else that charge must be included as part of the rent. Charges for garage and carports are permissible only if the items were not included as part of the eligible basis of the project and there is adequate "uncovered" or "free" parking available as an alternative. See Part 118 (Eligible Basis) for additional information.

- Cleaning Fees. Fees charged to a tenant to clean the unit upon move-out in order to get the unit ready to re-rent are not permissible, except for "damages" to the unit. Generally, fees that are charged to the resident must be included in the gross rent calculation if they are non-refundable, a condition of occupancy, and no reasonable alternative exists. Non-refundable fees associated with returning a vacated unit to "rent ready" condition may not be charged (refurbishment fees, redecorating fees, administrative fees).

- Clubhouse Rental Fee. It is permissible to require that the resident provide a refundable damage deposit for use of the clubhouse. A cleaning fee for use of the clubhouse is permissible provided the amount is reasonable and customary.

- Community Fee. Not permissible. A "community fee" is a lump sum charge collected from residents of senior or independent living properties at the time of admission, in addition to the normal monthly fee. It may be called an entrance fee, admission fee, facilities fee, or some other name. Generally, it is not refundable, except in limited situations. The purpose of the community fee, when described at all, is often characterized as supporting the operation of the building's common areas and amenities or to cover the cost of landlord-sponsored social events.

- Credit/Debit Card Fees. Some properties may have a credit/debit card machine onsite (or contract with a third party company to provide this service) to allow tenants to pay rent us-

ing this method. The monthly fee incurred in having a machine onsite can be passed on to the specific tenants who elect to use this payment method as long as it is an optional fee and charged on a per-usage basis. The fee would be considered optional if the tenants have alternate methods of paying rent that do not include a fee (i.e. cash, check, etc.). The fee charged to the tenant may not surpass the actual cost incurred from the machine (or third party service provider) and must be disclosed to the tenant prior to processing the transaction. Management must keep documentation showing the actual costs of providing the service and the amount of the fee charged to tenants.

- Damage Fees. Permissible if based on actual repair costs for damages caused by the household.

- Early Lease Termination Fee. Permissible if reasonable and customary.

- Guest Fees. Charging a fee to the guests of residents to use the community swimming pool is not allowed if the pool was included in eligible basis. Management may restrict the number of guests that use the pool.

- Guest Unit. Some developments have a unit that is made available to guests for overnight stays. It is permissible to charge a fee for use of this unit only if the unit was not included as part of eligible basis.

- Internet Service. Internet access is not a "utility" thus it is permissible for a LIHTC development to require that tenants pay for optional internet service. The owner/manager cannot charge tenants a separate or additional fee for electricity usage associated with computer use.

- Late Fees. Permissible if customary and reasonable and charged to all tenants, including market rate households.

- Laundry Facilities / Coin-operated Washers and Dryers. Permissible if fee is reasonable and provided the cost of the washers and dryers was not included in eligible basis. It is permissible for the owner to keep the room locked for security purposes, provided all tenants have access to the room via key or other means.

- Lockout Fee. Permissible if customary and reasonable and disclosed in the lease agreement.

- Maintenance Fees. Some LIHTC projects are scattered site projects (single family housing or duplex units) and have outdoor spaces (yards, driveways, and sidewalks) that must be maintained. These maintenance activities are similar to those that an owner of a single family home would be responsible for. Fees for these maintenance activities can be assessed to LIHTC rental units if acceptance of the service is at the option of the resident (i.e. the tenant could elect to mow his or her own lawn rather than pay the management agent/service provider) and there are adequate facilities (such as an outdoor storage shed) in which tenants can store their own equipment (such as a lawn mover and shovels).

- Mandatory Fees. These are any fees required for occupancy at the project. Mandatory fees must be included as part of gross rent and cannot (when combined with the tenant-paid portion of rent plus the utility allowance) exceed the maximum allowable gross rent.

- Meals. The charge for optional meals is not part of rent where central meals are available, but are not mandatory. However, in order for the purchase of meals to be considered optional, kitchen facilities must exist in each residential unit so that residents have a practical alternative way to provide meals for themselves.

- Month-to-Month Tenancy**.** Fees for month-to-month tenancies cannot exceed the maximum allowable rent. For example, *the maximum allowable rent for a one-bedroom unit is $400. The rent for the unit is $375 (including the utility allowance). If the development charges a fee for tenants who elect a month-to-month tenancy, it cannot exceed $25*. For related discussions, see Section 6B (Lease Agreements) and Part 546 (Transient Persons).

- Non-Sufficient Funds (NSF) / Bounced Check Fee. Permissible if customary and reasonable.

- Office Equipment. It is permissible to charge tenants customary and reasonable fees for use of a copier machine, fax machine, internet, etc. The fee cannot include a fee for wear and tear on the office equipment (if it was included in eligible basis) or for electricity usage, but can include the cost of toner, paper, communication fees for fax machines, etc.

- Optional Fee. Permissible, if truly optional. For a fee to be optional, residents must have a viable alternate at no cost. For instance, to charge a fee for meals, the resident must have the option (allow access to adequate cooking facilities, such as a stove and refrigerator) to prepare his or her own meals.

- Optional Services. Fees for optional "luxury" services (such as housekeeping, hair grooming, drycleaning, transportation, and errand services) are generally permissible.

- Pet Fees and Pet Deposits. Permissible if customary and reasonable. No fee or deposit can be required for an assistance animal.

- Re-keying Fee. Permissible if customary and reasonable.

- Rent Concessions and Discounts. The bargained for rent discount, rent concession, or incentive an LIHTC household receives or contracts for is not treated as part of household income nor as part of gross rent. Rent cannot be charged for common area units.

- Renter's Insurance. If renter's insurance is mandatory for occupancy in a development, the cost must be included as part of gross rent. The combined amounts of tenant-paid rent, the utility allowance, renter's insurance, and other mandatory fees cannot exceed the maximum allowable rent. Optional renter's insurance does not have to be included as part of maximum allowable rent.

- Reservation / Unit Holding Fee. Fees assessed to leasing applicants to hold a particular rental unit for the household's future occupancy are permissible only if the fee is optional and applied to the household's security deposit or rent.

- Security Deposit. Permissible if customary, reasonable, and refundable. The security deposit must be handled in accordance with Michigan Landlord Tenant Laws (discussed in Part 570).

- Security systems. Mandatory features such as telephone service or cable television to allow guests into a secure apartment building are considered rent and therefore, the basic costs of these services must be included as part of gross rent. For example:

  The buildings at ABC Apartments have secure entry doors through which access is controlled using an intercom system that is connected to the telephone in each resident's apartment. Because this system is not optional, each resident must have telephone service in order to operate the security doors to receive their guests and visitors. The maximum allowable gross rent for a one-bedroom unit at ABC Apartments is $300. The tenant pays for heat and electricity, for which a $60 utility allowance has been established. (Telephone and cable television are not utilities and thus are not included as part of the utility allowance.) The lowest-priced basic telephone service that is sufficient to operate the security doors costs $14 per month. The maximum permissible tenant-paid rent is $226 ($300 maximum allowable less $60 utility allowance less $14 basic telephone service).

- Storage Fees. These are disallowed if the storage space was included in eligible basis and/or if payment of fees for storage units is not optional.

- Supportive Services. Permissible if optional. (Supportive services include assistance with daily living activities and personal care tasks such as bathing, dressing, and eating). For information about supportive services, see Part 876 (Ineligible Facilities) and Part 540 (Permanent Supportive Housing).

- Tenant Facilities. Not permissible if item was included in eligible basis. Such facilities include parking lots, swimming pools, playgrounds, gyms, libraries, and other types of common space.

- Transfer Fees. Permissible if reasonable and the transfer was voluntary and requested by the tenant. Not permissible if transfer is due to health and safety needs, reasonable accommodations, or damage to or inhabitability of the unit that is not the fault of the tenant (such as fire, tornado, etc.). Transfers are discussed in Part 848.

- Utilities. Utility allowances are discussed in Part 438.

- Verifications, Fees Charged for – See Part 336 (Documenting Why Third Party Verification is Not Possible).

- Washer/Dryer Hook-up or Connection Set-up Fees. If a unit has washer/dryer hook-up provisions (such as designated utility and water outlets), residents must be allowed to hook up their personal machines without a fee for the hook-up. Fees for hook-ups cannot be charged because it is presumed that the mechanical structures (such as water lines, electrical outlets, etc.) were included in eligible basis, unless these structures were specifically excluded from eligible basis in the LIHTC allocation application and/or cost certification.

  The following example appears in the 8823 Guide:

  The maximum rent for a two-bedroom unit is $800 per month. The owner charges $795. In addition to rent, the owner charges a one-time $35 hookup fee for the tenant's washer and dryer the month a tenant moves in. A new tenant moves in on June 1, 2007 and pays $830 for rent the first month. For July through December, the

tenant pays $795. The one-time hookup fee is included in rent for one month. The rent of $830 for June exceeded the monthly limit.

- Washer/Dryer Rental Fees. A reasonable fee can be charged, provided the cost of the machines was not included in eligible basis. [It is also acceptable for the washer/dryer to be leased from a third party company and then to bill or have the resident pay the rental fee, provided the amount paid by the resident is the exact (or lower than the) amount charged by the third party company.] (See Laundry Fees for information about coin-operated washer/dryers.)

- Washer/Dryer Storage Fees. It is not permissible to charge a "storage fee" when an unused washer/dryer is removed from the unit and placed in storage because the tenant elects not to pay extra for it.

- Washer/Dryer Usage Fees. It is not permissible to charge a household a separate fee for its specific, actual, or projected use of water, sewer, electricity, or gas (except in the case of a sub-metered utility, as discussed in Part 472). Utility allowances are already based on an estimated average usage level for the particular unit size. The utility allowance already takes into account that some households may use less or more utilities than another. No separate fee can be charged for utility usage, even if the fee (plus tenant-paid rent and utility allowance) does not exceed the maximum allowable rent. (See Laundry Fees for information about coin-operated washer/dryers.)

It is not permissible for a LIHTC project to charge or collect rent for the use of a common area residential unit by an employee, as discussed in Part 858 (Common Area Residential Unit) nor for the use of common space, as discussed in Part 862 (Common Space – Non-residential).

The owner must complete and submit a **Resident Fees form** (available on the MSHDA website) as part of the Annual Owner Certifications (discussed in Part 704).

For related discussions, see Part 878 (Commercial Space), Part 118 (Eligible Basis), Part 438 (Utility Allowances), and Part 872 (Community Service Facility).

For information about compliance fees required for LIHTC projects, see Part 650 (Fees).

Note: MSHDA-financed projects must obtain pre-approval from MSHDA's Office of Asset Management prior to assessing any regularly recurring monthly fees for any residents residing in restricted units, regardless of whether the fee is mandatory for all residents or for an optional service elected by the resident.

Part 434 Gross Rent Floor Election

IRC 42(g)(2)(A), IRS Revenue Procedure 94-57

The area median gross income (AMGI) figures are published annually by the Department of Housing and Urban Development. As the AMGI of an area changes, the maximum allowable rent for a particular unit will change. The maximum gross rent that can be charged may fluctuate up and down as the county median income fluctuates year to year. If the AMGI increases, the maximum

allowable gross rent will increase. If the AMGI decreases, a reduction in the gross rent may be required. However, the gross rent never has to be decreased to an amount less than the gross rent floor as applied to a unit. The gross rent floor is the maximum rent that was applicable for the earliest period the building was included in determining whether the project qualifies as a low-income housing project. The gross rent charged never has to drop below the initial gross rent floor. That initial gross rent floor is fixed by the owner's election of either (1) the gross rent level in effect the year the LIHTC Allocation was received, or (2) the gross rent level in effect when the building was placed in service. The owner makes its election by completing of a Gross Rent Floor Election form (which is available on MSHDA's website in the Combined Application for Rental Housing Programs).

For a similar topic, see Part 408 (HUD Hold Harmless Projects).

Note: The HOME program also has a gross rent floor. However, the method of determining the gross rent floor for purposes of the HOME program differs from that of the LIHTC program.

Part 436 Rents in MSHDA Direct Loan Financed Projects

Owners/managers of projects that have multiple sources of government financing (such as tax-exempt bonds and taxable bonds) must follow the rent requirement that is most restrictive. IRC 142(d) does not have mandatory rent restrictions for bond programs. MSHDA, however, may impose rent restrictions during the bond commitment process and in the bond regulatory agreements. The maximum allowable rent that can be charged to a unit designated as "tax-exempt" is governed by the Regulatory Agreement and the Mortgage Loan Commitment Report. The rent limits for tax-exempt units often, but do not always, correspond to the income limit that is applicable to the household. Rent amounts and changes in MSHDA Direct Loan projects must be pre-approved by MSHDA's Office of Asset Management.

Section 4C - Utility Allowances

Part 438 Overview of Utility Allowances

Utilities include gas, heat, electricity, water, water heating, cooking, sewer, and trash, where applicable. Utilities do not include telephone, A/C (unless windows do not open), internet, or cable television (unless necessary for building security entrance system or other non-optional purpose).

When utilities are paid directly by the tenant (as opposed to paid by or through the development), a **utility allowance** must be used to determine the maximum allowable tenant-paid rent. Fees charged to the residents for utilities the owner pays directly to the utility company are considered rent, unless the units are sub-metered to account for actual consumption by the household.

The utility allowance must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent. *For example:*

> *The rent schedule published by MSHDA* lists the maximum allowable rent for a two-bedroom unit in ABC County as $500. Sam Smith applies to rent a two-bedroom unit at Michigan Villas, a LIHTC project located in ABC County. At Michigan Villas, water, sewer, and trash are included in rent. The tenant pays for gas and electricity. Michigan Villas must calculate a utility allowance for the gas and electricity paid by the tenant. The utility allowance must be subtracted from the maximum allowable rent listed on the MSHDA rent schedule to arrive at the maximum rent that can be charged to a tenant (i.e. the tenant-paid portion of rent). Michigan Villas uses the local PHA utility allowance schedule, which lists $35 for electricity and $70 for gas for a two-bedroom unit. The utility allowance that Michigan Villas must use is $105 for its two-bedroom units. Michigan Villas must subtract the $105 utility allowance from the $500 maximum allowable rent listed on the MSHDA schedule. The most that Michigan Villas can charge Sam Smith for a two-bedroom unit is $395.*
>
> **As discussed in Part 404, the owner must use the rent tables published by MSHDA, which are based on the income schedules published annually by HUD.*

If all utilities are included in the household's gross rent payment (i.e. paid by the development directly to the provider), no utility allowance is required and the maximum rent that can be charged to the household is the maximum gross rent from the MSHDA rent tables.

Since using the incorrect utility allowance can result in overcharging rents and is an event of noncompliance that is reported to the IRS, care should be taken in making a correct calculation and in using current utility allowance figures. Sources of utility allowances are discussed in Part 442. Section 1.42-10 requires owners to review all utility rates at least once during the calendar year and update the utility allowance if there is a change. New utility allowances must be used to compute rents that are due **90 days** after the effective date of the new allowances. Updating the utility allowance is discussed in Part 462.

Part 440 Utility Allowance Regulations and Policies

1. "Section 1.42-10" - Treasury Regulation Section 1.42-10 (26 C.F.R. Part 1 § 42) - In order to qualify as a rent-restricted unit within the meaning of section 42(g)(2), the gross rent for the unit must not exceed 30 percent of the imputed income limitation applicable to the unit. Section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary after taking into account the determinations under section 8 of the United States Housing Act of 1937.

   Section 1.42-10(a) provides that if utility costs for a residential rental unit are paid directly by the tenant, then the gross rent for that unit includes the applicable utility allowance as determined under § 1.42-10. Section 1.42-10(b) provides rules for calculating the appropriate utility allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building is not described in (1) or (2) above and the building's rents and utility allowances are reviewed by HUD on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings). As discussed below, additional methods were added with the July 2008 Amendment.

2. "The July 2008 Amendment" - Internal Revenue Bulletin 2008-39 was published on July 29, 2008 and contained final regulations that amended the utility allowances regulations concerning the low-income housing tax credit. The final regulations update the utility allowance regulations found in Section 1.42-10 to provide new options for estimating tenant utility costs. The additional methods are the agency estimate, HUD utility schedule model, and the energy consumption model.

3. "IRS Notice 2009-44" (Sub-metered Units) - The purpose of this notice was to clarify that, under § 1.42-10 of the Income Tax Regulations (the utility allowance regulations), utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant for purposes of § 42(g)(2)(B)(ii) of the Internal Revenue Code. Sub-metered units are discussed in greater detail in Part 472.

4. MSHDA Utility Allowance Policy Statement - The most current version of this policy statement is available on the MSHDA website. The purpose of this Policy Statement is to outline which method(s) an owner of a Michigan LIHTC project may utilize. It also provides a summary of the procedure to follow when requesting a utility allowance change for a LIHTC project.

Part 442 Sources of Utility Allowances for LIHTC Projects

IRS Regulation 1.42-10 dictates the form of utility allowance that applies to particular units. IRS Notice 89-6 lists the different sources of utility allowances for tax credit developments, which include the following:

- RHS Projects – Use RHS utility allowances – See Part 446.
- HUD Regulated Buildings – Use HUD approved utility allowances – See Part 448.

- Individual Apartments Occupied by Residents Who Receive HUD Assistance (Section 8 Existing, etc.) – See Part 448.
- MSHDA – Financed Projects – See Part 460.
- LIHTC Buildings without RHS or HUD Assistance – discussed below.

Utility allowances are applied individually to each building in the project. Therefore, it is possible that an owner/management may be required to use different utility allowances for different buildings in a single project and in some circumstances for individual units within the same building.

Utility Allowances for LIHTC Buildings without RHS or HUD Assistance or MSHDA-Financing

IRS Treasury Regulation 1.42-10 which governs LIHTC project utility allowance (UA) calculations has been revised. This change takes effect for taxable years beginning on or after July 29, 2008. If a building is neither RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units is the applicable PHA utility allowance. However, if a local utility company estimate is obtained for any unit in the building, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building (except those units that are HUD-regulated or RHS-assisted).

Options/sources for determining utility allowances are as follows:

1. Public Housing Authority Estimate – discussed in Part 450.
2. Local Utility Company Estimate – discussed in Part 452.
3. Agency Estimate based on Actual Consumption – discussed in Part 454.
4. Agency Estimate based on Similar Building – discussed in Part 454.
5. HUD Utility Schedule Model – discussed in Part 456.
6. Energy Consumption Model – discussed in Part 458.

Part 444 Determining the Appropriate Utility Allowance

Determining the Appropriate Utility Allowance	
1	**Is the building RHS-assisted?** Yes. Use the RHS Utility Allowance (discussed in Part 446). No. Proceed to Question #2.
2	**Are there one or more residents in the building who receive RHS Rental Assistance?** Yes. Use the RHS Utility Allowance (discussed in Part 446). No. Proceed to Question #3.
3	**Is the building HUD-regulated?** Yes. Use the HUD Utility Allowance (discussed in Part 448). No. Proceed to Question #4.
4	**Are there one or more residents in the building who receive HUD Rental Assis-**

	tance? Yes. Use the HUD Utility Allowance (discussed in Part 448) for that/those resident(s). For all others residents, proceed to Question #5. No. Proceed to Question #5.
5	**Is the building/project MSHDA-financed?** Yes. Use the MSHDA Utility Allowance (discussed in Part 460). No. Proceed to Question #6.
6	LIHTC projects that are not RHS-assisted, HUD-regulated, or MSHDA financed have the option of using one of the methods discussed in Part 442 (Utility Allowances for LIHTC Buildings without RHS or HUD Assistance or MSHDA-Financing).

Part 446 Utility Allowances for Rural Housing Services ("RHS") Projects and Residents (Method #1)

This method is available only to LIHTC projects that are RHS-financed.

If a project, building, or unit receives assistance from Rural Housing Services, the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by RHS for the building. The owner/management agent must contact Rural Housing to obtain the utility allowance figures.

RHS-Assisted Buildings – If a building received assistance from RHS, such as a mortgage or Section 515 financing, the building is considered an RHS-assisted building. The applicable utility allowance for all rent-restricted units in the building is the current RHS utility allowance, regardless of whether or not the building also receives other state or federal assistance.

Tenants receiving RHS Rental Assistance – If *any* resident receives RHS rental assistance payments, the applicable utility allowance for the entire building, (including any units occupied by residents receiving HUD rental assistance payments and including tenants in the building who do not receive RHS rental assistance) is the applicable RHS utility allowance.

For additional information about LIHTC projects that have RHS financing, see Part 1118 (Qualifying Tenants in RHS Projects for LIHTC Units).

Additional information about utility allowances, in general, is discussed in Part 474.

Part 448 HUD Regulated Buildings and Units (Method #2)

This method is available only to LIHTC projects that are HUD-regulated, but not RHS-financed (see Part 444).

HUD Regulated Buildings

If a building is regulated by HUD or participates in a HUD-financed program (such as a below-market HUD loan program, Section 8, and Section 236), the applicable utility allowance for all rent-restricted units in the building is the HUD utility allowance. Note: there is an exception to this rule, i.e., if a resident receives RHS rental assistance, in which case the entire building that the resident

is located in is subject to the RHS utility allowance. The owner/management agent must contact HUD to obtain the HUD utility allowance.

HUD Assisted Units

The public housing authority (PHA) utility allowance established for the Section 8 Existing Housing Program must be used for a tenant receiving HUD rental assistance who resides in a building that is neither RHS-assisted nor HUD-regulated and in which there are no tenants who receive RHS tenant assistance. In other words, the PHA utility allowance must be used for Section 8 voucher or certificate holders. (Note: If any residents in the building receive RHS rental assistance, the RHS utility allowance applies to the entire building, including the Section 8 unit.)

The utility allowance of the particular PHA that granted the voucher or certificate must be used for that household. A copy of the utility allowance must be kept in the Tenant File (discussed in Part 646). The utility allowance for the non-HUD assisted units in the building can be based on any of the acceptable methods discussed in this Section of the compliance manual.

For additional information about certifying Section 8 participants, see Chapter 11 (Qualifying Housing Voucher Participants for LIHTC Units).

Additional information about utility allowances, in general, is discussed in Part 474.

Part 450 Public Housing Authority Estimate (Method #3)

This method is available only to LIHTC projects that are not RHS-financed, HUD-regulated, or MSHDA-financed.

For a LIHTC building that is neither RHS-assisted nor HUD-regulated, and in which no resident in the building receives RHS rental assistance, the owner/manager can elect to use either a utility allowance calculated by the Public Housing Authority (PHA) in the area that the project is located or the MSHDA PHA Utility Allowance.

Local PHA Utility Allowance - The owner/management agent should contact the local PHA directly to obtain its utility allowance figures.

MSHDA PHA Utility Allowance – MSHDA publishes utility allowances for every metropolitan statistical area and county in the state. The most current MSHDA PHA Utility Allowance is posted on the MSHDA website, which is discussed in Part 202. (Note: MSHDA-financed projects must use the method discussed in Part 460, not the MSHDA PHA utility allowance.)

Additional information about utility allowances, in general, is discussed in Part 474.

Part 452 Local Utility Company Estimate (Method #4)

This method is available only to LIHTC projects that are not RHS-financed, HUD-regulated, or MSHDA-financed.

An interested party (including a low-income resident, a building owner, or MSHDA) may request the utility company estimation of actual utility consumption for each unit of similar size and con-

struction in the building's geographic area. Such an estimate must be in writing, signed by a local utility company official, prepared on the utility company's letterhead, and maintained in the Development File (discussed in Part 214) for the project.

The interested party does not participate in the calculation of this estimate. Owners must provide notification to MSHDA and the residents at the beginning of the 90 day period established in Regulation 1.42-10. MSHDA will review the utility allowance request during the 90 day period and will request additional information if necessary.

A utility company estimate can replace the PHA utility allowance. However, a utility company estimate does not supersede the Section 8 or RHS utility allowance for buildings or projects that are required to use those utility allowance sources by LIHTC regulations.

Important Notes:

(1) Utility "averages" are not the same as utility "estimates".
(2) The estimate provided by the utility company must be based on the geographic area in which the project is located. It should not be based on the particular project's utility usage, solely. If no utility company will provide estimates for future costs based on the geographic area, averages calculated from a specific property's usage do not qualify as utility company estimates and the owner must use a different method of calculating utility allowances.

Deregulated Utility Service Areas

In deregulated areas, an estimate from one utility company is allowed even if several companies can provide the same utility service to the unit. However, in order for that utility company's rates to be used, the estimate must come from a provider that actually offers utility services to the building.

The IRS regulation (Bulletin 2008-39 published on September 28, 2008) requires that the written local estimate include all "component deregulated charges" for providing the utility service. The estimate must include all components of the utility service if the service is divided between two or more types of service providers (for example, electric generation and electric transmission).

Additional information about utility allowances, in general, is discussed in Part 474.

Part 454 Actual Consumption Method (Method #5)

This method is available only to LIHTC projects that are not RHS-financed or HUD-regulated.

This Part will discuss the **Agency Estimate** based on **actual usage data**. (The utility allowance method involving an **Agency Estimate based on similar buildings** is not yet available in Michigan.)

The Actual Consumption option permits a building owner to obtain a utility estimate from its state housing agency for each unit in a building. The agency estimate will take into account the local utility rates data, property type, climate variables by region in the state, taxes and fees on utility charges, and property building materials and mechanical systems.

Time Frame and Effective Dates

Utility allowances must be updated at least annually. A request for a new or updated utility allowance based on Actual Consumption may be submitted to the MSHDA at any time during the year;

however, requests may not be submitted more frequently than once yearly. A request to change utility allowances must be submitted to MSHDA at least 90 days prior to the proposed change. The owner is responsible for submitting a new request at least 90 days before the expiration of the utility allowance in effect. For example:

> *ABC Apartments' utility allowance using the Actual Consumption method was approved for a **June 1, 2009** implementation date and is effective for one year, expiring May 31, 2010. The owner desires to use the Actual Consumption method again for 2010. The owner must submit a new request no later than **March 3, 2010**, which is 90 calendar days prior to June 1, 2010.*

Owners are required to submit information from the utility provider showing actual usage and rates. Actual consumption data must be no more than *60 days* old when submitted to MSHDA for review. Continuing the previous example:

> *The most recent data used to arrive at the proposed utility allowance must no be older than **January 2, 2010**, which is 60 days prior to the March 3, 2010 submission deadline.*

Sample data must include twelve months of utility invoices for a representative number of continuously occupied units (occupied 50 of 52 continuous weeks) as specified in the utility allowance instructions. Continuing the previous example:

> *Units used in the calculation of the proposed utility allowance must have been occupied for at least 50 weeks during the period of **January 2, 2009 through January 2, 2010**.*

The Utility Allowance Owner Certification must be signed by the owner or an authorized management agent representative. The application date of the Certification may be no later than 60 days beyond the end of the twelve month period used to calculate the utility allowance. Continuing the previous example:

> *The effective date of the Certification must be **March 3, 2010 or earlier**, which is no later than 60 days beyond the January 2, 2009 through January 2, 2010 twelve month data period.*

Required Documentation

Owners using this option must complete a Consumption Data Certification Workbook (an Excel spreadsheet), the Utility Allowance Owner Certification form, and provide backup documentation. An administrative fee is required. The Utility Allowance Owner Certification form, along with the Utility Allowance Documentation form (discussed in Part 470), must also be submitted to MSHDA annually with the year-end forms. (The Excel workbook and forms can be obtained on the MSHDA website.)

MSHDA Approvals and Denials

The owner must receive MSHDA Compliance's approval of the requested utility allowance prior to implementation. Owners that submit complete and accurate information will receive email notification from MSHDA within 45 days of receipt of the information approving the request, or requesting additional information. Owners who do not receive an email within 45 days must contact MSHDA Compliance. Non-receipt of an email is not considered MSHDA approval. If MSHDA grants approval of the requested utility allowance, it will be effective for one calendar year. Approved utility

allowance changes cannot be implemented prior to the end of the 90 day review period even if the owner receives MSHDA approval prior to that date. The owner must pay all costs incurred in obtaining utility estimates and providing notification to MSHDA and residents.

Projects that are not permitted to use the Agency Estimate option

A project to which any of the following applies is excluded from submitting a utility allowance request under the Agency Estimate option:

- The Project has any unresolved non-compliance issues (including but not limited to an uncorrected 8823). Until such time as compliance deficiencies are remedied, the project cannot submit utility allowance change requests under the Actual Consumption or HUD Model methods.
- The Project is not able to provide twelve months of continuous utility usage data. New projects must use the PHA rates (method #3) until one year of actual consumption data is available. If it is not possible to submit a sample size that has continuous occupancy due to high vacancies or other extenuating circumstances, the owner must contact MSHDA Compliance.
- Owners not able to obtain adequate consumption history from the utility company must utilize an alternative methodology to calculate the utility allowance.
- The Project is RHS assisted, HUD-regulated, or MSHDA-financed.

Administrative Fee

All requests for approval of utility allowance changes under the Agency Estimate option require an administrative fee of $3.00 per unit with a minimum of $50.00 and a maximum of $300.00 to be submitted at the time of the request. Requests will not be reviewed until the required fee has been received.

Additional information about utility allowances, in general, is discussed in Part 474.

Part 456 HUD Utility Schedule Model (Method #6)

Treas. Reg. §1.42-10(b)(4)(ii)(D). *This method is available only to LIHTC projects that are not RHS-financed, HUD-regulated, or MSHDA-financed.*

An owner may calculate utility allowance estimates using the HUD Utility Schedule Model which is found on the HUD web site at www.huduser.org/resources/utilmodel.html. The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric sources (lighting and refrigeration). The HUD Utility Schedule Model also incorporates building location and climate. This model requires the identification of a weather station in close proximity of the project and requires the owner to collect local utility rate data.

Time Frame and Effective Dates

Utility allowances must be updated at least annually. A request for a new or updated utility allowance based on the HUD Utility Model may be submitted to the MSHDA at any time during the year; however requests may not be submitted more frequently than once yearly. A request to change utility allowances must be submitted to MSHDA at least 90 days prior to the proposed change. The owner is responsible for submitting a new request at least 90 days before the expiration of the utility allowance in effect.

Required Documentation

Owners using this model will need to provide MSHDA with documentation providing the source and content of all factors entered into the model spreadsheet. Utility rates used for the HUD Utility Schedule Model must be no older that the rates in place 60 days prior to the date the utility allowance will change. An administrative fee is required.

MSHDA Approvals and Denials

The owner must receive MSHDA Compliance's approval of the requested utility allowance prior to implementation. Owners that submit complete and accurate information will receive email notification from MSHDA within 45 days of receipt of the information approving the request, or requesting additional information. Owners who do not receive an email within 45 days must contact MSHDA Compliance. Non-receipt of an email is not considered MSHDA approval. If MSHDA grants approval of the requested utility allowance, it will be effective for one calendar year. Approved utility allowance changes cannot be implemented prior to the end of the 90 day review period even if the owner receives MSHDA approval prior to that date. The owner must pay all costs incurred in obtaining utility estimates and providing notification to MSHDA and residents.

Projects that are not permitted to use the HUD Utility Schedule Model

A project to which any of the following applies is excluded from submitting a utility allowance request under the HUD Utility Schedule Model.

- The project has any unresolved non-compliance issues (including but not limited to an uncorrected 8823). Until such time as compliance deficiencies are remedied, the project cannot submit utility allowance change requests under the Actual Consumption or HUD Model methods.

- New projects must use the PHA rates (Method #3) until the earlier of the date the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the credit period.

- The project is RHS assisted, HUD-regulated, or MSHDA-financed.

Administrative Fee

All requests for approval of utility allowance changes under the HUD Utility Schedule Model option require an administrative fee of $150.00 per project to be submitted at the time of the request. Requests will not be reviewed until the required fee has been received.

Additional information about utility allowances, in general, is discussed in Part 474.

Part 458 Energy Consumption Model (Method #7)

This method is NOT available in Michigan at this time.

The Energy Consumption Model is sometimes referred to as the **Engineering Method**.

The Energy Consumption Model allows building owners to retain the services of a qualified professional to calculate utility allowances based on an energy consumption model. A building owner may calculate utility estimates using an energy, water, and sewage consumption and analysis model. The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by the agency that has jurisdiction over the building, and the qualified professional and the building owner must not be "related" within the meaning of section 267(b) or 707(b). The energy consumption model option is beneficial for housing using new energy-reducing technologies, such as solar and other renewable energy systems, because the estimate is based on the specific building and its particular energy saving features.

MSHDA does not have an approved list of engineers/qualified professionals at this time. Therefore the Energy Consumption Model **is not** an allowable method for utility allowances in Michigan at this time.

Part 460 LIHTC Projects with MSHDA Direct Loan Financing (Method #8)

Utility allowances for projects with MSHDA-financing (i.e. taxable and tax-exempt bonds), are calculated by the Asset Management Division of MSHDA and are updated on an annual basis.

Additional information about utility allowances, in general, is discussed in Part 474.

Part 462 Updating the Utility Allowances

Utility allowances need to be reviewed and updated according to the schedule below, whichever occurs first:

a) At least annually;
b) When the rents for a project or building are changed or there is a change in who (tenant or landlord) pays the utilities;
c) Within 90 days of an update by HUD, RHS, PHA, or local utility supplier; or
d) Within 90 days of a change in the applicable allowance (e.g., a tenant begins to receive HUD Section 8 rental assistance).

Criteria "a" and "c" above are discussed further below.

a) It is the owner's responsibility to obtain updated utility allowances **at least annually**. Even if the allowance does not/did not change since the last update, the owner must

have current utility documentation on site or a letter confirming that the prior utility allowances are still applicable. The owner must also provide utility allowance information with its annual report to MSHDA.

c) It is also the owner's responsibility to determine when the utility allowance is updated and to obtain that update. For owners using a government source (HUD, RHS, PHA, etc.) for its utility allowance, it is the owner's responsibility to periodically contact or track whether that agency has updated its utility allowance. Noncompliance could occur if the source has updated the utility allowance and the owner has not made rent adjustments, if necessary, within the 90 day time frame discussed above.

Example: An owner obtained a PHA utility allowance letter in May and the PHA then adjusted its utility allowance on June 1. The owner must apply the new utility allowances to rents due 90 days after June 1 (i.e., rents due on and after September 1). The owner cannot wait until the following May to get an updated letter.

Also note the following in regard to utility allowance updates:

- When using the Energy Consumption Model (Method #7), reviews must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

- Building owners may choose to calculate new utility allowances more frequently than once annually unless the method being used prohibits multiple submissions. The Actual Consumption Method (Methods #5) and the HUD Utility Schedule Model (Method #6) prohibit multiple submissions.

Part 464 Adjusting Tenant Rents When Utility Allowances Change

To remain in compliance, owners must utilize a correct utility allowance in order to properly determine unit rents. When a utility allowance changes, rents must be refigured as of the implementation date of the new utility allowance to avoid violating the gross rent limitations, as discussed in Section 4B (Maximum Gross Rent).

An increase in the utility allowance will increase the gross rent and could cause the rent to be greater than the maximum allowable rent, in which case the tenant-paid portion of rent must be lowered immediately, even if the change takes place in the middle of a lease term. For example:

The maximum allowable rent for a one-bedroom unit in JKL County was $375 for 2008. The utility allowance for a one-bedroom unit in 2008 was $69. The maximum permissible tenant paid portion of rent for a one-bedroom unit in JKL County was $306 ($375 less $69). Sunshine Apartments, a LIHTC project located in JKL County, charged residents of one-bedroom units a rent amount (tenant paid portion) of $305. This rent amount was within LIHTC guidelines because it was less than or equal to $306.

In 2009, new rent and utility allowance schedules were published. The maximum allowable rent was $380 for a one-bedroom unit and the utility allowance increased to $78. The maximum permissible tenant-paid rent is $302 ($380 less $78). To remain in compliance, Sun-

shine Apartments must lower the tenant-paid portion of rent for its one-bedroom units from $305 to $302.

No adjustment in rent would be required if the tenant-paid portion of rent plus the new utility allowance was less than the rent limit. Modifying the above example:

In 2009, the tenant-paid portion of rent was $302 and the utility allowance was $78. The gross rent (tenant-paid rent plus the utility allowance) was $380, which meets the requirement that the gross rent amount be less than or equal to the rent limit. In 2010, the rent limit remained the same at $380, however, the utility allowance decreased to $71. The gross rent for 2010 is $373 ($302 tenant-paid portion plus $71 utility allowance).

Caution: Rent Increases in the Middle of a Lease Term May Not Be Permissible

It appears that rent increases assessed to tenants resulting from decreases in utility allowance estimates may violate Michigan Landlord Tenant Law and Michigan's Truth in Renting Act. Owners/management agents should **consult legal counsel** before increasing a tenant's rent (i.e. the tenant-paid portion of rent) during the middle of a lease term.

In addition to IRS regulations, LIHTC developments must comply with Michigan Landlord Tenant Laws, including the Michigan Truth in Renting Act (MCL Section 554.631). Following is an excerpt from a document summarizing landlord tenant laws, entitled "Tenants and Landlords – A Practical Guide" by the Michigan Legislature in response to the question "*Can a landlord raise the rent once the lease has started?*"

Generally, the landlord may not alter a lease provision after the lease begins without the tenant's written consent. There are, of course, exceptions to this. With 30 days' written notice, the landlord may make the following types of adjustments, as long as there is a clause in the lease allowing for the adjustments:

1) *Changes required by federal, state, or local law, rule or regulation;*
2) *Changes in rules relating to the property meant to protect health, safety, and peaceful enjoyment; and*
3) *Changes in the amount of rental payments to cover additional costs incurred by the landlord because of increase in property taxes, increases in utilities, and increases in property insurance premiums.*

The above exceptions appear to be an exhaustive, all inclusive list of circumstances under which rent can be increased, provided there is a clause in the lease agreement. Michigan law does not appear to allow rent increases for other reasons, such as increased maintenance and labor costs. Rent increases assessed based on decreases in utility allowances for LIHTC projects does not meet any of the exceptions listed above for the following reasons:

1. Rent increases based on decreases in utility allowances are not a "change required by federal, state, or local law, rule or regulation." LIHTC merely allows, but does not require, the tenant-paid portion of rent be increased when there is a decrease in utility allowance. LIHTC requires that tenant-paid rent be adjusted based on a change in utility allowances in only one narrow circumstance – a situation in which the existing tenant-paid rent amount plus the newly increased utility allowance would exceed the maximum allowable LIHTC rent. (Unlike MSHDA bond-financed projects, which are required to use rent and utility al-

lowance figures approved by MSHDA, no such requirement exists for non-bond financed LIHTC projects. LIHTC does not set a particular actual rent, but prohibits exceeding the maximum allowable rent.)

2. A utility allowance is not based on expenses incurred by the landlord. Rather, utility allowances are estimates of utility expenses to be paid by the resident.

3. A decrease in utility allowance does not arise from an increase in expenses. Rather, the lowering of a utility allowance results from decrease in estimated utility costs.

4. In addition, the Truth in Renting Act prohibits lease clauses that waive a tenant's legal rights, including one that would allow the landlord to change the terms of the lease in the middle of the lease period. Even if there was a clause in the lease agreement that allowed the owner/management agent to raise the tenant's rent in response to a lower utility allowance, it could be void as an illegal clause.

Michigan Landlord Tenant Law is further discussed in Part 570. Further, as discussed in Part 430 (5% Cap on Rent Increases for Residents), some LIHTC projects that have been placed in service for less than three years are subject to a limit on the amount that a tenant's rent can be increased.

Part 466 Notification Requirements and Effective Dates

Owners must provide notification* of the proposed utility allowance to MSHDA and the residents at the beginning of the 90 day review period established in Regulation 1.42-10. The notification date begins on the date MSHDA receives the utility allowance request. The implementation date of the new utility allowance is at the end of the 90 day period. Increases in rents due to changes in the utility allowance are not allowed without the 90 day notification period.

*The notification to the residents can be in the form of a bulletin posted in a common area (such as the on-site leasing office) at the site. It should list the proposed utility allowance figures.

Part 468 Record Retention and Availability Requirements for Utility Allowance Documentation

- Record Retention - The building owner must retain any utility allowance calculations and supporting data as part of the taxpayer's records – discussed in Part 210. A Utility Allowance documentation form (available on the MSHDA website) must also be kept in the Development File (discussed in Part 214).

- Availability of Records to Tenants - The owner/management agent must make a copy of the utility allowance documentation available to tenants at the leasing office or upon request. A copy of the utility company estimates must be provided and retained by the owner of the building.

- Availability of Records at Tenant File Audit - A copy of the current utility allowance documentation must be provided to MSHDA (or its contractors) during file reviews. Certifications from previous years and backup documentation may also be requested. Failure to provide the utility allowance certifications or documentation will result in a noncompliance violation. Tenant File Audits are discussed in Part 708.

For a similar discussion, see Part 208 (LIHTC Record-keeping Requirements for Owners) and Part 210 (LIHTC Record Retention Requirement for Owners).

Part 470 Utility Allowance Documentation Form and Other Forms

Utility Allowance Documentation form (LIHTC 043)
MSHDA requires that documentation be completed each year indicating how utility allowances were determined. A Utility Allowance Documentation LIHTC 043 form must be completed at least once a year or whenever an update is necessary (whichever occurs first). A copy of the form must be submitted to MSHDA at least once per year with the annual compliance certifications (discussed in Part 704). All LIHTC projects, regardless of the utility allowance source method being used, must submit a Utility Allowance Documentation form.

Utility Allowance Owner Certification (UAOC) form
The UAOC is applicable to LIHTC projects that use the Actual Consumption Method of determining utility allowances, which is discussed in Part 454. The UAOC is completed by the owner and submitted to MSHDA when utility allowances (and updates thereof) based on the Actual Consumption Method are requested. If use of the Actual Consumption Method is approved by MSHDA, MSHDA will return a signed copy of the approved UAOC form to the owner. A copy of the signed UAOC form must be submitted by the owner with the Annual Owner's Compliance Certification documents (discussed in Part 704), in addition to the Utility Allowance Documentation form (LIHTC 043) discussed above.

Consumption Data Certification Workbook
This electronic spreadsheet is applicable to LIHTC projects that use the Actual Consumption Method of determining utility allowances, which is discussed in Part 454.

Note: Tenants residing in MSHDA Direct Loan projects must complete a Utility Data Release Authorization form (discussed in Chapter 11).

Part 472 Sub-metered Units

IRC 1.42-10; IRS Notice 2009-44

Section 1.42-10, which was amended by Treasury Decision 9420 on July 29, 2008 (73 FR 43863), sets forth the circumstances under which gross rent includes a utility allowance and provides rules for determining the applicable utility allowance. Under 1.42-10(a), if the cost of any utility (other than telephone, cable television, or Internet) for a residential rental unit is paid directly by the tenant(s) and not by or through the owner of the building, the gross rent for that unit includes a utility allowance.

Some buildings in housing developments are sub-metered. Sub-metering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

On May 5, 2009, the IRS issued guidance (Notice 2009-44) that confirms that utilities paid by a tenant occupying a sub-metered unit that are based on actual consumption of that unit will count as resident-paid utilities under the utility allowance regulation.

For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a tenant based on actual consumption in a sub-metered, rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building.

The Notice clarifies that the utility costs paid by a tenant based on actual consumption are included in a utility allowance. Utilities paid to or through the owner of the building based on an allocation method or ratio utility billing system (RUBS) are considered a mandatory fee and not included in the allowance.

The IRS notice further provides that, in the case of sub-metered utility costs:

- The rates charged to tenants must not exceed the rates charged by the utility company to the building owner (or their agents).
- An administrative fee (not to exceed $5 per month unless otherwise provided by state law) charged to tenants by the building owner (or their agents) will not be considered gross rent for purposes of the LIHTC rules.
- Sewage costs included in a combined water and sewage bill that are based on the tenant's actual water consumption determined with a sub-metering system are likewise treated as paid directly by the resident.

Part 474 Additional Notes about Utility Allowances

- MSHDA Utility Allowance Policy Statement – Available on the MSHDA website.
- MSHDA Utility Allowance Instructions – Available on the MSHDA website.
- Administrative Fee – An administrative fee must be paid by the owner/management agent to MSHDA if the Agency Estimate option or the HUD Utility Schedule Model option is selected. The term administrative fee is also used in reference to sub-metered units (discussed in Part 456).

- Annual Update – Utility allowances must be updated at least annually, as discussed in Part 462.

- Records – Utility allowance records must be made available to tenants and to MSHDA (or its contractors) during tenant file audits and at other times, as discussed in Part 468.

- Forms – Utility allowance forms are discussed in Part 470.

- Ratio Utility Billing Systems (RUBS) – The use of RUBS as a method of calculating utility allowances is not permissible. RUBS are used by owners for the reimbursement of utility expenses incurred on the part of the owner. With RUBS, residents are billed monthly for the average utility costs by the owner or a third party, rather than a household's actual usage.

- Sub-metered units are discussed in Part 472.

- Subsidies for utilities – Some utility companies provide certain tenants subsidies to assist in the payment of utility expenses. If households receiving certain subsidies are included in the sampling for utility allowance estimates, the amounts of these subsidies should not be included (i.e. must be subtracted from) their utility charges. For example:

  ABC Apartments is updating its utility allowance and has included the unit occupied by the Smith household in its sampling. The Smith's incurred $100.00 per month in gas expense, but received a monthly credit on their bill as a qualifying low income household for a government utility allowance subsidy program. In calculating the utility allowance for the Smith's particular unit type, ABC Apartments must add back the total credit received during the sample period for the Smith household.

  Another subsidy impacting the actual bill is a discounted utility rate for certain senior citizens. These households should not be included in the sampling, as determining the total dollar value of the lower rates is problematic.

  Other types of subsidies that assist tenants in paying their bill, but do not change the amount charged on their bill, can be included in the sample without a need for manual adjustments.

- Terminology
  a) Application Date – This is the date that the owner submits a utility allowance update request to MSHDA.
  b) Effective Date – This is the date posted by the PHA or RHS on its utility allowance annual schedules. Owners utilizing these methods have up to 60 days from the effective date to implement the updated allowances.
  c) Implementation Date – This is the date on which the updated utility allowances are reflected in the tenant's gross rent amounts.

Gross rent does not include any payments made to the owner to subsidize the tenant's rent, including Section 8, Housing Choice Voucher (HCV), or any comparable rental assistance program. Only the tenant-paid portion of the rent payment (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible. For example:

> *The maximum allowable gross rent for a unit is $300. A particular tenant is paying $172, the unit has a utility allowance of $28 and the owner receives a $175 Section 8 subsidy for this unit. The rent meets tax credit guidelines because the tenant-paid portion of the rent plus the utility allowance ($172 + $28 = $200) is not more than $300.*

Gifts from family members are not considered "rental assistance". Rent paid by family members on behalf of tenants must be counted as income to the tenant, even if paid directly to the apartment complex. Similarly, payments made by non-government entities and non-profit organizations are not considered to be "rental assistance", unless it can be established that the monies were derived from grants (or other funding) that the entity received from a government source and that those funds were mandated to be specifically targeted as rental assistance.

Rental assistance amounts provided by government programs are not included as part of household income for purposes of determining LIHTC eligibility.

A Section 8 or HCV resident who originally qualified for a LIHTC set-aside unit may later be required by the Section 8/HCV Program to pay an amount in excess of the tax credit limit due to their increased earnings and decreased subsidy. In this case, the Internal Revenue Code Section 42 does allow an exception to the maximum allowable tenant-paid portion of gross rent as long as the following requirements apply to the resident:

- the resident originally qualified for a LIHTC unit and the tenant-paid portion of rent plus the utility allowance was originally less than the maximum allowable LIHTC rent;
- the resident is a participant under a housing subsidy program; and
- at least one dollar of subsidy is being received.

If at any time the subsidy is revoked or is reduced to less than $1.00, the owner/management may not charge a gross rent greater than the LIHTC rent limit.

For additional information about Section 8 and Housing Choice Voucher participants, see Chapter 11.

Notes for HOME projects that have rental assistance:

A. Procedure for Tenant Based Rental Assistance (TBRA) (Housing Choice Voucher) - Both the High and Low rents represent the total that tenants can pay for rent and utilities combined. These rents also represent the maximum amount from all sources that the owner may receive for HOME-assisted units including both tenant contributions and Section 8 or

HOME-funded rent assistance. Therefore, the owner may not accept a subsidy payment in excess of the maximum HOME rent for the unit.

B. Procedure for Project-based Rental Assistance - If the project receives Federal or state project-based rental assistance for tenants with income at or below 50% of area median income, the rent limits from the project-based rental assistance can be used. Therefore, the owner may accept a subsidy payment from Section 8 if the household's income is at or below 50% of area median income.

Part 478 RHS Rental Assistance and Rent Overage

IRC Section 42(g)(2)(B)(iv)

Owners and managers of LIHTC projects must be aware that the rules for RHS (formerly called Farmers Home) and those of the LIHTC Program differ somewhat. Those differences could result in proper RHS rents but incorrect LIHTC rents. The following example appeared in a USDA memorandum dated July 21, 1995:

> *In a project where the tax credit rent is equal to or greater than the basic rent, a previously eligible tenant's household income increases beyond the tax credit rent. In this case, the tenant may or may not have previously received rental assistance or Section 8. EXAMPLE: One bedroom apartment: Basic rent - $250. Tax Credit Rent $300. Only one co-tenant works. Household pays $200/month and rental assistance pays $50. Household is both RHS and LIHTC eligible. Second co-tenant goes to work causing the household rent to go to $350. The new rent level exceeds both basic and tax credit rent. Overage is $100 due. Tax Credit rent limitations require that the owner charge tenants no more that $300, which causes a shortage of $50 per month in overage due RHS. The owner is therefore accountable for this shortage if the project was placed in service prior to January 1, 1991. For projects placed in service on or after January 1, 1991, the owner is allowed to collect the overage due from the tenant to the extent such that the owner pays an equivalent amount to RHS under Section 515. The tenant cannot be required to move based on tax credit ineligibility.*

For additional information about Rural Development projects, see Chapter 11 and the United States Department of Agriculture (USDA) websites at www.usda.gov and www.rurdev.usda.gov/RHS.