Agency Estimate of Utility Allowances

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Overview

On July 29, 2008 Treasury Regulation Section 1.42-10 was amended to add three additional methods for calculating utility allowances for conventionally financed Low Income Housing Tax Credit (LIHTC) projects. One of the additional methods is an Agency Estimate. The following instructions outline the procedures an owner of a LIHTC project must complete to request a utility allowance change using the Agency Estimate method. The Agency Estimate method uses a sampling of the tenants' past utility bills provided by the property owner to determine the monthly utility allowance for the upcoming year.

Timeline and Submission Requirements

At Move-in and Annual Renewal – Obtain Authorization to Release Utility Costs and Information forms from each household in the project and retain a copy in each household's file.

August 1st (150 days prior to the utility allowance change effective date) – Begin collecting the utility sampling data.

October 1st (90 days prior to the utility allowance change effective date) – Utility packages are due to MSHDA.

- All ***proposed utility changes must be made available to all tenants in the building.*** A sample posting notice is provided on the "UA Chg Notice" tab of the LIHTC Utility Template workbook. Notice is required even if the rent will not change. Refer to Treasury Regulation Section 1.42-10 for further details.

January 1st – Implement approved utility allowance changes.

New Developments

Properties must submit new utility allowance calculations once the property reaches 90% occupancy for 90 days or after the end of the first credit year, whichever is later.

Submissions

By October 1st or 90 days prior to the utility allowance effective date, submit the following items to the mshdacompli@michigan.gov mailbox with "UA Change, [Development Name], MSHDA #" in the subject line:

1. Excel Consumption Data Certification Workbook (Utility Template). Older versions will not be accepted; the latest version of the template can be found on the LIHTC Utility Allowances.
2. Pdf of the signed Owner's Utility Allowance Certification (MSHDA Mgmt. 456D).
3. Pdf of the utility company backup documentation with:
   - The utility company identified on each page.
   - Unit type, unit number or unit address, and tenant name for each sampled household.
   - Total billed amount (including taxes, service charges, and fees) for each month. *This requires at least one actual monthly bill each tenant receives directly from the utility company*.
   - Verification that the utility rate in effect for the last billing of the sampling was in effect within 60 days of the posting notice. *Only required if the last billing cycle of the sampling does **not** end within 60 days of the posting notice date*.

   Note: The state network has a limit of 25 megabytes on the size of files e-mailed to the state. If backup documentation exceeds this limit the file will need to be zipped or broken into smaller files for submission.

The submission cover note should be to the attention of your assigned Compliance Officer. Submission forms are all located within the LIHTC Utility Template spreadsheet on the MSHDA Compliance Website. To access the utility allowance webpage, select the following links:

1. "Rental".
2. Under the "Property Managers" heading, select "Compliance for Rental Housing".
3. "Income, Rent, and Utility Limits".
4. "Utility Allowances".

The utility allowances direct web address is: LIHTC Utility Allowances.

Ineligible Properties

Projects may *not* update utility allowances using the Agency Estimate method described in this policy, if the project has:

- Unresolved noncompliance issues (including, but not limited to uncorrected 8823).
- Less than one year of actual consumption data available. New projects must use the PHA issued utility allowances for one year prior to switching to the Agency method. If a project has greater than 50% of its units excluded in the utility sampling, contact the assigned Compliance Officer for additional guidance.
- RHS assistance or is HUD-regulated. These projects must continue to use the required utility allowance as defined in the IRS Regulation Section 1-42.10.
- MSHDA-financing. These projects submit the utility sampling with the annual budget process to the MSHDA assigned Asset Manager according to the Asset Management Division Utility Sampling and Rent Schedule policy.

Sample Data Requirements

Utility samples must be collected within a 12-month sampling period **ending no more than 60-days prior to the notification/ posting date of the Utility Allowance Change Notice.** If the sampling period does ***not*** end within 60 days of the posting notice, verify the utility rates in effect within 60 days of the notification are the same as the rates identified in the tenants' last monthly bills being sampled. When sampling:

- ***Only LIHTC units must be included in the sampling***.
- The same tenants must be sampled for all tenant-paid utilities. Thus, the units and tenant names only need to be entered on the Electric tab of the workbook and populate across all the other workbook utility tabs.
- Authorization to Release Utility Costs and Information – Utility companies require the submission of a tenant signed release authorization form prior to releasing utility data. The LIHTC Utility Template includes a recommended utility release authorization form.
- All samples within a specified utility type must cover the same date range as the other sampled units for that utility type.
- Owners/ agents must collect and submit sample data separately for each project.
- Projects with similar building types may calculate one average for each unit type found in all the buildings. Unit types are based on number of bedrooms; the number of bathrooms in a unit does not change the unit type.
- Projects with different building types (townhouses versus multi-story buildings) or with a different heating source (gas versus electric) must calculate separate averages for each building type and each utility source.

- All units must include 10 ***full*** months (full billing cycles) of utility expense. Refer to exclusions below for further clarification.
- Project based voucher (PBV) units may be used when selecting units for sampling utilities if the PBV overlaps with a restricted unit.
- Consumers Energy encourages owners/ agents to get connected to its landlord portal to gather utility information. Further information can be obtained by contacting 855-477-9027
- Consumers Energy posts 12 Month Electric and Gas Rate Averages on the Consumer's Energy website. Rate months are used four months after the reported period. E.g. The report dated April 2019 to April 2020 is the rate used for issuing August bills to tenants per Consumer's Energy.

The following utility sampling requirements must be met **for *each* unit type (1 bedroom, 2 bedrooms, etc.) based on the number of restricted units of that unit type:**

- The minimum sample size is identified in the following chart:

Number of Units	Minimum Sample
1-20	All
21-61	20
62-71	21
72-83	22
84-99	23
100-120	24
121-149	25
150-191	26
192-259	27
260-388	28
389+	29

- Utility allowances are a straight average of the sampled units. Do not drop one highest and lowest utility cost average from the sampling.

- ***Excluded Units*** – Do not enter data on the Electric, Gas, Water/ Sewer, and Trash tabs for any of the following **exclusions**. A unit that:
  - Has been vacant for more than 2 full months (full billing cycles). For example, if the billing cycle is the 4th of each month and tenant A moves out February 28th and Tenant B does not move in until April 6th, three full billing cycles have been affected and the unit must be excluded.
  - Is receiving an increased utility allowance as a reasonable accommodation.
  - Is receiving a flat utility rate as part of a low-income rate assistance utility program.

- Additional sampling process suggestions/ recommendations to follow ***if the sample size is greater than 20 units***:

- Units sampled must provide a fair representation of the property.
- Different units/ tenants should be chosen annually whenever possible for the sampling to gain an accurate representation of the whole property over time.
- If a specific unit type exists in eight different buildings, sample units are required from each of the eight buildings rather than only a few of the buildings.
- The number of household members must be considered, and the sampling must not contain a disproportionate number of smaller member versus larger member households.
- Request a greater sampling of units from the utility company than the required amount. This allows a buffer between the collected samples and the required sample size in case some samples do not meet the sampling requirements, such as the units to be excluded.

Eligible Utilities

Utilities that may be included and must be excluded from the utility allowance calculation are listed below. See Notice 2009-44 for more detail.

Utilities Included

Electricity.
Gas.
Water/ Sewer.
Trash pickup.
Any item a tenant must pay in addition to rent including a range or refrigerator, if not supplied by the owner.
Taxes/ fees paid directly to the utility company.

Utilities Excluded

Telephone.
Cable.
Internet service.
Any item that is a property expense paid with operating funds.
Optional items not included in the eligible basis.
Fees charged by a third-party billing company.

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

Administrative Fees

Administrative fees for approval of the Agency Estimate method of calculating the annual utility allowances will no longer be charged as of the effective date of this policy release.

MSHDA Review

MSHDA will review the entire submission for compliance with regulations and instructions. Please make sure the backup documentation is complete and legible to help expedite the approval process. MSHDA may request more information during the 90 days prior to the effective date. The information requested may include, but is not limited to the clarification of:

- Data for larger units calculating the same or lower average utility costs as a smaller unit.
- The difference appears extraordinary between the current UA and the proposed UA for a specific unit type in relation to the project's other unit type changes to UA.
- Any other anomalies in the UA data or changes to the unit types' utility allowances.

Owners/ agents should receive a response from MSHDA within 45 days of the package submission. If the approval is not received within 45 days, please contact the assigned MSHDA Compliance Officer. Non-receipt of an approval notice is not considered approval by MSHDA.

Disclaimer
All allowances provided under this option are based upon information submitted by the property owner. Therefore, the owner assumes full responsibility and accepts the consequences if the information is later determined to be inaccurate.

Utility Allowance Implementation

MSHDA-approved utility allowances will be effective for twelve months. The owner is responsible for submitting a new request, at least 90 days before the expiration of the utility allowance in effect (October 1st). Failure to do so, or failure to notify the tenants at least 90 days prior to a UA change will result in a finding of noncompliance.

Approval of the Agency Estimated utility allowance does not constitute a guarantee the rents are correct. Management must review the approved utility allowance in relation to the current rents to verify that the gross rents remain restricted under section 42(g)(2).

Rent Decreases

The effect of new utility allowance must be considered for implementation. If the new gross rent exceeds the established LIHTC gross rent limit, then a decrease in the

tenant-paid portion of rent must be implemented at the same time as the new utility allowance. Tenants should receive notice of the rent decrease prior to it becoming effective.

Rent Increases

If a utility allowance decrease allows for the tenant-paid portion of rents to potentially increase, then tenants must receive at least a 30-day notice of any rent increase. In addition, rent increases typically may only be implemented at a tenant's lease renewal. All rent increases must be in accordance with Michigan Landlord Tenant Law and the terms of the tenants' lease agreements.

Forms

LIHTC Comp. 9A – Instructions for Using the Consumption Data Certification Workbook
LIHTC Comp. 9B – LIHTC Utility Allowance Summary
LIHTC Comp. 9C – Tenant Utility Calculation Worksheets
LIHTC Comp. 9D – Owner's Utility Allowance Certification (LIHTC Only)