



The Arizona Department of Housing 2011 Information Bulletin

REGARDING PROGRAMS:

RENTAL COMPLIANCE

REGARDING FUNDING SOURCES: Low Income Housing Tax Credit Program

INFORMATION BULLETIN No. 03-11

ISSUED: January 31, 2011

**RE: NOTICE OF FINAL UTILITY ALLOWANCE GUIDELINES
FOR LOW-INCOME HOUSING TAX CREDIT PROPERTIES**

On December 6, 2010, the Arizona Department of Housing (“ADOH”) issued Information Bulletin No. 17-10 requesting public comments on proposed guidelines to be adopted regarding utility allowances for Low-Income Housing Tax Credit properties. This bulletin releases the final guidelines which have been adopted by ADOH, effective immediately.

Additional clarifications and requests for a copy of public comments received in response to Information Bulletin No. 17-10, should be directed to Carol Ditmore, Assistant Deputy Director|Operations, (602) 771-1000, carol.ditmore@azhousing.gov.



**STATE OF ARIZONA UTILITY ALLOWANCE GUIDELINES
FOR LOW-INCOME HOUSING TAX CREDIT PROPERTIES
Effective January 31, 2011**

¶1 To maintain compliance with program requirements, Low-Income Housing Tax Credit (“LIHTC”) properties must demonstrate that the utility allowance charged for a rent-restricted unit complies with one of the methods described in the Utility Allowance Regulation. In the event that the Arizona Department of Housing (“ADOH”) determines that the utility allowance does not comply with the Utility Allowance Regulation, including but not limited to tenant notification and deadline requirements, ADOH will issue a Form 8823 reporting to the I.R.S. that the unit does not qualify as a “rent-restricted unit” as required by the LIHTC Program.

¶2 Although the Utility Allowance Regulation allows it to do so, due to budget constraints ADOH does not prepare an “agency estimate” described by Treas. Reg. 1.42-10(b)(ii)(4)(C).

¶3 Utility allowances determined by the local PHA shall be the utility allowances for rent-restricted units as long as the owner has not obtained a utility allowance estimate based on one of the remaining methods: the utility company estimate, or an estimate based on the HUD Utility Schedule Model, or an estimate of based on the Energy Consumption Model. The costs of any of these methods are the responsibility of the Owner or other interested proponent. These remaining methods are only available for buildings that have completed the entire first year of the credit period.

¶4 Owners that obtain a utility company estimate, the HUD Utility Schedule Model estimate, or the Energy Consumption Model estimate must provide a copy of the relevant estimate to ADOH and make the estimate available to tenants. In addition, the owner’s submittal to ADOH must include a narrative description of the date and manner that the estimate is made available to tenants. The narrative description must be signed by a person with authority to bind the owner. Owners must keep the original estimate and evidence of dissemination of the estimate in its files located at the LIHTC property.

¶5 It is the responsibility of the owner to ensure that the utility allowance is determined and charged to tenants in accordance with the LIHTC Program. Submittal of a utility allowance estimate to ADOH shall not be understood as approval or other recommendation by ADOH that an estimate complies with the requirements of the LIHTC Program.

¶6 The utility allowance estimate obtained by the owner shall be the utility allowance charged to tenants of rent-restricted units. However, the utility allowance shall not be effective until 90 days after the estimate is provided to ADOH and made available to the tenants.

¶7 The information used in any estimate must comply with the aging requirements of the Utility Allowance Regulation.

¶8 For utility allowances based on the HUD Utility Schedule Model, ADOH does not review the estimate for accuracy or whether the use of the HUD Utility Schedule is correct. Nevertheless, the accuracy and appropriate use of the HUD Utility Schedule is the responsibility of the owner. Based on its review of annual reports or on-site monitoring of a property, ADOH may issue I.R.S. Form 8823 if it concludes that a unit is not rent-restricted due to errors or misuse of the HUD Utility Schedule Model. ADOH will consider a certification of a licensed professional engineer or a qualified professional energy rater or auditor that the HUD Utility Schedule Model estimate is true and correct.

¶9 The Energy Consumption Model may be used by a building owner to calculate utility allowance estimates based on an analysis of energy, water and sewage consumption. 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, building age, mechanical systems, appliances, and characteristics of the building location.

¶10 Utility allowances based on the Energy Consumption Model shall be prepared by a professional engineer licensed to practice in Arizona or some other qualified professional. ADOH considers energy raters and auditors who are certified and currently in good standing with Residential Energy Services Network (“RESNET”) to be “qualified professionals” for the purposes of the Utility Allowance Regulation. Owners using professionals who are not RESNET-certified raters or auditors must demonstrate to the satisfaction of ADOH that the professional otherwise meets comparable qualifications. Furthermore, the professional engineer or energy rater or auditor must not be related to the building owner, property manager or any other entities owned or controlled by these parties within the meaning of Sections 267(b) or 707(b) of the Internal Revenue Code. In addition to the materials described in ¶4, above, Owners who obtain estimates based on the Energy Consumption Model shall provide ADOH with documentary evidence that the estimate was prepared by a licensed professional engineer or other qualified professional consistent with the requirements of this paragraph. See, ¶ 12, below.

¶11 ADOH will not provide formal approval of any particular utility plan submitted, but will issue a letter verifying receipt of the estimate. If ADOH has concerns about the estimate it may request additional information. Reasons for concern would be the adequacy of documentation of the qualifications of the professional who completed the estimate, or of the availability of the estimate to tenants. Future compliance monitoring will include whether the utility allowances are charged in accordance with an estimate authorized by the Utility Allowance Regulation, the timing of implementation of the new utility allowance after the estimate was obtained, review of tenant notifications regarding the utility allowance, and documentation of annual review and updates, if any, to the allowance.

¶12 Documentation of the qualifications of the professional rater for the purposes of the Energy Consumption should include the following:

- a) For a professional engineer licensed to practice in Arizona:
 - 1) The estimate should bear a professional stamp demonstrating licensure as a professional engineer by the State of Arizona; or

- 2) Estimates bearing the professional stamp of an engineer licensed in a state other than Arizona must be accompanied by supporting documentation demonstrating that the engineer is authorized to practice in Arizona.
- b) For an energy rater or auditor:
- 1) Documentation of current status as a RESNET rater-member; or
 - 2) Documentation that the energy rater or auditor meets all of the following comparable qualifications:
 - i. Completed training that is similar in all material respects to the RESNET training syllabus;
 - ii. Successful completion of the RESNET National Rater Test;
 - iii. Performance of at least three energy ratings under the supervision of a person with three or more years of experience as a certified rater. (Supporting documentation must include the names and addresses and contact information of the persons for whom the energy ratings were performed and the personal resume of each supervising rater).

¶13 Regardless of the method adopted, a building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with Treas. Reg. 1.42-10(c)(1). The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates. Once a particular method (utility company estimate, HUD Utility Schedule Model, or Energy Consumption Model) applies to a unit, the owner may not change to a different methodology except as the result of the owner's annual review of utility allowances in the following calendar year. Although the review process begins in advance, in no event may an owner change the utility allowance for a unit more than once in a twelve-month period.

¶14 In the event that the owner commissions an estimate based on the Energy Consumption model, the same method must be used for a particular utility service provider for all units of a LIHTC project that are served by that utility service provider.

¶15 Utility allowances determined in accordance with revised Treas. Reg. 1.42-10 may be effective on or after January 1, 2009.



Arizona Department of Housing

1110 W. Washington, Suite 310, Phoenix, AZ 85007

Telephone (602) 771-1000 Facsimile (602) 771-1002 TDY (602) 771-1001

www.azhousing.gov