



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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CC:PA:LPD:PR (REG 1364191-09)  
Internal Revenue Service, Room 5205  
PO Box 7604, Ben Franklin Station  
Washington, DC 20044

RE: UTILITY ALLOWANCE SUBMETERING

To Whom It May Concern:

The Texas Department of Housing and Community Affairs (TDHCA or the Department) is the allocating and monitoring agency for the Housing Tax Credit program in the State of Texas. The Department appreciates the opportunity to comment on the utility allowance regulations.

TDHCA understands that utility allowances for ratio utility billing systems (RUBS) are not permitted. However, the proposed language could lead to the conclusion that RUBS would not be allowed on housing tax credit properties. In Texas, there are properties that bill residents for utilities using a RUBS. When monitoring, the Department treats that utility payment as a mandatory fee. The tenant-paid rent, plus an allowance for utilities the resident pays based on actual consumption, plus the RUBS payment cannot exceed the allowable rent limits. TDHCA believes we are monitoring utility payments made through a RUBS correctly but would like confirmation of that with the inclusion of the following sentence at the end of paragraph 1.42-10(a)

*"...If the cost of a particular utility for a residential unit is paid pursuant to a RUBS, then that cost is considered a mandatory fee and must be included in gross rent."*

The regulation provides that unless the building is RHS or HUD regulated, an owner may use the applicable PHA Allowance. There are areas of Texas that do not have a Public Housing Authority. We recommend that the regulation should take this into account with the following amendment to 1.42-10(b)(4)(ii):

*Other tenants—(A) general Rule. If none of the rules of paragraphs (b)(1), (2), (3), and (4)(i) of this section apply to any rent restricted unit in the building, the appropriate utility allowance for the units is the applicable PHA utility allowance. In the event there is not an applicable public housing authority operating a section 8 voucher program, the owner must calculate a utility allowance using the rules provided in paragraphs (b)(4)(ii) (B), (C), (D) or (E).*

Comment was requested regarding approval of the energy consumption model. TDHCA recommends that approval by the agency with jurisdiction over the building should be necessary for both properly licensed engineers and qualified professionals. In general, TDHCA believes that the regulation should make it clear that



the State Housing Finance Agency has the ability to approve or deny an owner's utility allowance, unless they are a RHS property or HUD regulated building.

It is the Department's understanding that utility allowances can be calculated by projecting energy consumption based on engineering models without the use of past consumption data. While we agree that past consumption data may not be relevant to the construction and use of an engineering model, it is a readily understood and widely accepted approach. We are concerned over the perceptions that will arise if engineering models yield allowances that are significantly out of line with past consumption. We request detailed guidance as to the development of acceptable assumptions for use in engineering models to avoid such problems.

The proposed regulations require owners to include in gross rent any amounts charged in excess of the lesser of \$5.00 per month or the owner's actual monthly costs paid or incurred for administering a submetering arrangement. Although Texas State law prohibits any service charge for administering the billing of submetered water on a Housing Tax Credit property, TDHCA recommends that the regulation require inclusion in gross rent any amounts that exceed \$5.00 and there be no consideration or evaluation of the owner's actual monthly cost.

If the final regulation requires owners to include in gross rent any amounts charged in excess of the lesser or \$5.00 per month or the owner's actual monthly costs paid or incurred for administering a submetering arrangement, then rules are needed to address the building owner's determination of actual cost. TDHCA believes that this would be an administrative burden and would lead to technical noncompliance over nominal amounts.

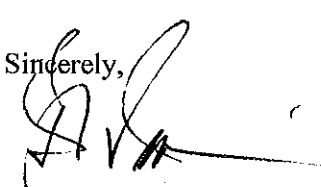
TDHCA recommends clarification to paragraph 1.42-10(b)(3) regarding buildings regulated by the Department of Housing and Urban Development. Because HUD does not review the rents and utility allowances *on an annual basis* for all their programs, TDHCA recommends the following amendment:

*If neither a building nor any tenant in the building received RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD ~~on an annual basis~~ (HUD regulated building), then the applicable allowance for all rent-restricted unit in the building is the applicable HUD utility allowance.*

Lastly, TDHCA would like to comment on paragraph (c)(1) and the requirement to make utility estimates available to all tenants in the building at the beginning of the 90-day period. As the monitoring agency, TDHCA, on occasion, has received comments from tenants regarding the utility estimates and has been uncertain as to how to handle those comments. We recommend that this regulation be expanded to provide guidance as to exactly how such disclosures should be given, and when such disclosures trigger comment; how that comment is to be addressed by the monitoring agency.

Thank you again for the opportunity to provide these comments. If you have any questions, please contact Patricia Murphy at (512) 475-3140 or at [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us)

Sincerely,



Timothy K. Irvine  
Executive Director

TKI/PMM

cc: Barbara Thompson, National Council of State Housing Agencies