



## VHDA Utility Allowance Options and Procedures

Effective July 29, 2008, the IRS issued,

Final regulations that amend the utility allowances regulations concerning the low-income housing tax credit (LIHTC). The final regulations update the utility allowance regulations to provide options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit.<sup>1</sup>

VHDA procedures may be amended at VHDA's discretion, upon changes to governing legislation and/or further IRS clarification/guidance.

Please keep in mind the following when considering utility allowances:

- Unit gross rents include the applicable utility allowance.
- Cable television, telephone and internet costs are **excluded** from utility allowance calculations.
- If the tenant pays utility costs (other than telephone, cable television or Internet) directly to the utility provider, then the gross rent for that unit must include the applicable utility allowance.
- Utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company.
- Utility allowances are applied individually to each building in the development. Therefore, depending on the development, an owner could have buildings in the same development using different utility allowances.
- Rents may need to be adjusted twice in a year because the release of median income figures and utility estimates may occur at different times.

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<sup>1</sup> Section 42 Utility Allowance Regulations Update. Internal Revenue Bulletin: 2008-39. September 29, 2008. T.D. 9420. [http://www.irs.gov/irb/2008-39\\_IRB/ar07.html](http://www.irs.gov/irb/2008-39_IRB/ar07.html)



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**NOTE:** If a utility is submetered, owners may establish a utility allowance using one of the approved methods and may bill the tenant for the actual tenant usage - even if more than the utility allowance.

If the LIHTC development contains the following unit type(s), the owner will calculate utility allowances as usual (i.e. no changes to guidelines regarding these types of units).

<b>Unit Type</b>	<b>Utility Allowance Guideline to Use</b>
Rural Development (RD) units	Use RD utility allowance schedule
Section 8, project-based units	Use HUD utility allowance schedule
Section 8, Housing Choice Voucher units	PHA utility allowance schedule

For all other LIHTC properties, per the Final Regulations, VHDA will allow the following options for calculating utility allowances.

Existing Option – PHA estimate	The owner can continue using the Public Housing Authority (PHA) estimate
Existing Option – Local Utility Company estimate	The owner can continue using the local utility company estimate. “The final regulations clarify that, in the case of deregulated utility services, the interested party is required to obtain an estimate from only one utility company even if multiple companies can provide the same utility service to a unit. However, <u>the utility company furnishing the estimate must offer utility services to the building in order for that utility company’s rates to be used in calculating utility allowances.</u> Furthermore, the estimate should include all “component deregulated charges” for providing the utility service.” <sup>2</sup>
Option 1	The owner may hire an “unrelated” mechanical engineer or an “unrelated” Residential Energy Services Network (RESNET) Certified Professional to <b>certify the owner’s HUD Utility Schedule model</b> estimate. Though the owner can complete the model, VHDA strongly encourages the use of an “unrelated” mechanical engineer or comparably certified professional. If the owner completes the model itself, a \$3 per unit review fee will be charged by VHDA.  For more information about RESNET certification requirements go to this link, <a href="http://www.resnet.us">www.resnet.us</a> .
Option 2	The owner must hire an “unrelated” mechanical engineer or an “unrelated” Residential Energy Services Network (RESNET) Certified Professional to <b>estimate the utility using an energy consumption model</b> , <i>an estimate based on information on units of similar size, construction and geographic area of the project and considering a number of factors including local utility rate data, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials and mechanical systems.</i> For more information about RESNET certification requirements go to this link <a href="http://www.resnet.us">www.resnet.us</a> .
<u>New</u> Option 3	To obtain the <b>Agency Estimate</b> , the owner must hire EarthCraft Virginia, the third-party entity that VHDA has designated to provide the Agency estimate. Any property eligible to use the optional methods may hire EarthCraft, however there may be a cost differential for those properties not previously EarthCraft certified during construction or rehabilitation. Costs incurred in obtaining the estimate are negotiated and borne by the building owner.

<sup>2</sup> Section 42 Utility Allowance Regulations Update. Internal Revenue Bulletin: 2008-39. September 29, 2008. T.D. 9420. [http://www.irs.gov/irb/2008-39\\_IRB/ar07.html](http://www.irs.gov/irb/2008-39_IRB/ar07.html)

**Stabilized Occupancy/Age of Data**

Per IRS regulation, “To bring financial stability to a project during the beginning of its operations, the final regulations clarify that the building owner is not required to review the utility allowances, or implement new utility allowances, 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.”

For each of the options, VHDA requires that the estimate be based on the most recent 12-month period. Data must be no older than 60 days at the time of submission.

In the case of buildings with less than 12 months of consumption data, the owner may use 12 months of data from similar units in similarly-constructed buildings in the subject's geographic area.

**Notification to Tenants and VHDA**

If the owner chooses the local utility company estimate or one of the other options above, then it must submit copies of the estimate to VHDA and make the estimates available to all tenants in the property at least 90 days prior to the effective date (i.e. implementation) of the new utility allowances. VHDA must be notified when changes are made to the utility allowance (see “Utility Allowance Option Term” section below).

**Term**

The regulation allows, “Building owners, at their discretion, to choose to calculate new utility allowances more frequently than once during the calendar year provided the owner complies with the requirements of IRS regulations, including the notification requirements to the [VHDA] and tenants.” However, once approved, the utility allowance option will be effective for one year, unless rates increase by more than 10% during that year.

**Notification of Approval/Denial**

When using the Local Utility Company, HUD Model, Energy Consumption model or Agency Estimate to obtain utility allowance estimates, VHDA will provide a written approval/denial notification within 30 days of receiving complete and accurate information from the owner. The owner will be notified if information provided is incomplete or insufficient.

**Certification of Completeness and Accuracy**

Per IRS Regulation, if VHDA determines that a building owner has understated the utility allowances for the owner's building under the particular option

chosen, and, therefore, some or all of the units in the building are not rent-restricted units under section 42(g)(2), then VHDA is required to report such non-compliance to the IRS on Form 8823, *Low-Income Housing Credit Agencies Report of Non-compliance or Building Disposition*. As such, VHDA requires that the owner and its engineer (if applicable) certify that all data and calculated estimates are complete and accurate (see *VHDA Certification of Completeness and Accuracy* form).

### **Failure to Maintain or Provide the Utility Allowance**

Failure to provide the utility allowance and supporting documentation annually is non-compliance. VHDA is required to report such non-compliance to the IRS on Form 8823, *Low-Income Housing Credit Agencies Report of Non-compliance or Building Disposition*.

### **Responsibility for Data and Costs**

It is the owner's or its engineer's responsibility to collect utility company data. The owner, through its property management office, must maintain utility allowance data and make it available for inspection by the tenant during regular business hours. If there is no resident manager and the tenant requests a review of the utility allowance data, requested data must be mailed to the tenant.

Costs associated with obtaining annual estimates are the sole responsibility of the property owner.

### **Review Fee**

Under Option 1, if the owner does not use an "unrelated" mechanical engineer or a comparably certified professional to complete the HUD Utility Model, a \$3 per unit review fee will be charged by VHDA. If applicable, submit the review fee with other documentation listed below.

### **Documentation Checklists**

#### Local Utility Company Estimate:

1. Cover letter stating utility allowance option
2. Documents provided by local utility company supporting estimate
3. Copy of 90-day notice to residents
4. VHDA Certification of Completeness and Accuracy
5. Utility Allowance Spreadsheet

Option 1: Estimate using HUD Utility Schedule Model (Note: utility rates must be no older than the rates in place 60-days prior to the beginning of the 90-day period after which the new allowance must be in place).

1. Cover letter stating utility allowance option
2. If the owner completes the HUD Utility Schedule Model, provide copies of actual usage data from the utility company (as described in the *Stabilized Occupancy/Age of Data* section above). If per unit usage data from the utility company is not available, provide copies of actual resident utility bills.

**or**

If the owner hires an engineer, supporting documentation (as described in the *Stabilized Occupancy/Age of Data* section above) will be required upon VHDA's request.

3. Owner/Engineer Certification of Utility Data, certifying complete and accurate information; owner authorized signature, engineer's signature and photocopy of the engineer's current license is required.
4. Copy of 90-day notice to residents
5. VHDA Certification of Completeness and Accuracy
6. Utility Allowance Spreadsheet

Option 2: Estimate using Energy Consumption Model - (**Note:** Owners selecting this option must obtain VHDA's approval prior to acquiring the service of the professional unless the professional is RESNET certified - Use of this model is limited to the building's consumption data and utility rates for the 12-month period ending no earlier than 60-days prior to the beginning of the 90-day period after which the new allowance must be in place).

1. Cover letter stating utility allowance option
2. Owner/Engineer Certification of Utility Data, certifying complete and accurate information; owner authorized signature, engineer's signature and photocopy of the engineer's current license is required.
3. Copy of 90-day notice to residents
4. VHDA Certification of Completeness and Accuracy
5. Utility Allowance Spreadsheet

**New Option 3:** Estimate using Agency Estimate – The owner must hire EarthCraft Virginia, the third-party entity that VHDA has designated to provide the Agency estimate.

1. Cover Letter stating utility allowance option

2. Letter on EarthCraft letterhead summarizing data for each BIN
3. Copy of 90-day notice to residents.
4. VHDA Certification of Completeness and Accuracy
5. Utility Allowance Spreadsheet

Inquiries regarding utility allowances should be directed to Brenda Hawkins, (804) 343-5763.

**Submit complete documentation to:**

VHDA-Compliance Monitoring  
Attention: Brenda Hawkins  
601 S. Belvidere Street  
Richmond, VA 23220-6504