

HUD Notice 2015-04: Utility Allowance Guidance



Today's Agenda

- Requirements of the notice
- Baseline Submissions
- Occupancy Issues
- Other Issues to Consider

Background

In June 2011, HUD issued a memorandum providing clarifications to existing statutes, regulations, and policies regarding utility allowances in Multifamily Housing properties, but did not identify a methodology to be used to complete a utility analysis and determine utility allowances.

This Notice provides a national standard/methodology for an acceptable Utility Allowance analysis, which will also provide an appropriate utility allowance to tenants.

Background

The regulation at 24 CFR Part 5.603 defines Utility Allowance as the estimate of the “monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances.”

The utility analysis methodology required by the Notice is premised on calculating average utility consumption based on actual tenant consumption by unit size, which Multifamily Housing in consultation with HUD’s Office of Policy Development and Research proposes as an estimate of reasonable consumption by an energy-conservative household of modest circumstances.

Timeline for Implementation

HUD has allowed TWO possible timelines to adopt this new UA requirement:

- O/A with properties whose anniversary dates are within 180 days of publication of this notice (June 22, 2015) can choose to perform their next UA using EITHER existing methodology OR the new methodology detailed in this notice to establish baseline.
- O/A of properties with anniversary dates 180 days (December 19, 2015) AFTER publication of this notice MUST perform their upcoming utility analysis using the method in this notice.

120 days prior to December 19 = 8/21!

150 days prior to December 19 = 7/22!

What Does the Notice Require?

This notice immediately changes how O/A may submit data and documentation for a change in the UA. Some of the highlights are:

- Sample size is now defined by HUD
- The process occurs in a three-year cycle.
 - This year all owners must submit a baseline of their current utilities.
 - For the next two years after the baseline is submitted, O/A may use a UAF (Utility Allowance Factor established annually by HUD) to increase/decrease their utility allowances. Or, the O/A can submit another baseline.
 - After 3 years, a new baseline is required.

Other Requirements of the Notice

Regarding **DECREASES:**

- If the utility allowance decrease that results from the initial application of this methodology would exceed 15% of the most recent utility allowance and that decrease is equal to or greater than \$10, the decrease must be phased-in.
- Owners **MUST** implement the first 15% decrease in the year the determination of change was made **AND** implement any remainder decrease the following year.
- This is only required in the first year of the new UA Policy.
- Notice to Tenants **MUST** be provided if the UA results in a decrease.
- Decreases in the UA no longer require HUD approval.

Decrease Phase-in Example

- The previous utility allowance was \$120
- The analysis indicates a total adjustment that decreases it to \$96.
- The UA has exceeded the 15 % decrease (20%)
- The decrease is greater than \$10
- The O/A will submit an adjustment to \$102 (a 15% decrease from \$120) in the first year.
- A further decrease adjustment will be applied in the following year to \$96 such that the full adjustment is phased-in over two years.
- This \$96 will be multiplied by the applicable UAF of the second year.

Other Requirements of the Notice

Utility Allowance Changes Outside of the Contract Rent Adjustment Schedule:

When rate changes result in an Increase of 10% or more in the current allowance. The owner must submit EITHER:

- Utility bills from the month prior to the rate change and the first month AFTER the rate change OR
- Verification of increase from Utility provider.

NOTE: Increase of 10% in one utility may NOT result in a cumulative increase of 10% in the UA. Only with a cumulative increase is a UA submission required.



What Does a Baseline Submission Look Like?

A Baseline Submission must NOT include:

- A unit receiving a UA as a reasonable accommodation
- A unit that has been vacant for 2 or more months....units included in sample should have at least 10 months of occupancy
- A unit receiving a FLAT RATE as part of a rate assistance

A Baseline Submission DOES

Include:

- Utility Bills that indicate consumption (or billed) figures.
 - NTHDC will not accept payment amounts.
- Comprehensive Analysis from the Utility Provider. (One Page Summary is not sufficient)
 - Includes monthly utility amount breakdown by unit.

A Baseline Sample Must Include:

Figure 1	
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 and above	29

***Per bedroom size. If the property consists of multiple non-identical buildings (the buildings are not substantially similar), then the sampling must be performed for each bedroom size for each building on the site.**

Question:

To clarify, for the base line analysis, we are to use every unit of every type unless it is one of the exclusions listed?

Other Baseline Requirements

- Owner must determine average utility cost without removing ANY units from the analysis...DO NOT remove highest and lowest household to determine the average.
- O/A must submit the completed analysis to the CA for review and approval and recommend this amount to the CA.
- MUST submit data in a format that uses HUD's formulas for Averaging UA costs. HUD has provided an Excel Spreadsheet with formulas for calculating UA increases/decreases. O/A do not have to use this particular form, but must use HUD's formulas.
- This is Attachment A of the HUD notice.

HUD's UA Worksheet

	A	B	C	D	E	F	G	I	J	K	
2	Property Name:						Date _____				
3	Contract Number:						_____				
4	Project Number:						_____				
6											
7											
8				Contract Units		Units to be Sampled					
9	0 Bedroom Units					0					
10	1 Bedroom Units					0					
11	2 Bedroom Units					0					
12	3 Bedroom Units					0					
13	4 Bedroom Units					0					
14	5 Bedroom Units					0					
15											
16				Average as Calculated from Analysis							
17	0 Bedroom Units			N/A							
18	1 Bedroom Units			N/A							
19	2 Bedroom Units			N/A							
20	3 Bedroom Units			N/A							
21	4 Bedroom Units			N/A							
22	5 Bedroom Units			N/A							
23											
Summary / 0 Bedroom Analysis / 1 Bedroom Analysis / 2 Bedroom Analysis / 3 Bedroom Analysis / 4 Bedroom Analysis / 5 Bedroom											

HUD's UA Worksheet

1 Bedroom Analysis

Unit	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Average
Unit 1													
Unit 2													
Unit 3													
Unit 4													
Unit 5													
Unit 6													
Unit 7													
Unit 8													
Unit 9													
Unit 10													
Unit 11													
Unit 12													
Unit 13													
Unit 14													
Unit 15													
Unit 16													
Unit 17													
Unit 18													
Unit 19													
Unit 20													
Unit 21													
Unit 22													
Unit 23													

Other Baseline Requirements

- If there are like units with varying sizes, e.g. 1BD Small, 1BD Large, there should be a separate UA calculation for each bedroom size.
- Samples must be chosen at random.
- Sampled units must be Section 8 Contract Units. Owners cannot use market rate units in the analysis.
- Properties with multiple utility types will have to do a separate comprehensive analysis for each type.
- Samples must all be from the same timeframe

Other Provisions

- RHS Properties must submit a Utility Analysis. It is no longer acceptable to use the UA amounts listed on the RD budget or letter.
- A One page Utility summary from the Utility provider is not acceptable. The comprehensive analysis must accompany the summary.
- Third Party Utility Analysis providers are acceptable so long as the analysis meets the requirements of the notice.
- Sampled units must be dated within 18 months from the property's contract anniversary date.

Obtaining Baseline Data

- Tenant Provided
- Set up a computer kiosk and printer
- Talk to utility company
- Third party analysis



Occupancy Issues

Other Provisions

- Households are required to disclose if they're receiving utility assistance from sources other than HUD.
- O/As must ask this question at a tenant's annual recertification of income and family composition.
- These assistance payments are a source of income and are included in the determination of annual income and the calculation of total tenant payment.

Requirements for Tenant Households

- Tenant Utility Release Form
- An Owner may require a tenant to sign a release for utility data in certain circumstances.
- For example, a utility company may require a tenant release as a condition of providing utility data.
- If a tenant release is necessary, the O/A will request and the tenant household is required to sign a release under 24 CFR 5.659 and the HUD Model Lease for Subsidized Projects.
- For HUD programs, the release remains applicable for the household's term of tenancy; however, there may be utility providers that require a tenant's signed release form more frequently.

Requirements for Tenant Households

- Households are required to provide utility data and documentation if requested.
- In accordance with the regulation at 24 CFR 5.659 and the HUD Model Lease for Subsidized Projects, households must provide utility documentation as requested by the O/A and the request does not have to correspond with a household's recertification.
- Tenants must also disclose if they are paying a flat rate as part of a low-income rate assistance program

Requirements for Tenant Households

Disclosure of Utility Assistance

- Households are required to disclose whether they are receiving utility assistance from sources other than HUD.
- O/As must ask this question at a tenant's annual recertification of income and family composition, because these assistance payments are a source of income and are included in the determination of annual income and the calculation of total tenant payment. See 24 CFR 5.609(a) and HUD Handbook 4350.3 paragraph 5-6.G.1.

Requirements for Tenant Households

Disclosure of Utility Assistance

- Households receiving utility assistance from sources other than HUD continue to receive the baseline HUD utility allowance as determined by the most recent utility analysis.
- Assistance that must be reported includes cash or other assistance from utility providers or other entities.
- Failure to disclose this income will be considered a lease violation in accordance with annual recertification requirements.

Penalties for Tenant Noncompliance

- Failure to comply with the reporting requirements is a lease violation and may result in termination of tenancy.
- If an owner pursues termination of tenancy, the termination must be carried out in accordance with Chapter 8 of HUD Handbook 4350.3, REV-1.



Other Issues to Consider

Question:

What if I am unable to obtain the required amount of sample sizes for the baseline?

Inadequate Sample Size

- First, remove from your sample size any invalid units (including those less than 10 months of occupancy) – inform the CS how many units you removed and why!
- You will be required to document and show your attempts to collect the tenant data in accordance with this notice. Your CS will request your letters and review that they include the eviction language and other requirements.
- You may be required to implement the tenant release form that was distributed with this HUD notice.
- Your efforts to acquire bills will be determined by our Managers. If it is deemed more can be done, the package will be held until a larger sample size is collected.

Other Notable Content of the Notice

The notice reiterates the following, existing guidance regarding UA's which will continue for the new process:

- O/A are required to adjust UA's annually at the time of annual or special RA
- UA's must be supported by an analysis
- Adjustments to UA must be made if analysis indicates any change up or down
- RA must be held until the owner submits the UA and all other required docs. Once submission is complete, RA will be retroactively implemented.

Other Notable Content of the Notice

- Owner certifications in lieu of an analysis are not permitted
- 30-day notice of decrease in UA must be provided to tenants
- Multiple adjustments to UA are permitted in a year
- Decrease in UA amount does not affect TTP
- A UA MUST be increased mid-year when changes in rates result in an increase of 10% or more.
- Tenants have a right to participate in and comment on a proposed decrease in UA----**30-day comment period**

Other Notable Content of the Notice

The Factors are published on HUDUser. -

<http://www.huduser.org/portal/datasets/muaf.html>

State	Oil	Natural Gas	Electricity	Water/Sewer/Trash
FLORIDA	0.980	1.009	0.995	1.033
VIRGIN ISLANDS	0.994	0.965	1.020	1.033
US	0.994	0.965	1.020	1.033

Will be published annually in conjunction with the OCAF.

Allowances for NC and SR

- Special submission guidelines have been provided in the notice for properties undergoing New Construction or Substantial Rehab.
- Properties undergoing NC or SR can establish baseline based on analysis completed at underwriting through an energy consumption model.
- **Owners may use this option instead of the methodology in this notice only in the first year of occupancy post-construction.**

Voluntary Use of EPA's Energy Star Portfolio Manager

- O/As of Multifamily Housing properties that both receive project-based rental assistance, and for which HUD provides a utility allowance, are encouraged to use ENERGY STAR Portfolio Manager, or an equivalent online tool, to track whole-building utility data (cost and consumption).
- For more information contact Michael Zatz at zatz.michael@epa.gov or go to <http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

