

## SECTION 42 PROJECT UTILITY ALLOWANCE REVISIONS

IRS Treasury Regulation §1.42-10 for Section 42 projects (aka LIHTC or AHTC) regarding utility allowance (UA) calculations has been revised. This change takes effect for taxable years beginning on or after July 29, 2008. ***This is not applicable to properties operating under the Rural Housing Service or HUD Section 8 (in combination with Section 42) or any building in which any resident receives Rural Housing Service rental assistance.***

### Treasury Regulation §1.42-10 Change Overview:

New Calculation Options. If a building is neither RHS-assisted or HUD-regulated, and no resident in the building receives RHS rental assistance, applicable utility allowances for rent-restricted units in the building are determined using either the Utility Company Estimate or one of the two choices outlined below. (Agency Estimates permitted per legislation are not applicable in Wisconsin).

Frequency of Utility Allowance Review: At least once during each calendar year, the basis on which utility allowances have been established must be reviewed and updated regardless of any percentage change in utility rates.

- Reviews must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.
- Building owners may choose to calculate new utility allowances more frequently than once per calendar year, provided the owner complies with the requirements for implementing utility allowances.
- Building owners are not required to review or implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days, OR the end of the first year of the credit period, *whichever is earlier*.

Cable Television and Internet Costs: Are specifically excluded (in addition to telephone) from utility allowance calculations.

Understated Utility Allowances: If WHEDA determines an owner has understated the utility allowance for a building, and as a result the building's units are not rent-restricted units (under section 42(g)(2)), WHEDA is required to report the noncompliance to the IRS.

Record Retention: The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records.

### Utilizing New Options:

Owner must pay for all costs incurred in obtaining these estimates and providing them to both WHEDA and building residents. WHEDA may require additional information from the owner during the 90-day period.

HUD Utility Schedule Model.

- Calculate utility estimates using the "HUD Utility Schedule Model" found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html> (or successor URL).

- Owners submit to WHEDA: WHEDA form 205, HUD form 52667 “Allowances for Tenant-Furnished Utilities and Other Services” generated from the HUD Utility Schedule Model (with supporting documentation), and the notification sent to building tenants. In the event the new utility allowance is a \$5.00 or more change from the previous year’s calculation an explanation must be provided with your submission.

Energy Consumption Model.

- Utility consumption estimates must be calculated by a properly licensed engineer using an energy consumption model which must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location.
- The engineer and building owner must not be related [within the meaning of section 267(b) or 707(b)].
- For newly-constructed or renovated buildings with less than 12 months of consumption data, the engineer may use consumption data for the 12-month period of units of similar size and construction within the geographic area in which the building containing the units is located.
- Owners submit to WHEDA: WHEDA form 205 along with the utility calculation documentation, a copy of the engineer’s current license, and the notification sent to building residents. In the event the new utility allowance is a \$5.00 or more change from the previous year’s calculation an explanation must be provided with your submission.

**Notification Requirements and Data Collection:**

Utility rates used to calculate analysis must be no older than the rates in place 60 days prior to the beginning of the 90-day period. WHEDA and all building residents must be notified of utility allowances 90 calendar days prior to the UA effective date. The utility company furnishing the estimate must offer utility services to the building.

Reminder: Only utility costs paid directly by the resident(s) and not by or through the owner are included in the utility allowance calculation. Unit gross rents include the applicable utility allowance.

Timeline for a Utility Allowance with an effective date of August 1, 2009:

- March 4, 2009 - May 2, 2009 (60 calendar days). Obtain utility data for the previous 12 months and calculate the utility allowance.
- No later than May 3, 2009 (90 calendar days). Owner notifies WHEDA and all building residents of utility allowance.
- May 3 – July 31, 2009 – WHEDA reviews and approves utility allowance.