

Utility Allowance Policy and Procedures

Effective January 11, 2010

Revised December 6, 2016

Section 1: Introduction and Background

While intended primarily for projects financed with Low Income Housing Tax Credits, the OHFA Utility Allowance Policies and Procedures are applicable to any multifamily project assisted by the Ohio Housing Finance Agency (OHFA).

On July 29, 2008, the IRS issued updates to the utility allowance (UA) regulation ([IRS Regulation 1.42-10](#)) with additional methods. These additional utility allowance methods are included in the final regulation in addition to the previously allowable methods. ***The Ohio Housing Finance Agency will accept the following utility methods as defined in IRS Regulation 1.42-10:***

The following utility allowance methods do not require OHFA Approval:

- Public Housing Authority (PHA) Allowance
 - Note: For properties with HOME funds committed on or after August 23, 2013, the PHA estimate or other estimates that are not project-specific cannot be used.
- Utility allowances as required by other federal programs should be used:
 - Allowances for buildings assisted by the Rural Housing Service (RHS) or with Rural Housing Assisted Tenants (515)
 - Utility allowances for buildings regulated by HUD (U.S. Department of Housing and Urban Development)
 - Allowances for tenants receiving HUD Rental Assistance either from the Housing Choice Voucher Program or a project-based voucher facilitated by the local metropolitan housing authority

The following utility allowance methods must be reviewed and approved by OHFA:

- Utility Company Estimates
- HUD Utility Schedule Model
- Engineer's Energy Consumption Model
 - Calculated by a properly licensed engineer or qualified professional as outlined later in this policy

Note: OHFA will no longer accept consumption-based or agency estimate methodology effective December 6, 2016. See Renewals in Section 3 of this policy for additional information.

The owner can select an allowance that provides the greatest benefit to a project or a portfolio of projects. For example, a project currently using a PHA allowance could use the HUD Utility Schedule Model for gas and a Utility Company Estimate for electric. Owners may request a project specific utility allowance or a portfolio approach.

If the owner seeks a portfolio-based UA, the portfolio must contain projects that are located in the same county,

have the same General Partner, and same type of housing stock. Be advised OHFA may deny a portfolio request if the sample size fails to meet any of the above-mentioned components.

Utilities Included in Allowance:	Utilities Excluded in Allowance:
Electric	Telephone
Gas	Cable
Water/sewer	Internet service
Trash	Items not included in the eligible basis
Any item tenant must pay in addition to rent including a range and/or refrigerator not supplied by the owner	Any item that is a property expense paid with operating funds

IRS Notice 2009-44

It is important to note that On May 5, 2009, the IRS issued Notice 2009-44 clarifying aspects of IRS Section 1.42-10 related to sub-metered utilities. When Section 1.42-10 was revised in 2008, the language was interpreted to prohibit charging residents for utilities under a sub-metering system. Services such as telephone, cable, or Internet service are not considered utilities under IRS Section 1.42-10. Notice 2009-44 clarifies that owners can charge residents for utilities if the unit(s) is individually metered, and these charges can be billed through a third-party service. Reasonable and customary charges, not exceeding \$5 per unit, may be charged to the resident. Such charges are not considered part of the gross rent calculation.

Service charges passed on to residents must be the actual charge for the service provided. Properties may not bill residents for prior charges. Fees may only be assessed for service provided after May 5, 2009. The Notice does not indicate that billing methodologies such as RUBS are acceptable; OHFA will not accept RUBS methodologies.

Included in Utility Allowance:	Excluded from Utility Allowance:
Taxes/ Fees from the utility company (e.g. service changes, riders, etc.)	Fees charged by a third-party billing company {e.g. Ratio Utility Billing System (RUBS)}

Changes to Utility Allowances

Owners are required to review current utility rates at least once during each calendar year and update the allowance if it has changed in accordance with Section 1.42-10. This update must be recorded in DevCo, OHFA's online reporting database, and proof of verification must also be provided in DevCo annually. Any change in the amount of a utility allowance must be listed in DevCo. Once a new utility allowance is added in DevCo rent updates should be completed on all units to show that there is a change in the gross rent.

Be advised that the local PHA Utility Allowance Schedule can change during the course of one-year. For projects using only PHA allowances, the Utility Allowance must be updated any time the PHA allowance changes. For projects that have an OHFA approved utility allowance, the allowance is effective for one calendar year.

Section 2: Projects Excluded From Submitting a Utility Allowance Request

Projects meeting any of the following conditions are excluded from submitting a utility allowance request to OHFA:

1. The project has an outstanding Uncorrected IRS Form 8823(s). Until such time as compliance deficiencies are remedied and a corrected IRS Form 8823(s) is issued, the project must continue using the PHA or other required utility allowance.
2. The project is HUD-regulated or receiving RHS assistance. These projects must continue using the required utility allowance as defined in [IRS Section 1.42-10](#).

Section 3: Submission of Utility Allowance Request

A. How to Submit

Owners are required to submit the following information for the utility allowance (UA) that is requested. OHFA will accept submissions by:

- Mail to the attention of the compliance analyst assigned to the project, Office of Program Compliance, Ohio Housing Finance Agency, 57 East Main St., Columbus, Ohio 43215
- Or, email the UA Request to the compliance analyst assigned to the project.

Each submission, whether a new request or a renewal, must include the following:

- [The OHFA Utility Allowance Request Form \(PC-E30\)](#).
- *Administrative fee of \$100 per project (mail to address above).*
- Any documents required for utility methods used in the request (*See section 5 for more information*).

Properties Initially Placing in Service

The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90% occupancy for 90 consecutive days or the end of the first year of the credit period, whichever is earlier. The following additional requirements must be followed:

- The request is project-based only.
- A utility allowance request must be submitted to the Office of Program Compliance by the date on which the final Housing Tax Credit or Housing Development Gap-Financing (HDGF) applications are due. This will allow OHFA's Office of Planning, Preservation and Development to timely complete the final underwrite should the owner be awarded a tax credit allocation(s).

If OHFA grants approval of the requested utility allowance, the approved allowance will be effective for one calendar year. An owner must ensure all required documentation is submitted with the utility allowance request. For example, an owner requests approval to use a Utility Company Estimate for gas and the HUD Utility Schedule Model for electric. In this example, the owner must submit all items listed under sections 6A and 6B.

OHFA charges a non-refundable administrative fee of \$100 for each project. When combining utility methods, the fee is not cumulative. For example, if the project is using estimates for gas and the HUD Utility Schedule Model for electric, the fee is \$100. A portfolio request must include a \$100 fee for each project included in the request. The per project fee must be received before an owner request will be reviewed. Checks should be made payable to the Ohio Housing Finance Agency and submitted to the attention of Program Compliance (address listed above). A request is not required if the property is using only the PHA allowance or another approved allowance by another federal housing program (e.g. HUD or RD).

B. Renewals

The owner is responsible for submitting a new request (as described above) 90 days before the expiration of the utility allowance in effect. A new request with all forms and documentation must be completed.

If an OHFA Approved Utility Allowance is not being renewed the submission must include only:

- [The Utility Allowance Statement of Non-Renewal Form \(PC-E31\)](#)

Owners that fail to submit a renewal or submit a Non-Renewal form are required to use the applicable PHA utility allowance retroactive to the expiration date of the previous utility allowance.

Note: For approved OHFA Consumption Utility Allowance [requests received](#) from January 1, 2016 to June 30, 2016, a one-time waiver will be allowed. For any requests after this one-time waiver, the owner will have to select another utility allowance methodology as outlined in the policy upon the next annual renewal date. *If the owner of an eligible project decides to request another consumption-based allowance, the submission should go directly to Betsy Krieger, PC Director, at bkrieger@ohiohome.org.*

Section 4: 2013 Final HOME Rule Utility Allowance Requirement

The 2013 Final HOME Rule requires Housing Credit Agencies or Participating Jurisdictions (PJs) to determine an individual utility allowance for each HOME rental project either (1) by using the HUD Utility Schedule Model or (2) by otherwise determining the allowance based upon the specific utilities used at the project. PHA estimates or other estimates that are not project specific are no longer acceptable. OHFA will require owners of projects that received **HOME funds on or after August 23, 2013** to request a utility allowance from OHFA. Owners of these projects will no longer be able to use the Public Housing Authority (PHA) allowance for all HOME units in the project. *Effective January 1, 2017*, owners of these projects are required to submit an individual utility allowance by using the HUD Utility Model, utility company estimate, or engineer's energy consumption model. OHFA will work with the owners of these projects regarding the implementation of the utility allowance requirement.

Projects that have a utility allowance mandated by another Federal Program (e.g. HUD Section 8, Rural Development) may use the utility allowance as determined by the housing contract. Due to the HOME program not allowing the PHA utility allowance to be utilized, a household with a Housing Choice Voucher would not be able to meet the HOME utility allowance criteria. If selecting such a unit is the only option at the property, the owner must contact OHFA for further guidance.

Owners of projects that received OHFA **HOME funds prior to August 23, 2013** are not impacted by the utility allowance requirement in the 2013 Final HOME Rule and may continue to use any utility method described in this policy to include PHA utility allowance.

Section 5: Projects in Extended Use

During Extended Use, the owner is not required to submit to OHFA for approval any allowance, but it must be updated on an annual basis and consistent with the current utility allowance policy. Changes in utility allowances must be completed in DevCo on an annual basis, at minimum as per Internal Revenue Code Section

1.42-10. Documentation for the utility methodology selected must be updated annually based on the anniversary of the effective date. OHFA reserves the right to request documentation demonstrating the utility allowance meets OHFA's policy.

Effective January 1, 2017, Projects in extended use and currently using a consumption-based utility allowance must use another utility allowance methodology as outlined in this policy when the allowance is due for an annual update. All other OHFA approved utility allowances may continue to be used.

Section 6: Utility Methods Accepted

A. Local Utility Company Estimate

An owner may submit a utility company request to use an alternative allowance. If the owner is unable to obtain estimates from the utility company, this option cannot be used.

An owner must submit the following information to use this utility method:

1. Written estimate from a local utility company for utilities of a similar sized unit and construction. The estimate must take into account taxes and fees on the utilities that the tenant pays. The estimate must be from the local utility company and contained on the company's letterhead.

B. HUD Utility Schedule Model

An owner must submit the following information to use this utility method:

1. A completed HUD Utility Schedule Model (HUSM). <https://www.huduser.gov/portal/resources/utilallowance.html>
2. Back up documentation showing entry into the HUSM, and any documentation showing how rates, blocks, and charges were selected for each utility entered into the HUSM.

Information on completing the model can be obtained in the following video (using the web based form):

<https://youtu.be/wJa8b2kZhc?t=2m15s> Note: discusses HUSM use with HOME funds but the steps are the same

C. Engineer's Energy Consumption Model

An Engineer's Energy Consumption Model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation (e.g. townhouse versus flat/garden unit), design and materials, mechanical systems, appliances, and characteristics of building location. The use of an Engineer's Energy Consumption Model will be allowed under the following conditions:

- The energy professional or firm conducting the allowance calculations must meet the following minimum requirements:
 - a) Demonstrate that staff supervising the calculation of utility allowances maintain certifications and licenses relevant to the development and implementation of an energy consumption model (e.g. Professional Engineer license, Professional Architect license, Certified Energy Manager or similar designation)
 - b) Demonstrate a minimum of one year experience implementing energy consumption models
 - c) Submit resumes for those completing/overseeing the utility allowance calculations

- The firm or professional conducting the energy audit must not be related to the owner within the meanings of Internal Revenue Code Section 267(b) or 707(b)
- The model is limited to a 12 month period ending no later than 60 days prior to the beginning of the 90-day review period. The Model must show the results are within 10 percent variance of actual consumption data. If the variance is more than this and the engineer or architect believes his/her model is actually more representative of a calendar year, a detailed explanation of such reasoning must be included with the request.

An owner must submit the following information to use this utility method:

1. Description of the firm's or energy professional's experience implementing energy consumption models, including resumes.
2. Letter from the engineer or architect that they are not related to the owner within the meanings of Section 267(b) or 707(b) of the IRS regulations.
3. A complete copy of the Engineer's Energy Consumption Model projection. This should show the steps of the process, the projected consumptions, as well as the dollar amounts including taxes and fees.
4. Copies of all supporting documentation such as letters from the utility companies showing the rates, taxes, and fees.

Section 7: Implementation, Tenant Notice, and Record Keeping

The IRS utility regulation requires owners to make available the proposed utility allowance to residents at the beginning of the 90-day review period before the approved utility allowance is used to determine gross rents of rent-restricted units {1.42-10(b)(4)(ii)(B)}. If the utility allowance uses data from the project it must be for a 12-month period and must end no earlier than 60 days prior to the 90-day review period established in [Section 1.42-10](#).

The notification date is the date upon which OHFA receives the utility allowance request and begins the 90-day review period. The effective date for an approved utility allowance is the first day after the end of the 90-day review period. If a utility allowance approval requires additional documentation or corrections it is at the discretion of the OHFA compliance analyst to determine the appropriate timeframe. The approved utility allowance cannot be implemented prior to the end of the 90-day review period even if the owner receives an approval letter from OHFA before that time.

Example:

A Utility Allowance request is submitted to OHFA on August 21, 2016 and made available to the tenants on August 21, 2016. The notification date is August 21, 2016 and begins the 90-day review period. OHFA approves the request on October 30, 2016 and notifies the owner of the approval. The new approved utility allowance is effective on November 19, 2016.

Once the utility allowance is approved it is the responsibility of the Owner or Management Company to record the utility allowance in DevCo. OHFA requires that the owner maintain OHFA's approval letter and the utility allowance request in hardcopy and/or in an electronic format.

Section 8: Utility Allowance Denials and Appeals

OHFA reserves the right to deny a request for the following reasons, but not limited to:

1. Calculation errors
2. Insufficient sample size
3. Outstanding non-compliance issues
4. Sample size contains units not continuously occupied unless approved by OHFA
5. Failure to provide the per project \$100 non-refundable administrative fee

If the utility allowance request is denied, an appeal may be submitted to OHFA within **10 business days** from the date of denial. An appeal must be in writing on company letterhead and signed by the owner or owner agent. The written appeal must specifically describe why the appeal should be granted. OHFA will allow one appeal per property or portfolio submission.

Written appeals should be addressed to Betsy Krieger, Director of Program Compliance, 57 East Main St., Columbus, Ohio 43215. OHFA will provide the owner with written notification of the decision. OHFA's decision regarding an appeal is final.