HUD UPDATE
2015
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As HUD celebrated its 50th anniversary on September 6th 2015, HUD is focused on advancing policies that create opportunity for all Americans, creating a solid foundation for the next 50 years.

1. BUILD A STRONGER HUD

2. HELP AMERICANS SECURE QUALITY HOUSING

3. END HOMELESSNESS

4. STRENGTHEN COMMUNITIES IN THIS CENTURY OF CITIES

5. LEVAEL THE PLAYING FIELD FOR ALL AMERICANS

6. ADDRESS CLIMATE CHANGE AND NATURAL DISASTERS
Multifamily for Tomorrow Transformation

As you know, the Office of Multifamily Housing is moving forward with the Multifamily for Tomorrow (MFT) Transformation. Through MFT, Multifamily Housing will modernize and improve our business model while fostering an exceptional environment for employees. Elements of this initiative include workload sharing, digitization of property records, adopting industry best practices in Production and Asset Management, and streamlining the Multifamily organizational structure.

The second wave of MFT has started in the following offices: Chicago, Minneapolis, Detroit, Columbus, Cleveland, Indianapolis, and Milwaukee. These offices will be streamlined into one Midwest Region, with Chicago serving as the Regional Center and Minneapolis and Detroit serving as the Regional Satellite Offices. Asset Management will continue to operate in the remaining field offices.

To support staff during this transition, Multifamily Housing will reallocate some of the work through workload sharing to different Multifamily offices or to third-party vendors in Production (Summit Consulting, LLC) and Asset Management (Alpine Companies, Inc.). Below, you will find information on how this will impact Production and Asset Management in affected offices.

Production:

Beginning October 15, 2014, all applications for the Midwest Region, including Chicago, Minneapolis, Detroit, Columbus, Cleveland, Indianapolis, and Milwaukee, must be sent to a single point of contact for processing. The following procedures will be implemented to ensure the timely processing of applications:

1. Lenders will submit electronic copies (CDs) of the applications to:

   Production Division
2. Applications will be uploaded and assigned to a Regional Center/Satellite Office or to Summit Consulting, LLC for processing;

3. Lenders will be notified of the office processing the application and receive instructions from the Midwest Regional Center in Chicago on where to forward hard copies of the application;

4. Until further notice, all concept meetings will be conducted in the current program centers.

Asset Management:

Many transactions in the existing Chicago, Minneapolis, Detroit, and Columbus Hubs, including Cleveland, Indianapolis, and Milwaukee, will soon be shifted to other locations. Property owners and lenders who are impacted will receive notification with directions for contacting the appropriate HUD or Alpine Companies, Inc. representative. No servicing interruptions are expected. We are committed to keeping you fully informed as we move forward with MFT.

For more information about the Multifamily for Tomorrow transformation, please visit [www.hud.gov](http://www.hud.gov) or send us an email at mft@hud.gov. We appreciate your patience and understanding as HUD works to improve the delivery of our programs and our service to you.
PBCA Contracts

The United States Supreme Court announced that it has declined to hear HUD's latest challenge to a previous federal appeals court decision which requires the agency to follow standard procurement practices in the Performance-Based Contract Administrator (PBCA) Program.

In the past, HUD managed the PBCA Program through competitively awarded contracts. Then in 2012, HUD re-cast the procurement contracts as cooperative agreements through a Notice of Funding Availability (NOFA). During the application period of the PBCA NOFA, 42 states filed protests with the Government Accountability Office due to HUD's use of the NOFA as the award mechanism for the PBCA contracts. On August 15, 2012, the GAO sustained the protests. The GAO determined that HUD's use of a NOFA to award the PBCA contracts to administer the project-based Section 8 HAP contracts "was improper because the 'principal purpose' of the NOFA was to obtain contract administration services for HUD's direct benefit and use, which should be acquired under a procurement instrument that results in the award of a contract."

After a long series of appeals from both HUD and the plaintiffs, on March 25, 2014, the US Court of Appeals for the Federal Circuit ruled that the PBCAs are procurement agreements, not cooperative agreements as HUD had argued. HUD filed a petition for a writ of certiorari, or a cert. petition, with the Supreme Court, asking the court to consider this appeal. However, with the Supreme Court declining to hear this cert. petition, the series of legal challenges has now concluded and the next step will be for HUD to reinstate a formal, competitive procurement process in the PBCA Program.
Disparate Impact under the Fair Housing Act

In June of 2015 the US Supreme Court upheld “Disparate Impact” as a form of discrimination under the Fair Housing act.

What is Disparate Impact?

(HUD Definition) A practice that actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex handicap, familial status or national origin.

This rule has complicated proof issues.

Proofing disparate impact

• Need not to show intent for disparate impact claims
• Claims based on statistics that suggest a housing policy has a discriminatory effect on a protected class.
• Disparate impact is used to attack policies or practices that are neutral on their face but that have allegedly disproportionate impact on minorities.
• Disparate impact may expose cooperatives to liability for otherwise “normal” operations and policies.

Crime/drug credit screening policies may have a disproportionate effect.

Three Step Burden- shifting approach:

• The plaintiff (or charging party) must make a prima facie (First Look) showing of either a disparate impact or segregative effect.
• If the discriminatory effect is shown, the burden of proof shifts to the respondent to show “Legally sufficient justification.”
• If the respondent satisfies the burden, then the charging party/plaintiff may still establish liability by proving that these substantial, legitimate, nondiscriminatory interests could be served by another practice that has a less discriminatory effect.
The future:

- Expect swift increase in the number of cases
- Effectively, expands number of “pseudo-protected classes” (high risk borrowers, convicted felons, persons with non-wage income)
- Lower courts will have to wrestle with the details.

Future kind of challenges

1. Residency preference
2. Drug/crime screening policies
3. Membership decisions based on source or type of income
4. Credit screening
5. House rules

What to do now:

- Review new/existing policies or practices
- Be cautious about rules that focus on specific groups (Like restricting children’s activities)
- Document the what and why on occupancy requirements, preferences and house rules.
Utility Allowances

At least once every three years projects with anniversary dates on or after December 19, 2015 are required to establish and recommend to their contract administrator baseline utility allowances for each of their bedroom sizes. On the second and third years, HUD will provide a factor to be applied to the baseline. In other words, the process described below need only be done once every three years.

How to establish the baseline:

- The required sample size is based not on the total number of units in the property but on the total number of units of a given bedroom size (i.e., 1BR, 2BRs, etc.) in the property.
- If the project has more than one building, separate calculations for each BR size would suffice unless the various buildings are substantially different. In other words, if you have two buildings and, for example, one is a high rise and the other attached townhouses, separate calculations would be required for each building.

- Minimum sample sizes are as follows.
  - These are *minimums*. You are not required to collect more than the minimum.

<table>
<thead>
<tr>
<th>Number of Units of given BR size</th>
<th>Minimum sample size for that unit type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 20</td>
<td>All</td>
</tr>
<tr>
<td>21 - 61</td>
<td>20</td>
</tr>
<tr>
<td>62 - 71</td>
<td>21</td>
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<tr>
<td>72 - 83</td>
<td>22</td>
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<tr>
<td>84 - 99</td>
<td>23</td>
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<tr>
<td>100 - 120</td>
<td>24</td>
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<tr>
<td>121 - 149</td>
<td>25</td>
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<tr>
<td>150 - 191</td>
<td>26</td>
</tr>
<tr>
<td>192 - 259</td>
<td>27</td>
</tr>
<tr>
<td>260 - 388</td>
<td>28</td>
</tr>
<tr>
<td>389 +</td>
<td>29</td>
</tr>
</tbody>
</table>
A unit must be excluded from the sample if it:

- Is receiving an increased utility allowance as a reasonable accommodation;
- Has been vacant for more than two months (i.e., it must have been occupied for at least 10 months during the 12 month period being sampled); or
- Is receiving a flat utility rate as part of a low-income rate assistance program.

The same 12 month sampling period must be used for all units included in the submission.

- As indicated above, a sample unit can have been vacant for one or two months during this period.
- It is not necessary that the same tenant have been in occupancy during the 12 month sampling period (e.g., so long as the vacancy turnover took no more than 2 months, the unit can be included in the sample).

When calculating the monthly average for purposes of making your recommendations, do not exclude the “high” and “low,” as some contract administrators have, in the past, directed.

HUD has provided as Attachment A of Notice H 2015-04 a sample spreadsheet for use in calculating and making your recommendations. Use of this spreadsheet is not mandatory, but if you choose to use your own forms they must provide essentially the same information as on Attachment A both as to the calculations and the recommendation itself.

- The recommendation form is the Summary Sheet in Attachment A.
- The calculations are done on the 2nd, 3rd, 4th, etc. sheets in Attachment A.

Tenants are required to provide management agents with the information necessary to conduct a utility survey and prepare a recommendation. A sample release form/letter to utility companies is attached. This sample was created by HUD.

- The Notice requires that you treat a failure by a tenant to cooperate as a violation of the lease. At the same time, though, HUD understands that in some jurisdictions no judge would agree to evict a tenant for failure to provide utility information. You can rely on your counsel’s advice in such circumstances, but be sure to document it.

If you are unable to obtain the minimum number of samples for a given unit size, you must provide an explanation, with appropriate documentation, of why this is the case and, if applicable, what you did to obtain the full sample size.

- If the reason for exclusion of a unit was provision of a higher UA as a reasonable accommodation, too few months of occupancy, or a flat utility rate, simply indicate this.
- If the reason was failure of the tenant(s) to cooperate, provide documentation such as sample copies of letter(s) to tenants requesting the information and of your efforts to enforce your request.
If the utility allowance covers more than one utility (e.g., electricity and gas), you will have to demonstrate how you arrived at your recommendation. This will require separate calculations for each utility. Therefore, you probably will want to use an Attachment A spreadsheet for each utility. Since each spreadsheet will give you its own Summary Page, you will then have to combine the numbers on a separate page when you submit the package to your contact administrator.

**If you are recommending a reduction of utility allowances** you must provide the tenants with at least 30 days notice of your intent to make that recommendation. Attached is a blank copy of a sample notice to tenants of intent to reduce utility allowances.

A copy of the notice — together with any tenant comments — must be included with your submission to the contract administrator. It therefore is important that you begin your utility analysis process well before the date by which you must submit your request for rent increase. As a reminder, OCAF rent increases are supposed to be submitted at least 120 days before the contract anniversary date. In effect, since you can’t know for sure if your utility survey will result in a recommendation to reduce a utility allowance, this means that you should begin the triennial process of establishing a baseline six months before the contract anniversary date.

**If the reduction in utility allowance is approved**, you must provide the tenants with at least 30 days notice of that approval. A sample notice is attached.

**If the UA decrease will exceed 15% of the current UA and that decrease is equal to or greater than $10 per month**, the decrease must be phased in. The decrease the first year will be 15%, with the remainder (up to 15%) implemented in the second and (if applicable) third year of the triennial cycle.

- When calculating the second year UA, first apply the remainder of the UA reduction before applying the Utility Adjustment Factor that will be provided by HUD.

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**What must your submission to the contract administrator include?**

Your submission to your contract administrator must include:

- Recommendation form (Attachment A of Notice H-2015-14 or equivalent);
- Spreadsheet(s) showing your calculations (Attachment A of Notice H-2015-14 or equivalent);
- Utility bills, or printout from utility company;
- If applicable, an explanation of and documentation relative to any failure to obtain the minimum sample size; and
- If applicable, a copy of the notice to tenants of intent to reduce utility allowances together with any comments received by the tenants.
SAMPLE RELEASE OF TENANT UTILITY INFORMATION

DATE:

TO: (Name of Utility Provider) FROM: (Name Owner/Agent)  
Address)

ADDRESS)

SUBJECT: Request for Utility Information

Dear Sir/Madam:

The person named below receives housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). The Department provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. These utility allowances are adjusted each year and supported by an owner's analysis of the property's utility costs and consumption data.

In order to perform this utility analysis and better estimate the allowance provided to our tenants, your cooperation is requested in providing cost and/or consumption data for the below individual for the previous 12 months. Below you will find the tenant's consent to release this information.

Thank you for your help with HUD's goal of ensuring the right benefits go to the right individuals.

Request for Utility Information for: NAME: ____________________________  
ADDRESS: ____________________________________________  

PLEASE RETURN THIS UTILITY INFORMATION TO THE PERSON LISTED ABOVE

CONSENT TO THE RELEASE OF UTILITY INFORMATION: I hereby authorize the release of the requested utility information to the building owner and to HUD for the term of my tenancy at the above address. Information obtained under this consent is limited to utility cost and consumption for the address provided above. I understand that my utility information will be used to adjust utility allowances and to enable HUD to better conserve energy and better manage its expenditures on utilities.

Signature of Tenant Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

Name of Property Owner or Agent Title

Signature of Property Owner or Agent Date

PENALTIES FOR MISUSING THIS CONSENT:  
Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security numbers are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a) (6), (7) and (8)
Date of Notice (30 days prior to the date of utility submission)

On [date], [name of development] management plans to submit a request for approval to decrease the utility allowance to the

The proposed decreases have been requested, because our most recent sampling of resident utility bills has produced a decrease in the average utility rates.

The utility allowance decreases for which we have requested approval are:

<table>
<thead>
<tr>
<th>Bedrooms</th>
<th>Present Utility Allowance</th>
<th>Proposed Utility Allowance</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

(Tenant Notification and Rights on back.)
Tenant Notification and Rights

For 30 days after the posting date of the notice, a copy of the materials submitted in support of the utility allowance decrease request will be available during normal business hours at [address] for inspection and duplication by residents of [name of development] and, if the residents wish, by legal or other representatives acting for them individually or as a group.

During the 30 day period after the posting date of the notice, residents of [name of development] may submit written comments on the proposed utility allowance decrease to management at [address]. Resident representatives may assist tenants in preparing those comments. If, at request or otherwise, we make any material change during the comment period in the materials available for inspection and duplication, management will notify the residents of the change or changes, and the residents will have a 15 day period from the date of the additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed utility allowance decrease. These comments will be transmitted to the following address:

[Assigned Asset manager], Attention: [ ]

or the Department of Housing and Urban Development (HUD) may approve, adjust upward or downward, or disapprove the proposed utility allowance decrease upon reviewing the request and comments. When advises management in writing of the decision on the request, the residents will be notified. If the request is approved, any allowable change will become effective in accordance with the terms of existing leases and only after the residents receive at least 30 days notice of the approved utility allowance decrease.
NOTICE TO RESIDENTS OF APPROVED CHANGE IN UTILITY ALLOWANCE

Reference: PROPERTY
Contract Number: XXXX-XXXX-XXX
Date of Notice: DATE

Take notice that on DATE, CONTRACT ADMINISTRATOR, acting on behalf of HUD, approved a decrease in the utility allowance for certain units at PROPERTY. The utility allowance was decreased because data obtained from UTILITY COMPANY showed that actual costs were lower than the utility allowance. Effective DATE, the utility allowances will be adjusted as follows:

<table>
<thead>
<tr>
<th>Unit Type</th>
<th># Of Units</th>
<th>Current UA</th>
<th>New UA</th>
<th>Amount of Change</th>
</tr>
</thead>
</table>

A copy of the materials that were submitted to in support of the utility allowance calculation are available during normal business hours at ADDRESS for a period of 30 days from the date of service of this notice. These materials are available for inspection and copying by tenants of PROPERTY and, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of service of this notice, tenants of PROPERTY may submit written comments regarding the utility allowance change to us at ADDRESS. Tenant representatives may assist tenants in preparing those comments. These comments will be transmitted to along with our evaluation of them.

You will be given at least 30 days notice before the utility allowance change is implemented in accordance with the terms of existing leases.
DATE: 

TO: (Name of Utility Provider Address) FROM: (Name Owner/Agent Address) 

SUBJECT: Request for Utility Information 

Dear Sir/Madam:

The person named below receives housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). The Department provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. These utility allowances are adjusted each year and supported by an owner’s analysis of the property’s utility costs and consumption data.

In order to perform this utility analysis and better estimate the allowance provided to our tenants, your cooperation is requested in providing cost and/or consumption data for the below individual for the previous 12 months. Below you will find the tenant’s consent to release this information.

Thank you for your help with HUD’s goal of ensuring the right benefits go to the right individuals.

Request for Utility Information for: NAME: 

ADDRESS: 

PLEASE RETURN THIS UTILITY INFORMATION TO THE PERSON LISTED ABOVE

CONSENT TO THE RELEASE OF UTILITY INFORMATION: I hereby authorize the release of the requested utility information to the building owner and to HUD for the term of my tenancy at the above address. Information obtained under this consent is limited to utility cost and consumption for the address provided above. I understand that my utility information will be used to adjust utility allowances and to enable HUD to better conserve energy and better manage its expenditures on utilities.

Signature of Tenant Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

Name of Property Owner or Agent Title

Signature of Property Owner or Agent Date

PENALTIES FOR MISUSING THIS CONSENT:

Title 18. Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security numbers are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a) (6), (7) and (8).
<table>
<thead>
<tr>
<th>Contract Units</th>
<th>Units to be Sampled</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>1 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>2 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>3 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>4 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>5 Bedroom Units</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Average as Calculated from Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
</tr>
<tr>
<td>1 Bedroom Units</td>
</tr>
<tr>
<td>2 Bedroom Units</td>
</tr>
<tr>
<td>3 Bedroom Units</td>
</tr>
<tr>
<td>4 Bedroom Units</td>
</tr>
<tr>
<td>5 Bedroom Units</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current Utility Allowance</th>
<th>Proposed Utility Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>1 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>2 Bedroom Units</td>
<td></td>
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<tr>
<td>3 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>4 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>5 Bedroom Units</td>
<td></td>
</tr>
</tbody>
</table>
Subject: Methodology for Completing a Multifamily Housing Utility Analysis

I. PURPOSE

This notice provides instruction to owners and management agents (O/As) for completing the utility analysis required at the time of the annual or special adjustment of contract rents and when a utility rate change results in a cumulative increase of 10 percent or more from the most recently approved utility allowance. As discussed below in Part III, the notice builds upon the June 2011 memorandum titled Clarification Utility Allowance Regulations issued by former Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante.

II. APPLICABILITY

This notice is applicable for the following programs:

A. Project-based Section 8
   1. New Construction
   2. State Agency Financed
   3. Substantial Rehabilitation
   4. Section 202/8
   5. Rural Housing Services (RHS) Section 515/8
   6. Loan Management Set-Aside (LMSA)
   7. Property Disposition Set-Aside (PDSA)
B. Section 101 Rent Supplement
C. Section 202/162 Project Assistance Contract (PAC)
D. Section 202 Project Rental Assistance Contract (PRAC)
E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
F. Section 811 PRAC; Project Rental Assistance (PRA)\textsuperscript{1}

G. Section 236

H. Section 236 Rental Assistance Payments (RAP)

I. Section 221(d)(3) Below Market Interest Rate (BMIR)

III. BACKGROUND

The Department of Housing and Urban Development’s (HUD) Office of Multifamily Housing has been working towards streamlining the methodology for utility analyses as part of a larger effort to make energy and water conservation a priority at all HUD Multifamily properties. Currently, HUD’s annual outlay for utilities is more than six billion dollars a year. HUD is exploring how to make the Multifamily portfolio more energy and water efficient, to reduce O/As’ operating costs and reduce HUD outlays for utilities.

The Department is a partner in the President’s Better Buildings Challenge (BBC), a voluntary leadership initiative that asks building owners, developers, and managers to make a public commitment to energy efficiency. Many BBC Multifamily partners own HUD-affiliated properties and Multifamily Housing is providing incentives to help O/As meet the BBC goal to reduce energy consumption by 20 percent over ten years across their entire portfolio. Accurate utility data collection and analysis are integral to success in the reduction of energy and water consumption. This notice is a key step in streamlining the methodology for determining utility allowances. Additionally, it is expected that the data-centered approach will offer an opportunity for O/As to reevaluate property energy usage and make efforts to conserve where feasible.

In June 2011, then Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante issued a memorandum to Multifamily Hub and Program Center Directors and Contract Administrators 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. The memorandum clarified the following:

- Owners of multifamily housing properties that receive subsidy assistance, and for which HUD provides a utility allowance, are required to adjust their properties’ utility allowances every year at the time of the annual and special adjustments of contract rents.
- Utility adjustments must be supported by a utility analysis.

\textsuperscript{1}A Project Rental Assistance (PRA) property with a Rental Assistance Contract (RAC) that specifies use of the HUD Multifamily Housing policy for developing utility allowances will use the methodology outlined in this notice to develop utility allowances for that property.
Adjustments to the utility allowance must be made regardless of whether the utility analysis shows an increase or a decrease.

Rent adjustments must be held until the owner submits the utility analysis and all other required submissions. Once submitted, the rent adjustment will be retroactively implemented.

Owner certifications in lieu of a utility analysis are not permitted.

As required by 24 CFR 245.405(a) and 245.410, a minimum of 30-days notice must be provided to tenants for any utility allowance decrease.

Tenants have the right to participate in and comment on a proposed decrease in the utility allowance.

A decrease in a tenant’s utility allowance does not constitute a change in total tenant payment.

Multiple utility allowance adjustments are permitted throughout the contract year.

A utility allowance must be increased mid-year when changes in utility rates result in an increase of 10 percent or more to the utility allowance from the most recently approved utility allowance.

Since the June 2011 memorandum was issued, industry partners have requested that Multifamily Housing leadership provide a national standard for an acceptable analysis, which will also provide an appropriate utility allowance to their tenants. To accomplish these goals, industry leaders asked Multifamily Housing to provide helpful tools to assist them in conducting a reliable analysis. These tools, which have been included in this notice or as an attachment to this notice, include a sample tenant consent form, a directive requiring tenants to provide utility data upon request, and an Excel spreadsheet to aid in the allowance calculation.

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 described below 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. This has been and continues to be the basis for utility analyses in the programs covered by this notice.

IV. UTILITY ANALYSIS METHODOLOGY

Multifamily property owners must establish baseline utility allowances for each of their bedroom sizes once every third year, which are determined by using the baseline utility analysis outlined in Section A below. For the two years after the baseline is established, O/As have the option to perform a factor-based utility analysis, as described in Section B below.
A. Baseline Utility Analysis

A baseline utility analysis makes use of the sample size methodology detailed in Part VI below. To perform a baseline analysis, the O/A must perform the following steps:

1. Request utility data from either the utility company or the tenant household for at least the number of units determined by the sample size methodology detailed below. This must be done for each bedroom size at the property. If the property consists of multiple identical buildings (or buildings that are substantially similar), then the sampling may be performed at the property level (encompassing all buildings on a site) for each bedroom size. If the buildings are not identical, the sampling must be done for each bedroom size for each building.

A unit should be excluded from the sample if it:

   a) Is receiving an increased utility allowance as a reasonable accommodation;

   b) Has been vacant for 2 or more months. Units included in the sample should have at least 10 months of occupancy; or

   c) Is receiving a flat utility rate as part of a low-income rate assistance utility program.

Note: A baseline utility analysis can use a sampling greater than the HUD approved sample size.

2. Determine the average utility cost for each bedroom size without removing any units from the analysis beyond those excluded from the sample size as indicated in (1) above.

   Do not remove the highest or lowest utility cost household when determining the average.

3. Recommend this amount to the contract administrator (CA) for approval.

A sample format for utility allowance submissions, which includes built-in formulas to average utility costs for each unit size, can be found as Attachment A to this notice.

Multifamily Housing recognizes the difficulties associated with obtaining utility data from utility companies and tenant households. To assist in obtaining the
required sample size, a sample tenant release form is attached to the notice (Attachment B). Designating a workstation in the management office for tenants to access their utility accounts and print utility information has proven to be an effective way to obtain data.

1. **Implementation - Properties with Contract Anniversary Dates Within 180 Days of Publication of this Notice**

Properties that fall into this category can choose to perform their upcoming annual utility analysis using either the existing methodology or the methodology outlined in this notice. If the existing methodology is used, a baseline analysis as described above must be used at the next contract anniversary date to establish baseline utility allowances.

2. **Properties with Contract Anniversary Dates 180 Days after Publication of this Notice**

Properties that fall into this category must perform their upcoming utility analysis using the methodology outlined in this notice.

**B. Factor-Based Utility Analysis**

For the two years after a baseline utility analysis is completed, the utility allowance amounts for each bedroom size and each utility at the property can be adjusted by a state-specific increase factor, the Utility Allowance Factor (UAF), provided by HUD, in lieu of a baseline utility analysis. The UAF, which can be found on the HUDUser website, is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil/propane for residential customers that is published by the U.S. Energy Information Administration.

After completing the property’s utility analysis under the factor-based utility analysis method, O/As should compare the adjusted utility analysis to their paid utilities over the previous twelve months. If, in the O/A’s determination, the results indicate a significant disparity between the two, the O/A should complete a baseline analysis to help ensure the allowance(s) provided are accurate.

**C. Utility Allowance Changes Outside of the Contract Rent Adjustment Schedule**

Owners are required to submit documentation and a request for an increase in utility allowances when changes in utility rates result in a cumulative increase in utility allowances of 10 percent or more from the most recently approved utility allowance. When the owner requests an increase in utility allowances, the owner must submit either of the following as evidence of the rate change:
1. Utility bills from the month prior to the utility rate change and the first month after the utility rate change; or

2. Verification of the increase from the utility provider.

Note that a 10 percent or greater increase in any one utility component may not necessarily result in a corresponding 10 percent or greater increase in the utility allowance. Only when a utility rate change results in a cumulative utility allowance increase of 10 percent or more must the owner request the increase.

If required under the triennial cycle, the owner must still complete a baseline utility analysis at the next contract rent adjustment. If the owner performed a baseline utility analysis in the previous year and can use a factor-based utility analysis at the time of contract rent adjustment, the utility for which the rate was raised will not be adjusted by the UAF for that utility; however, all other utilities will be adjusted by the UAF.

V. UTILITY ALLOWANCE DECREASES

A. Notice to tenants

Whenever an adjustment to the utility allowance results in a decrease, an owner must follow the requirements of 24 CFR Part 245.405(a) and 245.410 regarding notice to tenants.

B. Phase-in of certain decreases

If the utility allowance decrease that results from the initial application of this methodology would exceed 15 percent of the most recent utility allowance and that decrease is equal to or greater than $10, the decrease must be phased-in. This means the O/A will implement a 15 percent decrease from the most recent utility allowance for that year, and then implement the remainder of the calculated decrease the following year, so that no decrease in any one year is greater than 15 percent.

For example, if a tenant's previous utility allowance was $120 and the analysis indicates a total adjustment that decreases it to $96 (a 20 percent decrease), the utility allowance has exceeded the 15 percent decrease (and the decrease is at least $10); the O/A will submit an adjustment to $102 (a 15 percent decrease from $120) in the first year and then a further adjustment the following year to $96 (multiplied by the applicable UAF), such that the full adjustment is phased-in over two years. The UAF will be applied in the second and third years of the triennial cycle after subtracting out any phased reduction. To continue with the example above, $96 would be multiplied by the UAF to establish the second-year utility allowance. (If the decrease is less than $10, the owner will implement the full decrease without any phase-in.)
VI. UTILITY ANALYSIS SAMPLE SIZE

The O/A must use an appropriate sample size to perform a statistically accurate utility analysis. Multifamily Housing requested assistance from HUD’s Office of Policy Development and Research (PD&R) to determine the appropriate sample size. To support this study, utility analyses were obtained from properties in California, Florida, Indiana, Massachusetts, New York, North Carolina, Ohio, and Washington, DC. PD&R’s research, which used a 12 percent margin of error and a 95 percent confidence interval, resulted in the sample size rule and formula below.

This formula has been built into the utility allowance submission template mentioned earlier and Figure 1 below shows how it translates based on the number of units per bedroom size.

<table>
<thead>
<tr>
<th>Number of Units *</th>
<th>Minimum Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-20</td>
<td>20</td>
</tr>
<tr>
<td>21-61</td>
<td>21</td>
</tr>
<tr>
<td>62-71</td>
<td>22</td>
</tr>
<tr>
<td>72-83</td>
<td>23</td>
</tr>
<tr>
<td>84-99</td>
<td>24</td>
</tr>
<tr>
<td>100-120</td>
<td>25</td>
</tr>
<tr>
<td>121-149</td>
<td>26</td>
</tr>
<tr>
<td>150-191</td>
<td>27</td>
</tr>
<tr>
<td>192-259</td>
<td>28</td>
</tr>
<tr>
<td>260-388</td>
<td>29</td>
</tr>
<tr>
<td>389 and above</td>
<td></td>
</tr>
</tbody>
</table>

*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.
Figure 2 below illustrates how many units would be sampled using a random representation of contract units of multiple bedroom sizes within a property.

<table>
<thead>
<tr>
<th>Bedroom Size</th>
<th>Number of Contract Units</th>
<th>Sampling for Utility analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>113</td>
<td>24</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>74</td>
<td>22</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>4 Bedroom</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Total Units</td>
<td>259</td>
<td>88</td>
</tr>
</tbody>
</table>

Rule:
If $N < 20$, sample all units  
If $21 \leq N \leq 61$, sample 20 units  
If $N > 61$, sample $n_0$ using the formula below.

Formula:

$$n_0 = \frac{(z^2) \cdot (CV^2)}{(e^2 + (z^2) \cdot (CV^2)/N)}$$

$N$ is the number of Section 8 units of a particular bedroom size  
$z$ is the value corresponding to a 95% confidence interval = 1.96  
$CV$ is the coefficient of variation of utilities, which is set at 0.34  
$e$ is the acceptable percent margin of error, which is set at 0.1

VII. ALLOWANCES FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Properties undergoing new construction or substantial rehabilitation may establish initial utility allowances for new or rehabilitated units based on analysis completed at underwriting through an energy consumption model, including an HFA-approved utility allowance calculator. This option is based on guidance established by the Internal Revenue Service under Section 42 Utility Allowance Regulations Update. The energy consumption model 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. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by HUD. Third, the owner must furnish a copy of the estimates derived from the energy consumption model to HUD or the CA and make copies of the estimates available to all tenants in the building. Finally, the building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing
the estimates to HUD and tenants. The O/A may use the utility allowance model instead of the methodology outlined in this notice to establish utility allowances only in the first year of occupancy post-construction.

For example, a property newly constructed or rehabilitated under the Rental Assistance Demonstration (RAD) program and converting to project-based rental assistance may establish initial utility allowances using such a calculator. However, when the property is occupied and the owner can obtain 12 months of consumption data, the owner must then follow the methodology in this notice and establish a baseline analysis. A newly constructed or rehabilitated property with a Section 8 HAP contract added to it through an 8 (bb) transfer of budget authority, or an existing Section 8 property undergoing rehabilitation in conjunction with a contract renewal under Chapter 15 of the Section 8 Renewal Guide would also be examples of properties that may initially utilize an energy consumption model calculator to estimate utility allowances, but thereafter follow the methodology in this notice.

VIII. ADMINISTRATIVE PROCEDURES

Upon completion of the utility analysis, the O/A must submit the analysis to the CA for review and approval. Calculations may be made using a software tool of the owner's choice (e.g. they may use the Excel spreadsheet offered by HUD or other tabulation software) as long as the inputs reflect the methodology detailed in this Notice. HUD will serve as a resource to O/As by providing training and technical assistance where possible.

IX. REQUIREMENTS FOR TENANT HOUSEHOLDS

A. 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. A sample tenant utility release form is included here as Attachment B.

B. 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.

C. 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. 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.

X. PENALTIES FOR TENANT NONCOMPLIANCE WITH PART IX

Failure to comply with the requirements in Part IX above 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.

XI. 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). If O/As cannot achieve whole-building data, they can utilize Portfolio Manager and follow the sampling protocol identified in this notice. ENERGY STAR Portfolio Manager is a no-cost, secure online resource that enables O/As to benchmark, track, and manage energy and water consumption at the property and portfolio level. O/As can use EPA's ENERGY STAR Portfolio Manager to identify under-performing buildings, set investment priorities, monitor and verify efficiency improvements, receive EPA recognition for superior energy performance, and report out on building and portfolio performance.

For more information on the use of the EPA Portfolio Manager, please 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.

XII. INFORMATION COLLECTION

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0352. In
accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

XIII. CONTACT

For more information on the utility analysis methodology outlined in this notice, please contact Kate Brennan in the Office of Asset Management and Portfolio Oversight at Catherine.M.Brennan@hud.gov.

Edward L. Golding  
Principal Deputy Assistant Secretary for Housing

Attachments
A – Sample Utility Analysis Submission Workbook  
B – Sample Release of Tenant Utility Information
Frequently Asked Questions
Methodology for Completing a Multifamily Housing Utility Analysis
H 2015-04 (June 22, 2015)

Implementation Period

1. Question: What is the effective date of this notice?

Answer: The implementation schedule is based on the contract anniversary date. If that date falls within the first 180 days after the publication of the notice (6/22/15), then the owner has a choice—s/he can choose to follow the new methodology, or follow the existing methodology. If the contract anniversary date is more than 180 days after the publication of the notice, s/he must follow the methodology in the notice.

Baseline Analysis

2. Question: What documentation will an O/A be required to submit with a utility analysis and request for approval of a U/A?

Answer: The O/A will submit all of the backup information required to demonstrate how s/he calculated the new utility allowances.

Some examples of backup information include:
1. Copies of the tenant data received from utility providers, this is typically in summary format; or
2. Copies of the printouts indicating a summary of monthly data if the tenant was able to obtain data online from their utility provider for the previous 12 months, or 10 months if the case may be; or
3. If the O/A obtained actual monthly utility bills from a tenant, the O/A may submit a spreadsheet summarizing the average of the monthly bills. The actual utility bills will not need to be submitted to the CA but will need to be retained in the tenant files for the term of tenancy plus 3 years and will be subject to CA review;
4. There may be cases where a combination of the above will need to be performed.

3. Question: We have some residents whose utility accounts are in a relative's name and the utility company will not provide the information based on the resident's signature. What do we do then?

Answer: Have the relative obtain the info, or if possible, use other units for your sample.

4. Question: If an apartment is only occupied by a resident for 10 months, how do we handle the other 2 months and any partial months?
Answer: Get an average for the unit for the 10 months; do not use the partial months.

5. Question: When a resident vacates an apartment and another resident moves in, the utility company will only release the information for the current resident. Even if the apartment was vacant for only a few days, we may not have 10 months of usage for the new resident. How do we handle that?

Answer: In years when UA baseline calculations are anticipated, make every effort to collect information for the vacating resident prior to their departure. While you need 10 months of utility data for the same unit, the resident can change. In other words, you could have 5 months for one resident and 5 months for another resident. If you cannot obtain the information for at least 10 months, you should not use the unit in the sample.

6. Question: Can an O/A combine methods of data collection (some bills from residents, some information from the utility provider)?

Answer: You can use either method, or both. There may be cases in which the O/A has no choice but to combine methods.

7. Question: Some CAs/HUD offices require that estimated amounts for certain appliance usage be removed from the total utility bill. For example, owner/agents may be required to remove costs to run AC or to use washer/dryers installed in the units. Is this a HUD requirement or are individual agencies allowed to implement such requirements?

Answer: This is not a HUD requirement nor should any agency or HUD office impose such a requirement.

8. Question: Please clarify the rounding to the nearest whole dollar – in some cases there have been differences due to rounding.

Answer: Collect the data and calculate the average in dollars and cents, and then round the resulting U/A to the nearest dollar (>=.50 round up, <=.49 round down)

Sample Size

9. Question: If the owner is unable to obtain the minimal sample size despite best efforts, will the analysis be accepted based on available data?

Answer: The owner must demonstrate that every effort has been made to obtain the required sample and to otherwise meet the requirements of the analysis. It is an owner's responsibility to
provide an analysis that follows the protocol outlined in the notice as closely as possible, recognizing that the “perfect” sample may not always be available. It will be HUD’s or the CA’s responsibility, as appropriate, to make sure that the analysis justifies the resulting U/As, with whatever compromises in the sampling were necessary to achieve that analysis. The CA, in consultation with HUD, may require the owner to complete another baseline the following year.

10. **Question:** For smaller properties, especially senior properties, that may have to use 100% sampling, certain circumstances will skew the resulting U/A up or down, e.g. residents spending weeks or months in a hospital, residents spending (colder) months with relatives, residents with medical conditions who need their apartments to be exceptionally warm, cold, or where they use medical equipment that uses a lot of energy. In most cases, the resident has not requested a reasonable accommodation to increase the U/A.

**Answer:** Smaller properties will necessarily require a proportionately larger sample size (including 100% sampling) in order to ensure statistically valid results. Management should encourage residents with medical equipment who have extraordinary utility bills to seek a reasonable accommodation for a higher utility allowance.

11. **Question:** If the property has 20 or fewer apartments and information is not available for at least 10 months in any number of units, does the sample size get reduced? For example: Property has 15 units so all the units must be included in the sample. However, 2 units are vacant and 2 units have only been occupied by the current resident for 5 or 6 months.

**Answer:** Even if 100% sampling is required, owners must exclude units that have not been occupied for at least 10 months. (see also question 9).

12. **Question:** Can you clarify the instruction on excluding units with less than 12 months of occupancy? The instructions indicate that a unit must be excluded if it has been vacant for 2 or more months, but then indicate that a unit with only 10 months of occupancy may be included.

**Answer:** The notice should have said to exclude units that have been vacant more than 2 months; units with only 10 months of occupancy may be included.

13. **Question:** Can you elaborate on sample sizes when the property has multiple floor plans for same bedroom size?

**Answer:** You would treat them as two different unit sizes if they appear on your rent schedule that way and sample for both sizes. For example, your rent schedule may indicate both a One Bedroom Unit and then a One Bedroom Unit (Large). This indicates that the unit size is different but the number of bedrooms is the same. It is likely that the U/A is different as well. If this is the case, these unit types should be considered individually. (If you are using the HUD worksheet attachment to the notice, you would amend it to include this additional unit type.)
14. **Question:** Can you use the usage amount for residents paying a flat rate, especially if most residents are paying a flat rate?

**Answer:** Generally, you would exclude the units of residents paying a flat rate, but this rule assumes that those units are the minority of units. If most residents pay a flat rate, including them in the sampling will give you a sample more representative of the whole. If you do so, document your reasons for doing so to help the CA/HUD determine if your approach was reasonable. And if you include these units, calculate the average based on the flat rate, not on the usage.

15. **Question:** Is the UA Analysis for all units at the property or just Section 8 units?

**Answer:** The U/A analysis covers only those units that receive a U/A; only HUD-assisted units will be included in the analysis.

16. **Question:** Is the flat utility rate exclusion meant apply to any unit receiving any kind of subsidy or just units that receive a flat utility rate? We have a variety of low income assistance programs that are not rate-based but result in lower utility bill amounts and would skew the average.

**Answer:** For now, the exclusion applies only to units with flat utility rates. We will review this policy and determine the best treatment of units receiving varying forms of subsidies. We welcome your feedback on this issue.

**HUD's Utility Analysis Excel Worksheet**

17. **Question:** Must an owner use the HUD-provided worksheet that was attached to the notice?

**Answer:** No, owners may develop their own worksheets to suit their needs, as long as they provide HUD/CA with adequate documentation.

18. **Question:** With the worksheet protected - how can we change to accommodate the same unit type i.e. 3 BR & 3 BR TH?

**Answer:** An unprotected version has been posted to HUDCLIPS. (Password is Sharkey)

19. **Question:** The HUD worksheet calculates averages based on the values entered. If you only have 10 months of data and enter 0 in the other two months, the average will calculate on all months that have data. Is this correct?

**Answer:** No, you should not enter any value for the months that are vacant (do not enter $0). Or, using the unprotected version of the worksheet that is now available, change the formula so that the average is calculated on only non-zero months. If you have only 10 months of data, the
average must be calculated on only those 10 months.

Release Forms

20. Question: The utility company requests we use their form for the release of information; is this okay?

Answer: The release form included with the notice is a sample. Owner/agents may use their own release form or a release form provided by the utility provider.

Mid-year U/A adjustments

21. Question: When a change in utility rates results in a 10% or more increase in the U/A, how do you compute the new allowance? Do you simply apply the % increase to the existing U/A?

Answer: Yes, you would apply the utility rate increase to that component of the U/A allowance, e.g. electric rates go up 15% so if the U/A for the property comprises both electricity costs and gas costs, you would apply the 15% to the electricity component of the U/A.

22. Question: What would be the historical time period to use for the new analysis?

Answer: The notice indicates that when rate increases cause U/As to increase 10% or more, an owner can submit the following evidence of the change: (1) utility bills from the month prior to the rate change and the first month after, or (2) other verification of the increase from the utility provider. So in that case, the owner isn't looking at historical data, but actually justifying the rate increase with the most current data.

Utility Assistance As Income

23. Question: Some tenants receive assistance under the Department of Health and Human Services Low-Income Home Energy Assistance Program (LIHEAP). According to Handbook 4350.3 Exhibit 5-1 Income Inclusions and Exclusions, this form of assistance is listed under Income Exclusions (e). The notice states that tenants must report this type of assistance as income and that it must be counted as income. Is it included or excluded?

Answer: Although the notice indicates that this type of assistance must be reported as income, assistance under this specific program is excluded from income. Please see the May 20, 2014 Federal Register for the current list of federally mandated exclusions from income, here: http://www.gpo.gov/fdsys/pkg/FR-2014-05-20/pdf/2014-11688.pdf
The Factor-Based Utility Allowance Analysis

24. Question: Can you provide the link to the website referenced in the Notice regarding the factor-based increases and the UAF?

Answer: [http://www.huduser.org/portal/datasets/muaf.html](http://www.huduser.org/portal/datasets/muaf.html)

25. Question: What is the timing of the issuance of the Utility Allowance Factor (UAF)?

Answer: The UAF is a component of the OCAF and so will typically be published yearly when the OCAF is published.

26. Question: In the years in which you perform a factor-based analysis, do you take the previous utility allowance before rounding or after rounding and then apply the factor?

Answer: You apply the factor to the previous approved utility allowance, which was the utility allowance after rounding. For example, if the previous year’s baseline analysis yielded an average 2-bedroom utility allowance of $38.49 and the approved utility allowance was thus $38 (after rounding), then in second year, the factor would be applied to $38.

27. Question: For the two years after a baseline utility analysis is completed, the Utility Allowance Factor (UAF) can be used. According to the Notice, the O/A “should compare the adjusted utility analysis to their paid utilities over the previous twelve months. If the results indicate a “significant disparity” between the two, the OA should complete a baseline analysis.” Please clarify what constitutes a “significant disparity,” and whether the paid utilities analysis documentation needs to be provided to the CA/HUD in order to use the UAF. Please also clarify the “paid utilities” – does this represent the common area utilities paid by the property?

Answer: A new baseline analysis is not mandated. We do want owners to look closely at the results of a factor-based analysis, and expect that they will make an appropriate decision about further analysis if those results appear very different from what their own paid utilities suggest (i.e., their common area utilities). This analysis does not need to be provided to the CA/HUD. The comparison is intended to have owners take a “second look” at the factor-based results. If it is suspected that special circumstances cause year-to-year fluctuations that materially differ than the utility adjustment factor, owners and CAs may consider completion of a new baseline.

28. Question: Does the U/A have to be changed for all baseline transactions, even one dollar?

Answer: Yes, factor-based as well, whether it is an increase or a decrease.

Utility Allowance Decreases – Phase In

29. Question: Are O/As required to phase-in a UA decrease?
Answer: Yes, but only in the initial implementation of the new methodology, and only if the decrease is 15% or more AND at least $10.

Miscellaneous

30. Question: Does the data used in the analysis for each unit have to be from the same time period for each unit?

Answer: Yes, to the greatest extent possible.

31. Question: I have 3 contracts on one property - is analysis by contract or property?

Answer: By property (keeping in mind that if the property consists of multiple buildings, the buildings must be substantially similar in order for you to sample by unit size property wide).

32. Question: I completed a utility analysis for a 2015 contract renewal that was due prior to June 22, 2015. If this baseline analysis complied with the requirements described in the Notice, do I have to complete a new baseline for 2016?

Answer: Yes, your next utility analysis must be a baseline in accordance with the requirements of the notice.

33. Question: May an owner offer residents monthly incentives to provide copies of their utility bills every month? For example, $1.00 or $2.00 per month per resident as “Additional Costs to Rent” in the budget.

Answer: Owners may offer incentives but they may not pay for them out of project funds nor include them as an expense in the budget.

34. Question: Which utility allowance calculators are HFA approved?

Answer: The notice intentionally does not identify pre-approved tools as the field is changing regularly. This is the pertinent language in the notice:

“The energy consumption model 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. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by HUD. “

One example, however, is the CUAC tool, which is available for use in California, from the website of the Tax Credit Allocation committee. For the specific question re: HFAs, owners
would need to talk with an HFA directly.
## SECTION 8 RENEWAL OPTIONS

<table>
<thead>
<tr>
<th>OPTIONS</th>
<th>RENEWAL RENTS</th>
<th>COMP STUDY REQUIRED?</th>
<th>CONTRACT TERM</th>
<th>RENT ADJUSTMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MARK UP TO MARKET</td>
<td>Market rents</td>
<td>Yes</td>
<td>Mandatory 5 years (subject to annual appropriations)</td>
<td>OCAF in years 2-5</td>
</tr>
<tr>
<td>2. RENEW AT CURRENT RENTS NOT TO EXCEED MARKET</td>
<td>Current rents plus OCAF not to exceed market, owner has option to select budget-based review *exception projects can reduce rents to market under this option</td>
<td>Yes - at initial renewal (comp study is good for five years)</td>
<td>Generally 1 or 5, but owner can request 2,3 or 4 years. HUD also has discretion to renew for longer than 5 years. All renewals are subject to annual appropriations.</td>
<td>OCAF unless owner requests budget-based review</td>
</tr>
<tr>
<td>3. OAHP Referral LITE OR &quot;HAIRCUT&quot; FOR MARK TO MARKET ELIGIBLE PROJECTS</td>
<td>Rents can be reduced to market upon renewal without debt restructuring. FHA projects are subject to OAHP review to ensure adequate debt service coverage</td>
<td>Yes - at initial renewal (comp study is good for five years)</td>
<td>Generally 1 to 5 years (see above). Projects that have full debt restructuring receive 20 year HAP (subject to annual appropriations)</td>
<td>OCAF unless owner requests a budget-based review</td>
</tr>
<tr>
<td>4. EXCEPTION ON PROJECTS (Those ineligible for debt restructuring)</td>
<td>Lesser of current rents w/OCAF or budget</td>
<td>No - unless project is FHA insured and must show rents are below comparable</td>
<td>Generally 1 to 5 years (see above)</td>
<td>OCAF unless owner requests a budget-based review (RCS required for budget rent adjustments in non-renewal years)</td>
</tr>
<tr>
<td>5. M2M DEMO PROJECTS OR ELIPHA/LIHPR HA (TITLE II OR TITLE VI PROJECTS)</td>
<td>Current Rents (Projects under this section may only renew under this option)</td>
<td>No, but demo deals that did not involve debt restructuring must be reviewed by HUD central. Comp study required at fifth year for demo deals</td>
<td>M2M demo deals mat have been restructured may renew annually for four years. LIHPRHA or ELIPHA deals may request multi year contracts.</td>
<td>OCAF for demo deals. LIHPRHA or ELIPHA project rents will be adjusted according to previous agreements</td>
</tr>
<tr>
<td>6. OPT-OUT</td>
<td>Enhanced vouchers will be provided to residents currently being assisted.</td>
<td>No, but PHA will conduct a rent reasonableness test</td>
<td>Current residents' enhanced vouchers will be renewed as long as they remain in project (subject to annual appropriations)</td>
<td>Owner may adjust rents to keep pace with the market. Subsidy will be increased for enhanced voucher recipients as long as PHA deems rent reasonable.</td>
</tr>
</tbody>
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HUD Rule on Affirmatively Furthering Fair Housing

The U.S. Department of Housing and Urban Development (HUD) has released a final rule to equip communities that receive HUD funding with the data and tools that will help them to meet long-standing fair housing obligations in their use of HUD funds. HUD will provide publicly open data for grantees to use to assess the state of fair housing within their communities and to set locally-determined priorities and goals. The rule responds to recommendations of the Government Accountability Office and stakeholders for HUD to enhance its fair housing planning obligations by providing greater clarity and support to jurisdictions receiving HUD funding, and facilitating local decision-making on fair housing priorities and goals.

For more than forty years, HUD funding recipients have been obligated by law to reduce barriers to fair housing. Established in the Fair Housing Act of 1968, the law directs HUD and its program participants to affirmatively further the Act’s goals of promoting fair housing and equal opportunity. The final rule on affirmatively furthering fair housing (AFFH) aims to provide all HUD grantees with clear guidelines and the data that will help them to achieve those goals, because no child’s ZIP code should determine her opportunity to achieve.

HUD's rule clarifies and simplifies existing fair housing obligations for HUD grantees to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through an Assessment of Fair Housing (AFH). To aid communities in this work, HUD will provide open data to grantees and the public on patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity. This improved approach provides a better mechanism for HUD grantees to build fair housing goals into their existing community development and housing planning processes. In addition to providing data and maps, HUD will also provide technical assistance to aid grantees as they adopt this approach.

Key features of this final rule include:

- **Clarifying existing fair housing obligations.** Existing patterns of meeting AFFH obligations have been undermined by limited access to data about fair housing conditions and access to opportunity. A Government Accountability Office report from 2010 also cited a lack of clarity, standards, and transparency for communities under the current process. HUD's rule clarifies and standardizes this process.

- **Publicly open data on fair housing and access to opportunity.** HUD will provide publicly open data and mapping tools to aid community members and local leaders in setting local fair housing priorities and goals.

- **A balanced approach to fair housing.** The final rule helps to facilitate communities relying on local knowledge and local decision-making to
determine best strategies for meeting their fair housing obligations at the local level - including making place-based investments to revitalize distressed areas, or expanding access to quality affordable housing throughout a community.

• **Expanding access to opportunity.** The strength of America's economy, the stability and security of its neighborhoods, and the ability for all to prosper depends on all Americans having equal access to opportunity - no matter what they look like or where they come from. This rule facilitates local decision-making by HUD grantees to expand equal access to opportunity for all Americans.

• **Valuing local data and knowledge.** HUD is providing grantees with publicly open data to assist with their assessment of fair housing, but grantees will also use local data and knowledge to inform local decision-making, including information obtained through the community participation process.

• **Customized tools for local leaders.** Recognizing that one size does not fit all grantees, given their differing responsibilities and geographic areas served, HUD will be providing fair housing assessment tools specific to local jurisdictions, public housing authorities (PHAs), and states and Insular Areas.

• **Collaboration is encouraged.** Many fair housing priorities transcend a grantee's boundaries. Actions to advance these priorities often involve coordination by multiple jurisdictions. The final rule encourages grantees to collaborate on fair housing assessments to advance regional fair housing priorities and goals.

• **Community voice.** The rule facilitates community participation in the local process to analyze fair housing conditions and set local priorities and goals.

• **A phased-in approach.** The final rule provides for additional time for communities to adopt this improved process for setting local fair housing priorities than originally proposed.

• **Additional time for small grantees and recent regional collaborations.** Local jurisdictions receiving a CDBG grant of $500,000 or less and qualified PHAs will have more time to submit their first AFH. Grantees that recently submitted a Regional Analysis of Impediments in connection with HUD's Sustainable Communities competition have additional time to submit their first AFH than originally proposed.
Four costly Mistakes that will assure Discrimination claims:

1. Don’t get flustered over relay communications

2. Don’t leave out information about available units

3. Don’t deny appointments with applicants

4. Don’t reject modification requests outright
WASHINGTON - As part of the White House Conference on Aging today, the U.S. Department of Housing and Urban Development (HUD) issued guidance to better serve and help avoid discrimination to LGBT Americans seeking HUD-assisted or HUD-insured housing. The guidance will help clarify the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule (Equal Access Rule), which was originally published in 2012. The Equal Access Rule ensures that housing across HUD programs is open to all eligible individuals regardless of actual or perceived sexual orientation, gender identity or marital status, including Section 202 Supportive Housing for the Elderly.

"'Every American deserves to live with dignity, regardless of who they love or who they are," said HUD Secretary Julian Castro. "HUD is committed to fighting unjust discrimination and to expanding housing opportunity for all."

HUD's guidance on multifamily and insured housing programs clarifies that a determination of eligibility for housing that is assisted by HUD or subject to a mortgage insured by the Federal Housing Administration (FHA) shall be made in accordance with the eligibility requirements provided for such a program by HUD, and be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. The guidance also clarifies that no owner of administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any recipient or sub-recipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter or owner occupied.

Violations of the rule and guidance could result in HUD's determination that the owner has failed to comply with program requirements. HUD may pursue any available remedy, including sanctions, that it determines appropriate to remedy the violation.

The creation and implementation of the Equal Access Rule builds on HUD's and President Obama's commitment to expanding opportunity, advancing equality, and leveling the playing field for the LGBT. Since 2010, HUD has taken steps to strengthen LGBT protections, such as formally adopting the principle that gender identity discrimination is sex discrimination under the Fair Housing Act, releasing a groundbreaking study on LGBT housing discrimination, and pursuing complaints under the Equal Access Rule. The multifamily assisted and insured housing guidance follows additional
guidance issued by HUD in February on **home lending and transgender access to homeless shelters**.

For more information on today's guidance, please visit

Reasonable Accommodations:

**WHO:** A disabled individual
(a physical or mental impairment that substantially limits one or more major life activities)

**WHAT:** "Extra Rights"
(change or modification in rules, policies, practices or services; physical modification)

**WHEN:** Necessary to afford an equal opportunity to use and enjoy the housing

**COMMON EXAMPLES:**
- Unit Transfers
- Pets
- Live-in Aides Parking
- Modifications

**ESTABLISH POLICY:**
Request in writing (can't insist or condition upon)

Obtain Verification -
- From qualified professional
- Regarding the existence of a disability
- Nexus (connection/identifiable relationship) between the disability and the inability to equally and fully use and enjoy the housing (will it ameliorate the effects of the disability?)
- Reasonableness (is requested accommodation reasonable?)
Tenant Participation Requirements

Who:

All HUD assisted and/or loan guaranteed project.

What:

HUD's commitment to resident participation, individually and through resident organizations. They can;

- distribute leaflets in lobby and common areas, under resident's doors posting information on bulletin boards.
- Initiating contact with residents, go form door to door for surveys and distribute information
- Offer assistance for residents to participate in resident organization activities
- Convene resident organization meetings on-site without boards or management.

Management may "not"

- Deny accessible meeting space to residents
- When requested not to- send management representatives attends meetings any way.
- Threatening to evict or otherwise threatening objections
- Amongst others

Enforcement:

- Debarment
- Suspension
- Denial of Participation
- Civil Money Penalties
Violence Against Women Act (VAWA)

The reauthorized VAWA of 2013 expanded protections than the 2005 act and expanded to additional HUD programs. This act expands protections to victims of sexual assault and pertains to almost everyone in the household. Each covered project must develop a model transfer plan.

VAWA not only protects survivors of domestic violence from eviction, but it also provided funding and a variety of services for victims of domestic violence, including but not limited to:

- Grants to encourage arrest policies and enforcement of protection orders
- Legal assistance for victims
- Consolidation of grants to support families in the justice system
- Outreach and services to underserved populations
- Programs to meet the needs of immigrant women and women of different races and ethnicities
- Programs and services for victims with disabilities
- Services for children and teens (11-24 years of age)

While victims of domestic violence, dating violence, sexual assault and stalking are not specifically protected under the Fair Housing act, it is under the VAWA.
What is Section 3?
Section 3 of the Housing and Urban Development Act of 1968 (Section 3) ensures that HUD-funded jobs, training, and contracts are provided to local low-income residents, particularly those that reside in public housing, and businesses that substantially employ them.

What is a Section 3 Business?
Section 3 businesses are:

a. 51% or more owned by residents of public housing or persons whose income does not exceed HUD’s local area low-income limits (i.e., Section 3 residents); or
b. Comprised of 30% or more full-time employees who are Section 3 residents; or
c. Can provide evidence of a firm commitment to award 25% or more of sub-contracts to businesses that meet a. or b.

Please visit the “Am I a Section 3 Business?” Calculator

What is the Section 3 Business Registry?
The Section 3 Business Registry is a national registry of businesses that have self-certified to HUD that they meet one of the definitions of a Section 3 business.

How Does the Section 3 Business Registry Benefit Section 3 Businesses?
Section 3 businesses are entitled to a preference for local HUD-funded contracts. The Section 3 Business Registry facilitates the notification about HUD-funded contracts to eligible firms.

How Can A Business Sign Up for the Section 3 Business Registry?
Businesses can sign up for the Section 3 Business Registry at: www.hud.gov/sec3biz

How Does the Section 3 Business Registry Help HUD Grantees, and Their Contractors?
PHAs, other HUD grantees, and their contractors are required to notify Section 3 businesses about the availability of HUD-funded contracts to solicit bid proposals. The Section 3 Business Registry is a tool that helps them locate prospective Section 3 businesses. Please visit: www.hud.gov/sec3biz to search for local Section 3 businesses.

Are Businesses in the Section 3 Business Registry Guaranteed HUD-funded Contracts?
No. Businesses in the Section 3 Business Registry must still compete for local HUD-funded contracts. They must possess the necessary qualifications and comply with all procurement requirements.

Does HUD Verify Businesses in the Section 3 Business Registry?
HUD does not verify that self-certified businesses in the Section 3 Business Registry meet one of the definitions, nor does the Department endorse the services they provide. As such, PHAs, other HUD grantees, and their contractors are encouraged to exercise due diligence by checking the eligibility of businesses in the Section 3 Business Registry before providing them preference for HUD-funded contracts.

Where Can I Find Out More Information About Section 3?
www.hud.gov/section3