

Virginia Housing Utility Allowance Options and Procedures

The IRS issued regulations which provide several methods for establishing utility allowances for projects with Tax Credit funding. The regulations allow an agency to approve or disapprove a method of determining certain utility allowances. After careful consideration of all utility allowance options, VHDA has elected to amend the options available for project utility allowances.

Effective March 1, 2020, the following alternative utility allowance options requiring an annual VHDA review and approval will no longer be accepted:

1. Agency Estimate
 - a. Viridiant (EarthCraft Virginia), the third-party entity VHDA designated to provide the Agency estimate, will continue to provide utility estimates using one of the available options.
2. HUD Utility Schedule Model (HUSM), Option A, which permits the owner to complete the HUSM for a fee paid to VHDA. **Only a HUSM completed by a certified professional will be accepted.**

Alternative Utility Allowance Options - VHDA Review & Approval Required

VHDA permits alternative utility allowances for projects **without** Rural Housing Service (RHS/RD), a rent subsidy from a Public Housing Authority (PHA), and HUD Assisted Buildings. VHDA review and approval is required before implementing one or more of the following alternative utility allowance methods for projects:

1. **Local Utility Company Estimate**
 - The estimate must be provided by a local utility company that offers utility services to the building, even if deregulated utility services are provided to the building.
 - In the case of deregulated utility services, Reg § 1.42-10 states that the owner may obtain an estimate from **only one** utility company even if multiple companies provide the same utility service to a unit.
 - The estimate must include all component deregulated charges for providing the utility service.
2. **Energy Consumption Model** – The estimate must be completed by an unrelated, Licensed or Certified Professional according to the VHDA minimum requirements.
3. **HUD Utility Schedule Model** - The estimate must be completed by an unrelated, Licensed or Certified Professional according to the VHDA minimum requirements.

These utility allowance options are not available for projects with RHS-assistance (tenant based or project), HUD-regulated building(s), or other rental subsidy.

Standard Utility Allowance Options - VHDA Approval Not Required

Utility allowances provided or required by federal programs, such as the Rural Housing Service (RD), HUD (PBRA or Section 8), or Public Housing Authority (PHA) are considered standard utility allowances. VHDA review and approval is **not** required prior to implementing one or more of these utility estimates.

Agency	Utility Allowance Guideline to Use
Rural Development (RD) Assisted Building	Always use the RD utility allowance
Rural Development (RD) Tenant Assisted	Always use the RD utility allowance
HUD Section 8 and Project-Based Units	Use HUD utility allowance
Housing Choice Voucher units-Tenant Based	Public Housing Authority (PHA) utility allowance

The PHA utility estimate may be used for a Housing Choice Voucher, Tenant Based Voucher, or for any Tax Credit units not governed by RD or HUD. These options, when used, is not required to be reviewed and approved by VHDA.

[VHDA Utility Allowance Schedules](#) on the VHDA website may be used if the local PHA has adopted VHDA utility allowances or if the only local PHA is a [VHDA administered program agency](#).

The utility allowance documentation for projects governed by Rural Housing Service (RD), HUD, or Public Housing Authority (PHA) must be maintained in the project files and will be reviewed as a part of the scheduled on-site audit.

Utility Allowance Options Background

Effective July 29, 2008, the IRS issued regulations updating existing utility allowance regulations concerning low-income housing tax credit (LIHTC) properties and providing additional options for estimating utility costs. The regulations affect owners of LIHTC properties who claim the credit, the residents in those properties, and the State and local housing credit agencies administering the credit.

Additional guidance was published:

1. May 26, 2009, Internal Revenue Bulletin, Notice 2009-44 clarifying guidance for the use of sub-meters
2. August 7, 2012, Federal Register Proposed Regulations incorporated in Notice 2009-44
3. March 3, 2016, Final and Temporary Regulations, Federal Register Vol. 81, No. 42
4. March 4, 2019, Final Regulations and Removal of Temporary Regulations, Federal Register Vol. 84, No. 42

The utility allowance is generally based on an estimate of reasonable household consumption and the cost for the unit size. Utility allowances are intended to reflect “typical” utility costs paid by an individual household. All costs associated with obtaining the annual utility allowance estimates are the sole responsibility of the building owner.

Ratio Utility Billing System (RUBS)

The federal regulation does not prohibit the use of **RUBS** for Tax Credit projects. However, any amount paid by the tenant for utilities **on a monthly basis** must be included in the gross rent. The building owner is responsible for keeping organized and detailed records to confirm the monthly rent charged to the tenants is within the applicable maximum gross rent limits. These records must be maintained and available for VHDA Compliance monitoring upon request.

VHDA Minimum Requirements for Alternative Utility Allowance Options

For each of the alternative utility allowance options, VHDA requires:

1. **For Existing Buildings**, the estimate is based on available historical data, from the most recent 12-month period.
2. **For New Construction** buildings with less than 12 months of consumption data, the owner may use 12 months of data from similar units in similarly-constructed buildings in the project's geographic area and considering factors such as local utility rate data, property type, climate/degree-day variables by region in the state, taxes and fees on utility charges, building materials and mechanical systems.
3. Data must not be more than 60 days old at the time of submission to VHDA, **and**
4. The information must be completed by the utility company providing the utility service **or** an unrelated engineer **or** an unrelated Residential Energy Services Network (RESNET) certified professional, **or** other unrelated Licensed or Certified Professional registered to do business in Virginia.

For more information about RESNET certification or to find a qualified professional go to www.resnet.us.

Licensed or Certified Professional Description

The Energy Consumption Model and the **HUD Utility Schedule Model (HUSM)** must be completed by an unrelated, Licensed or Certified Professional. A Licensed or Certified Professional includes an Engineer, licensed Architect, RESNET certified professional, Energy Manager, or other qualified, Licensed or Certified Professional with certification(s) or license(s) relevant to the development of an energy consumption model and licensed to do business in Virginia.

The Licensed or Certified Professional must demonstrate:

1. Current, valid certifications and licenses relevant to the review of Energy Consumption models or providing energy estimates
2. The firm and/or professional(s) compiling the energy models must not be related to the owner
3. Current License to do business in Virginia

Combination of Utility Allowance Options

The owner may select to implement the utility allowance that provides the greatest benefit to a project, which includes combining utility allowances options.

******For example, a project may use the PHA utility allowance schedule for electric and the Local Utility Company Estimate for water and sewer.

Utility allowances are applied individually to each building in the development. Therefore, depending on the development, an owner could have buildings in the same development using different utility allowances. ****Reference Federal Register Vol. 81, no. 42 March 3, 2016 [Utility Allowance Guidance for RHS, HUD and PHA guidelines](#).**

Required 90-day Notification to Tenants and VHDA

The IRS requires owners to make available the proposed utility allowance to residents for a period of 90-days before the proposed and approved utility allowance is used to determine the gross rents in the project.

The local utility company or unrelated Licensed or Certified Professional collects the utility data. It is the owner's responsibility to ensure, through its management agent to maintain the utility allowance data applicable to all buildings in the project and make it available for inspection by the tenant during regular business hours. If there is no resident manager and the tenant requests a review of the utility allowance estimates, the utility allowance estimates must be mailed to the tenant.

Each year, the owner must submit copies of the estimate(s) to VHDA **and** make the estimates available to all tenants in the property at least 90 days before the effective date (i.e. implementation) of the new utility allowances. Also, if the project uses one or more of the alternative methods, VHDA must be notified anytime there are changes in the utility allowance option, utility estimate, or effective date before it is implemented in the project.

Federal Register July 29, 2008 – Section 42 Utility Allowance Regulations Update

<https://www.vhda.com/BusinessPartners/PropertyOwnersManagers/LIHTCCompliance/LIHTC%20Compliance/IRS-2008-UA-Reg-Update.pdf>

43866 Federal Register / Vol. 73, No. 146 / Tuesday, July 29, 2008 / Rules and Regulations

*To provide tenants with the opportunity to comment on proposed utility allowances to the Agency and building owner, the final regulations apply the existing disclosure requirement under current § 1.42–10(b)(4)(ii)(B) (regarding the utility company estimate) to an owner using a utility company estimate, the HUD Utility Schedule Model, or an energy consumption model. Therefore, **an owner must submit copies of the proposed utility allowances to the Agency and make the proposed utility allowances available to all tenants in the building at the beginning of the 90-day period before the utility allowances are used in determining the gross rents of rent-restricted units.** Similarly, the final regulations require that any utility estimates obtained under the Agency estimate option must be made available to all tenants in the building at the beginning of the 90-day period. **An Agency may continue to require additional information from the owner during the 90-day period.***

VHDA Utility Allowance Certification Form

VHDA will make every effort to provide a written approval of the proposed utility allowance option, rates, and effective date within 30 days of receiving complete and accurate documents in the utility allowance request. VHDA will contact the owner within **10-business days** of receiving the request if the documents submitted include incorrect or insufficient documentation.

The VHDA **30-day review window** begins once we confirm that the utility allowance estimate package is complete and accurate. After approval, the utility allowance will be effective for one year (365 days) from the approval date.

The Owner **and** an unrelated engineer **or** an unrelated RESNET certified professional **or** other unrelated Licensed or Certified Professional registered to do business in Virginia must sign page 3 of the [VHDA Utility Allowance Certification form](#).

Annual Utility Allowance Review

Owners are required to review current utility allowance rates at least once during each calendar year and update the utility allowance if it changes. Please be advised that the PHA utility allowance schedule may change at any time within the year. For projects using only the PHA utility allowance schedule, the utility allowance must be implemented no later than 90-days of the effective date.

Review Fee for Multiple VHDA Utility Allowance Reviews

The building owner may choose to calculate new utility allowances using a different available option more frequently than once during the calendar year. VHDA will review one utility allowance request per project annually without fees. If the building owner chooses to change the utility allowance option which requires VHDA approval within the one-year approval period a fee equivalent to the greater of \$100 or \$5.00 per unit must be submitted with the new utility allowance request. The 90-day tenant notification and a new VHDA review must be carried out, and VHDA will provide a new approval of the utility option, rates, and effective date for a new one-year period.

Documents to Submit to VHDA for Approval

1. Complete and executed [VHDA Utility Allowance Certification form](#) filled out and signed
 - The Owner **and** an unrelated engineer **or** an unrelated RESNET certified professional **or** other unrelated Licensed or Certified Professional registered to do business in Virginia must sign page 3
2. Copy of [90-day notice sent to residents](#)
 - The 90-day review period cannot begin until the utility estimates are received **and** the tenants are notified of the new utility estimates
3. [Utility Allowance Estimates by BIN Number Spreadsheet](#) - Must include each bedroom size and type using the utility allowance estimate
4. Copy of the unrelated engineer **or** an unrelated Residential Energy Services Network (RESNET) certified professional **or** other Licensed or Certified Professional/engineer's current Virginia business license or current Virginia SCC certificate
 - Required for Energy Consumption Model and HUD Utility Schedule Model
5. Utility Allowance Estimate supporting documentation
 - **Local Utility Allowance** - Documents provided by local utility company supporting the estimate for each unit size and type by square feet
 - **Energy Consumption Model** – Must meet VHDA minimum requirements
 - **HUD Utility Schedule Model** - Provide the completed HUD Model and the supporting rates, schedules, taxes, fees, and riders

Submission to VHDA:

Email: Forms and documents scanned together in one pdf package to: utilityallowances@vhda.com	Mail: VHDA Compliance & Asset Management Dept. P.O. Box 4630 Richmond, VA 23220-8630	Inquiries: Regarding utility allowance approvals must be directed to: utilityallowances@vhda.com
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The following must be considered when reviewing utility allowances:

- **Required Annual Review** - The building owner is required to update utility allowances at least once during the calendar year. If there is no change in rates, the owner must document that the rates have not changed.
- **Non-Compliance** - Failure to document the utility allowance and supporting documentation annually may result in rents above the maximum allowable rent limits. VHDA is required to report such non-compliance to the IRS on form 8823, Low-Income Housing Credit Agencies Report of Non-compliance or Building Disposition form.
- **Combining Utility Allowances** - The building owner may combine available options in establishing and determining the utility allowances for the Tax Credit project.
- **Frequency of Utility Allowance Review** - The building owner may choose to calculate new utility allowances more frequently than once during the calendar year, provided the building owner complies with all requirements under the IRS regulations, including notification to VHDA and the tenants.
- **VHDA Utility Allowance Review Fees** - If the building owner requests a new utility allowance review at any time during the approved one-year period, a fee equivalent to the greater of \$100 or \$5.00 per unit must be provided with the new utility allowance request.
- **Standard Utility Allowances** - If the Tax Credit project contains units under RD, or has a contract for units with HUD or a Public Housing Authority (PHA), the owner must use utility allowance schedule estimates approved by the applicable agency. These utility allowances are mandatory and VHDA approval is not required to implement these utility allowances.
- **Excluded Utility Allowance Costs**-Cable television, telephone, and internet costs are excluded from utility allowance calculations.
- **Tenant Utility Costs** - If the tenant pays utility costs (other than telephone, cable television or Internet) directly to the utility provider, then the gross rent for that unit must be reduced by the applicable utility allowance.
- **Gross Rent Changes** - The release of median income figures and utility estimates may occur at different times and may require rent adjustments as needed to confirm that the project gross rent is within allowable limits.
- **Submeters:**
 - If a utility is sub-metered, owners may establish a utility allowance using one of the approved methods and may bill the tenant for the actual tenant usage - even if actual usage is more than the utility allowance.
 - Utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid by the tenant directly to the utility company.
 - If applicable, administrative fees of \$5.00 or less per month may be charged to tenants. For administrative fees greater than \$5.00 per month, the difference must be included in the gross rent. A summary of all submeter fees must be provided to VHDA upon request detailing the current fees charged on the Utility Allowance Estimates by BIN Number Spreadsheet.