



An Affordable Housing Owner's Guide to Utility Allowances

Overview of federal program requirements and tips for considering utility allowance adjustments as part of your energy efficiency financing strategy

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About the California Housing Partnership Corporation:

The California Housing Partnership Corporation (CHPC) is a private nonprofit organization committed to helping government and nonprofit housing agencies preserve and expand the supply of affordable housing for lower-income households throughout California. Through our Green Rental Housing Energy Efficiency Network (GREEN) and related advocacy efforts, CHPC is expanding access to energy efficiency and renewable energy resources for California’s lowest income renters by ensuring that the mission-driven organizations serving them receive an equitable distribution of these resources. CHPC staff contributing to this report included:

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About the National Housing Law Project:

The National Housing Law Project (NHLP), based in San Francisco, has served as the nation’s expert in affordable housing law since 1968. NHLP’s mission is to help the millions of extremely low-income people in our country realize their basic human right to decent and affordable housing, and use the power of law to address the inequities and discriminatory practices that have traditionally created barriers to housing justice. NHLP seeks to ensure that low-income tenants are not only financially protected, but also gain net benefits from expanding energy improvements to affordable housing throughout the nation. NHLP staff contributing to this report included:

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INTRODUCTION

Setting the right policy or pricing signals to promote energy conservation and efficiency in multifamily rental properties is a universal challenge. In master-metered affordable properties, where the owner has a financial incentive to make energy improvements, tenants have no direct financial incentive to reduce or conserve energy consumption. Conversely, in tenant-metered properties, where tenants pay their utility bills directly, owners have no direct financial incentive to pay for energy improvements, since tenants gain most of the financial benefit from any improvements that reduce energy costs within units. Moreover, in tenant-metered affordable properties, tenants have minimal or no control over improvement decisions at the property, and limited resources to invest in energy efficiency improvements. These dynamics are commonly referred to as a *split incentive*.

In cases where split incentives occur, owners may seek opportunities to access the rent stream in order to finance or pay back energy improvement costs not covered by energy incentives or rebate programs. However, because rents in affordable housing are regulated and restricted, owners cannot simply increase rents as improvements are made. Instead, property owners must consider strategies to lower *utility allowances* provided to tenants as part of the rent calculation to account for lower utility costs. This method, where possible, can often increase the rent stream or Net Operating Income to the owner and offers a pathway to recovering some of the costs of energy improvements made by the owner.

Where utility allowance adjustments are pursued, they should reflect savings from energy efficiency improvements in a manner that is fair to tenants, financially feasible for owners, and reduces long-term public subsidy expenditures.

In practice, however, only a small subset of owners can currently leverage utility allowances to finance energy retrofits. In 2014, the California Housing Partnership's Green Energy Rental Home Energy Efficiency Network (GREEN) conducted a survey of multifamily owners of affordable housing revealing that few owners of affordable housing in California choose to undergo the process of adjusting utility allowances for energy improvements. The survey found that owners faced regulatory, administrative, and cost barriers when attempting to adjust utility allowances to reflect energy improvements at the property.¹

The purpose of this guide is to provide owners of affordable housing with the practical knowledge needed to evaluate whether utility allowances can be effectively leveraged as a resource to finance or pay back energy improvement costs.

This guide is divided into four parts:

PART 1 covers basic utility allowances principles, provides an overview on the relationship between rents and utility allowances, and describes the methods governing how utilities allowances are set. Experienced housing owners may want to skip or only skim this section.

PART 2 describes the requirements for setting utility allowances under specific federal programs including:

- HUD Project-Based Section 8 Rental Assistance (PBRA)
- USDA Rural Development (RD) Rental Assistance
- Public Housing
- Section 8 Vouchers
- Project-Based Vouchers (PBV)
- The Low Income Housing Tax Credit Program (LIHTC)
- HOME Investment Partnerships Program (HOME)

PART 3 highlights some of the current barriers to leveraging utility allowances for financing retrofits, and presents next steps for identifying solutions.

PART 4 contains a utility allowances “checklist” to help housing owners assess when it makes sense to include utility allowance adjustments in a financing strategy for an energy efficiency retrofit.



1. BASICS OF UTILITY ALLOWANCES

Relationship between Rents and Utility Allowances in Affordable Rental Housing:

Rents are set based on the affordability restriction of the specific housing program used to fund or finance the property. Depending on the specific program governing the particular property (described in more detail in Part 2), tenant rents are based on either: (1) affordability to the income segment(s) specified in the regulatory agreement (e.g. 30%, 40% or 50% of Area Median Income), or (2) a percentage (usually 30%) of each tenant’s actual annual household income. In either case, the definition of maximum “affordable” rents for tenants includes both housing and reasonable utility costs. Where some or all utilities are tenant-paid, the rent actually charged to the tenant (the “net rent”) must be reduced by the utility allowance.

Although the specific rules differ for each program, the utility allowance is generally based on an estimate of reasonable house-

hold consumption and cost for the unit size. Utility allowances are intended to reflect “typical” utility costs, not actual bills or costs paid by any individual household. For most programs, utility allowances approximate the *reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.*²

Figure 1 below illustrates the dynamic between the net rent, utility allowance payment, and gross rent paid pre-and-post retrofit.

Under federal rules, utility allowances can often be adjusted to reflect changes in applicable utility rates or tenant consumption at the property, particularly upon completion of a renovation that includes energy-efficiency improvements. When utility allowances are adjusted, the adjustment does not affect maximum gross rent (LIHTC) or total tenant payment (HUD or RD) of the low-income households because federal

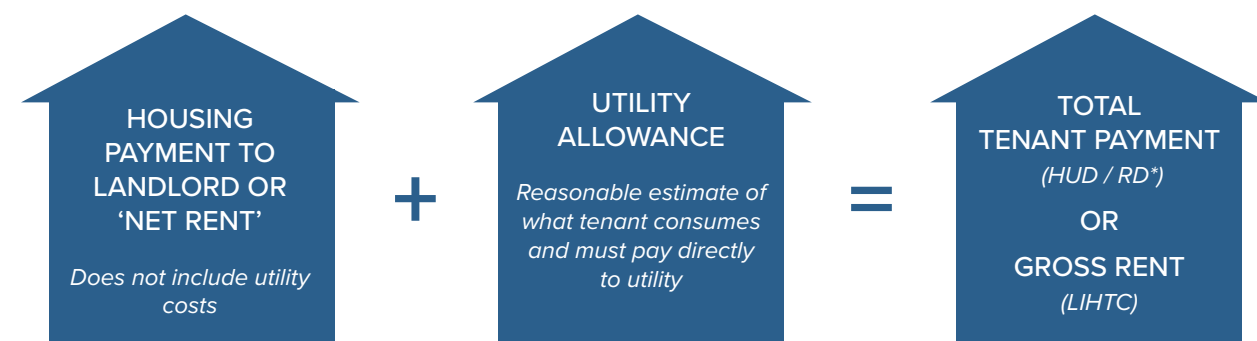
and state programs generally limit gross rents and tenant payments. This means that as utility allowances are increased or decreased to reflect the estimated energy consumption requirement for a unit type, the tenant’s housing payment to the property must be adjusted by an equivalent amount. This dynamic is illustrated in Figure 2 and 3 below. The examples below assume that no HUD or RD rental assistance subsidy payment is being made on behalf of the tenant.

Figure 3 shows that the tenant’s utility allowance has been reduced post-retrofit by \$20 to reflect lower utility costs, which means that the tenant’s rent to the owner has increased by the same amount. The housing costs for the tenant have remained the same, as has the gross rental income under the program. In this example (not involving rental assistance), the rental income actually available to the property has increased by that same \$20.

In practice, there are conflicting policies and practices that limit a property owner’s ability to adjust utility allowances and capture cost savings in response to reductions in energy consumption or rates. For example, under California Tax Credit Allocation Committee (TCAC) rules, alternative utility allowances can be set for new construction and for existing Low Income Housing Tax Credit (LIHTC) properties that complete solar photovoltaic (PV) retrofits under the Multi-family Affordable Solar Housing (MASH) program.³ However, other existing LIHTC properties that complete energy efficiency retrofits have no pathway for making utility

allowance adjustments that reflect the improvements. In practice, these property owners cannot use actual consumption or other methods to reset utility allowances that might allow the property to recognize added efficiency. In most cases, these property owners use the local Public Housing Authority (PHA) schedule, which does not reflect actual performance. Even where adjustments are possible, as in the case of MASH solar retrofits, expensive modeling requirements and unrealistically low utility allowances under existing PHA schedules may render these strategies impractical. Owners should also take caution because there is a risk that tenants will pay higher total housing costs if the projected energy consumption or cost savings do not materialize.

Figure 1: Relationship between Utility Allowance and Setting Tenant Rent



* Note: In HUD and RD Rental Assistance programs, the “Total Tenant Payment” is supplemented by a housing assistance payment to reach the total “contract rent” for the unit.

Figure 2: Utility Allowance Pre-Retrofit

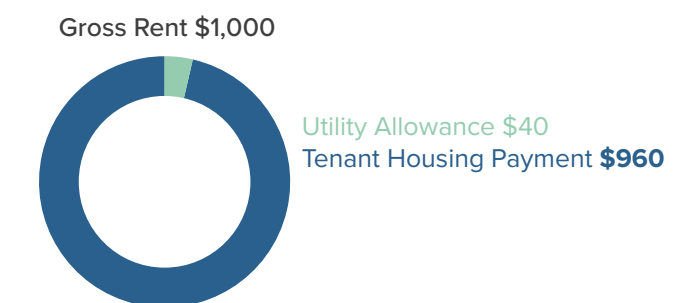
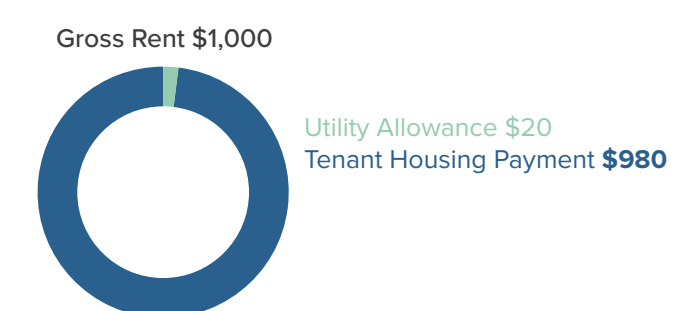


Figure 3: Utility Allowance Post-Retrofit



Why Are Accurate Utility Allowances Important?

Accurate utility allowances are important for several reasons. First, accuracy advances the goal of ensuring affordability to the tenant, as intended by law and the mission and goals of most affordable housing organizations. Allowances that are too low effectively transfer cost burdens from subsidy providers or owners to tenants, imposing financial hardship on tenants that might exceed legal limits.⁴ In contrast, allowances that are too high effectively increase subsidy costs or, in the case of LIHTC properties, reduce rental income to owners.

Second, accurate utility allowances are often necessary to properly assess the economic feasibility of energy efficiency retrofits. For example, if an owner installs a solar PV system that serves residents and the existing utility allowance is substantially lower than the utility consumption or costs at the property, then the utility allowance adjustment made after the solar installation may not take account of all of cost savings generated by the solar system. Indeed, under California Tax Credit Allocation Committee rules, property owners could actually see an increase in the utility allowance after the solar installation because a PHA utility allowance schedule may be artificially low. Such situations clearly distort proper decision-making concerning energy improvements.

THE DIFFERENCE BETWEEN MASTER-METERED, TENANT-METERED AND SUB-METERED BUILDING TYPES:

Master-Metered Buildings:

Owners pay the utility cost, and the cost to tenants is included in their net rent; there is no utility allowance to subtract.

Tenant-Metered Buildings:

Each household has a separate account with the utility company and pays the utility company directly.⁵ These tenants must receive a utility allowance that is based on an estimate of typical energy use. (i.e., kilowatt-hours or therms) by building and unit type, or an estimate of the cost of that energy.⁶

Sub-Metered Buildings:⁷

The owner pays for the utility services provided to tenants. The owner separately sub-meters the actual utility consumption provided to each dwelling unit. Where tenant utilities are sub-metered, the property must provide a utility allowance. The amount billed to the tenant must be based on the actual consumption and cannot exceed the rates charged by the utility. In some cases, the amount billed may reflect only the amount of the consumption in excess of the tenant's utility allowance.

UTILITY ALLOWANCE FACTS



Utility Allowances can be small or large, usually ranging from less than \$20 to over \$200 monthly.



Utility Allowances usually consider building type, climate zone, local utility rates, the number of utilities and uses covered, unit size, and in some cases, the particular characteristics of the building and dwelling unit that affect energy use.



The prescribed method for setting utility allowances varies by program. Federal regulations and guidance govern the setting and adjustment of utility allowances in all federally supported affordable housing, and state credit allocation agencies may issue additional rules or guidance for LIHTC properties.



Setting Utility Allowances: Methods

For HUD subsidy programs, the governing standard for utility allowances is that they must approximate *a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.*⁸ All tenant-paid utilities and necessary services, such as water and trash collection, must be included in utility allowances, but not telephone, Internet services or cable or satellite television.⁹ For LIHTC units, owners and state agencies may use a variety of methods to determine reasonable consumption, some of which are based upon the HUD programs.¹⁰

To implement the generally applicable reasonable consumption standard, owners and PHAs use one of three methods:

1. A schedule:

Utility allowance schedules are developed by PHAs and adopted for use within the areas they serve. Utility allowance schedules are used in programs where schedules are permissible, such as for the Housing Choice Voucher program, and in the LIHTC program. This schedule is a community-wide standard and usually less accurate than an estimate that is property-specific.

2. Actual Tenant Consumption Data:

Actuals require access to a sample of tenant consumption data, which in turn require owners to collect tenant releases to access data or actual bills.

3. Energy Consumption Model (ECM):

An engineering-based method provides an estimate of reasonable consumption, taking account of specific building and unit characteristics affecting consumption. Energy consumption models produce project-specific allowances, which are generally more accurate for owners, tenants, and subsidy providers.¹¹

ENERGY CONSUMPTION MODEL: THE CALIFORNIA UTILITY ALLOWANCE CALCULATOR

The California Utility Allowance Calculator (CUAC) is an example of an ECM designed to calculate project-specific utility allowances for low-income housing developments. In 2008, the Internal Revenue Service (IRS) authorized state allocation agencies to use energy consumption models like CUAC to determine project-specific utility allowances for LIHTC properties. CUAC can be used to set UAs for in new construction and, since January 2015, existing LIHTC projects that added solar PV through the state's Multifamily Affordable Solar Housing (MASH) program. Energy consumption models like CUAC must be updated to reflect changes in utility rates and advances in energy-efficiency technologies.



“ The governing standard for utility allowances is that they must approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment. ”

2. SETTING UTILITY ALLOWANCES: SPECIFIC PROGRAM REQUIREMENTS

I. RENTAL ASSISTANCE PROGRAMS:

HUD Section 8 Project-Based Rental Assistance:

Project Based Rental Assistance (PBRA) is a rental assistance program in which tenants generally pay 30% of their income for housing and utilities and HUD provides the owner with monthly payments sufficient to pay for either the remainder of the operating budget or the agreed upon market-based rent depending on the type of contract. In 2015, HUD issued guidance that establishes a consistent methodology for conducting an analysis to set utility allowances for almost all properties with Section 8 Project-Based Rental Assistance.¹² The guidance requires collection of a required sample size of actual consumption billings, and requires utility allowances to be set at the average consumption for each unit size.¹³ Under the guidance, each project-based Section 8 owner must establish a new utility allowance baseline under the guidance at their first contract anniversary date occurring after December 15, 2015.

Required Adjustments:

Owners must submit an analysis of a project's utility allowance in conjunction with any annual or special adjustments of contract rents, and must follow the relevant guidance.¹⁴ In addition, when utility rate changes would result in a cumulative increase of ten percent or more in the utility allowance, the owner must advise the contract administrator and request approval

of a new utility allowance.¹⁵ For Section 8 additional assistance, the owner must also submit an analysis of the utility allowance as part of any contract rent adjustment process, which may occur annually or even more frequently depending upon the circumstances. This analysis must address rate changes and other factors affecting consumption.¹⁶ Further, the owner must request utility allowance adjustments when cumulative rate increases total more than 10 percent.¹⁷ HUD or its agent must review the utility allowances and accompanying information annually to determine whether adjustment is necessary because of rate changes or other factors.¹⁸

Implications for Energy Efficiency:

Under HUD rules, reductions to utility allowances also reduce the rental assistance payment made by HUD to the property owner. Because HUD is currently the sole beneficiary of energy efficiency savings, there is no economic incentive for owners to make energy efficiency improvements. Additional guidance is needed to ensure that utility allowances are calculated in a manner that correctly credits energy benefits that are paid for and provided by the property to tenants, and to ensure that energy benefits mandated by a variety of recent state programs are retained by the intended beneficiaries.

USDA Rural Development (RD) Rental Assistance:

Properties supported with subsidized loans under the USDA Section 515 program must have utility allowances for those tenants who pay some or all of their own utilities.¹⁹ Many RD Section 515 units are also supported with rental assistance, either under the project-based Section 8 program, or under the separate RD Rental Assistance program.²⁰

In RD housing, owners must establish utility allowances "based on expected costs" and supported by documentation, which is reviewed for approval by USDA staff.²¹ The standard for setting allowances is not well defined in the regulations.²² Prior program guidance provided two methodologies: (1) for existing housing, actual average consumption by unit size, based upon tenant utility bills (or that of comparable projects, if data is unavailable), or (2) for new construction, professionally calculated load factors to determine consumption, along with current utility rates.²³

Required Adjustments:

Owners must review utility allowances annually; if utility rates have increased cumulatively by at least 15%, owners must adjust the utility allowances; utility increases less than 15% trigger requirements to submit documentation but no utility allowance adjustment is required.²⁴ All utility allowance changes must be submitted to USDA for approval.²⁵ There are no additional standards for conducting the annual analysis.

Implications for Energy Efficiency:

Under RD rules, reductions to utility allowances also reduce any rental assistance payment made by RD to the property owner. Because RD is currently the sole beneficiary of energy efficiency savings for properties receiving rental assistance, there is no economic incentive for owners to make energy efficiency improvements. Additional guidance is needed to ensure that utility allowances are calculated in a manner that correctly credits energy benefits that are paid for and provided by the property to tenants, and to ensure that energy benefits mandated by a variety of recent state programs are retained by the intended beneficiaries.

Public Housing:

Public housing functions like a budget-based rental assistance program in that in most cases tenant payments for rent and utilities are set at 30% of actual income. Utility allowances in public housing are set to "approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment."²⁶

The regulations further provide that in establishing allowances, the PHA must take into account the following nine factors:

1. Equipment and functions intended to be covered by the allowance;

2. Climate of the location of the project;
3. Size of the unit and the number of occupants per unit;
4. Type of construction and design;
5. Energy efficiency of the PHA-supplied appliances;
6. Utility consumption requirements of the appliances supplied by the tenant;
7. Physical condition of the project;
8. Temperature levels intended to be maintained in the unit; and
9. Temperature of hot water for domestic use.²⁷

Required Adjustments:

HUD requires each PHA to review its utility allowance schedule at least annually.²⁸ If utility rates have increased cumulatively by 10% or more since the most recent allowance, the PHA must adjust the utility allowances.²⁹

Although the regulations address most of the end uses covered by the utility allowance, HUD has questioned the inclusion of multiple electric appliances or air conditioning as luxuries.³⁰ Tenants who require the use of air conditioning as the result of age, illness, or disability may request an increased utility allowance for use of air conditioning.³¹

Implications for Energy Efficiency:

The HUD Rolling Base formula for public housing operating assistance allows PHAs to capture a small percentage of energy savings during the first three years following energy retrofits. Additionally, PHAs can

capture 50% of the energy savings from solar photovoltaic (PV) investments. Further enhancement of HUD guidance is needed to allow PHAs to recover a greater portion of the energy savings to cover more of the costs of energy investments.

Section 8 Housing Choice Vouchers:

The Section 8 Housing Choice Voucher program—where the tenant generally pays 30% to 40% of her income toward rent with the voucher covering the difference—presents a different set of issues due to the program’s structure. Because the voucher program subsidizes individual units, PHAs adopt utility allowance schedules based on a community standard that reflects utility consumption and costs for building types within the PHA jurisdiction. Where a voucher holder lives in a tenant-metered unit, if the gross rent for the unit is within the PHA’s payment standard for the program, the PHA deducts the utility allowance from the portion of the rent paid by the tenant under the terms of the Housing Assistance Payment contract. Those tenants renting units costing more than the payment standard may receive little or no benefit from the utility allowance.

How PHAs set voucher utility allowances:

The PHA must base initial utility allowances on the “normal patterns of consumption for the community as a whole and current utility rates” and the “typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality.”³² The PHA must take into account the unit size,

as well as the type of structure (high-rise, row house, detached unit, etc.) and fuel.³³ If the necessary data are not available from local sources, PHAs are instructed to use national norms developed by HUD.³⁴ PHAs should make adjustments to these norms to account for local conditions.³⁵ The PHA utility allowance information is recorded on HUD Form 52667.³⁶ While the PHA sends this form to HUD, the agency has no duty to review or approve it.³⁷

Required Adjustments:

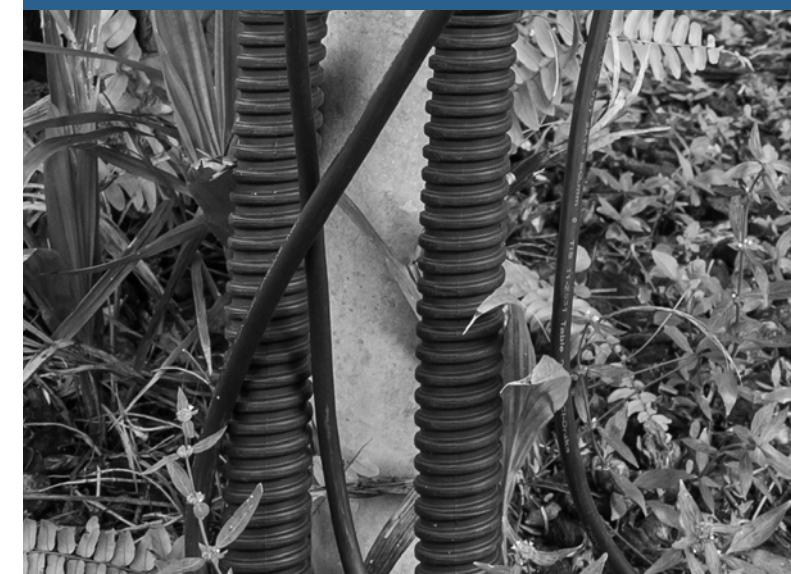
The PHA must review its utility allowance at least annually, and must adjust it when there has been a change of 10% or more in a utility rate since the last revision.³⁸

Implications for Energy Efficiency:

Housing Assistance Payment contracts do not set rent or utility allowance levels based on the energy performance of the units rented to voucher holders. Accordingly, the voucher program provides little incentive to pursue energy improvements. To address this limitation, some PHAs have developed Energy Efficiency Based Utility Allowances (EEBUAs). An Energy Efficiency Based Utility Allowance is a separate schedule for more recently constructed or rehabilitated properties that meet higher code and energy standards, which can include units rented to voucher holders or properties with a Project-Based Voucher (PBV) contract (see next section). Low Income Housing Tax Credit properties using engineering models to set utility allowances may also be required to have multiple utility allowance schedules for similar units at the property—one



“ Further enhancement of HUD Guidance is needed to allow PHAs to recover a greater portion of the energy savings to cover more of the costs of energy investments. ”



based on the model, and one based on the PHA Schedule for those units occupied by voucher holders (further discussion of LIHTC in Capital Subsidy Programs Section below). These schedules can widely differ even though the energy consumption of the units at the property would be similar based on unit size. Owners have requested waivers from HUD to address this issue.³⁹ Greater efforts are needed to align LIHTC and PHA utility allowance regulations in LIHTC properties.

Project-Based Vouchers:

Project based vouchers (PBVs) are vouchers that have been attached to a specific property through a contract between the owner and the local PHA. Properties with PBVs typically use utility allowance schedules adopted by the PHA for its Voucher Program, selecting the applicable values for the unit sizes and types, fuel sources, and end uses found at the property from the PHA matrix.⁴⁰ As noted earlier, schedules use aggregate community data that is not based on actual consumption at the property, or its specific thermal characteristics.

Required Adjustments:

There are no separate standards for adjusting PBV utility allowances; refer to the section on vouchers for adjustment requirements.

II. CAPITAL SUBSIDY PROGRAMS:

Low Income Housing Tax Credit (LIHTC)

Owners of properties financed with LIHTCs must include an allowance for tenant-paid utilities when calculating net tenant rents. Unlike most rental assistance programs, tenants are not limited to paying 30% of actual income for rent and utilities. Instead, gross rents must not exceed 30% of the applicable income limitation selected by the owner and the allocating agency (usually 50% or 60% of area median income, sometimes lower).⁴¹ If any utilities are tenant-paid,⁴² tenants must receive a utility allowance as a deduction from the maximum gross rent.⁴³ For example, a unit might have a gross rent of \$800 set at 30% of 50% of area median income, which would then be reduced by the PHA schedule utility allowance for that unit size of \$80, reducing the net rent the tenant pays to the owner to \$720.

As compared to the rental assistance programs described above, the key difference is that the LIHTC utility allowance directly affects the net rent received by the owner, not the amount of an ongoing rental assistance subsidy provided by HUD or USDA. Thus, if utility allowances are lower than actual consumption, an owner charging the maximum allowable rent benefits by collecting higher net rent. If utility allowances are higher than actual consumption, tenants pay less rent than they otherwise would be obligated to do and the owner receives less net rental income. In any event, because there is no

ongoing subsidy, properly adjusted allowances are critical to enabling the owner to pay for the cost of energy improvements, and require no agreement with a subsidy provider to share ongoing subsidy savings.

How Owners Set Utility Allowances:

The LIHTC regulations provide several methods for establishing utility allowances. First, if HUD or the USDA-RD annually reviews the rents and allowances at a property, the applicable HUD or USDA utility allowance rules apply.⁴⁴ Second, the utility allowances for units occupied by voucher holders must be set using the PHA voucher Schedule, as described above.⁴⁵

For other LIHTC-financed properties, owners may use any of the following methods to establish utility allowances for the units not occupied by voucher holders:

- 1. PHA Schedule:** the local PHA utility allowance for the voucher program.⁴⁶
- 2. Utility company estimate:** an estimate from a local utility company providing the estimated cost of utilities for a unit of similar size and construction for the geographic area.⁴⁷
- 3. Agency estimate:** an estimate from the state credit allocation agency providing the estimated cost of utilities for units of similar size and construction for the geographic area.⁴⁸
- 4. HUD Utility Schedule Model (HUSM):** an estimate calculated via HUD's online Utility Schedule Model, using recent utility rates.⁴⁹
- 5. Energy Consumption Model:** an estimate from a qualified professional

using an energy consumption model that takes into account the unit size, building orientation, design and materials, mechanical systems, appliances and location.

The primary method selected by owners for setting utility allowances in LIHTC properties is to adopt the PHA utility allowance schedule for Housing Choice Vouchers.

In California, the LIHTC-allocating agency, TCAC, has also approved the use of an energy consumption model developed by the California Energy Commission. This model, the California Utility Allowance Calculator (CUAC), can be used for LIHTC properties constructed after 2009, and for revising utility allowances in existing LIHTC properties that install Multifamily Affordable Solar Housing (MASH) solar systems servicing residential units.⁵⁰ To date, only a relatively small number of properties have used this method. In addition, TCAC does not provide a state agency estimate, and therefore actuals cannot be currently used to set or update utility allowances.

Because there is no requirement that an LIHTC owner use a methodology that most accurately reflects actual project-specific consumption, many owners have chosen to use the method that is easiest, least expensive to implement, or that delivers the lowest allowance (to maximize net rental income). Indeed, owners electing to use the CUAC to set the initial utility allowance can elect to switch to a PHA utility allowance schedule, so long as they comply with any specified procedures for implementing changes.⁵¹

Required Adjustment:

Owners must review and update utility allowances at least once during each calendar year.⁵² Owners using a PHA schedule must update their allowance with an updated PHA schedule. Owners using CUAC can update the CUAC estimate or switch to a PHA schedule. The CUAC update takes into account changes in utility rates and any changes to the building that affects energy consumption, such as conservation measures.⁵³

Implications for Energy Efficiency:

For those LIHTC units that do not have rental assistance payments under a HUD or RD program, utility allowances usually have a direct impact on the rent burdens of tenants and the net income received by the owner. Thus, some owners may be able to directly utilize the rent stream by reducing utility allowances to reflect tenants' energy cost savings from energy improvements. However, the extent of any opportunity depends upon the level of the prior allowance and the methods available under each state agency's rules and guidelines for adjusting allowances to reflect any improvements. In addition, separate PHA schedules such as Energy Efficiency Based Utility Allowances may be available.

HOME Investment Partnerships Program (HOME):

Under the HOME program, HUD allocates money to Participating Jurisdictions, which in turn allocate their HOME funds typically in the form of loans or grants to developers who use them to construct affordable rental

homes or, more rarely, in the form of tenant-based rental assistance that functions similarly to Vouchers.⁵⁴

In 2013, HUD revised its regulations governing the way that utility allowances may be calculated for HOME-assisted units in new rental housing projects.⁵⁵ Until 2013, participating jurisdictions typically relied on the local PHA voucher utility allowance schedule to establish utility allowances for HOME-assisted units⁵⁶ and for all HOME-assisted rental developments.⁵⁷ Participating jurisdictions must now "determine specific utility allowances for each [new] HOME rental development, either by using the HUD Utility Schedule Model (HUSM) or by otherwise determining the allowance based upon the specific utilities used at the project."⁵⁸ The HUD Utility Schedule Model is one of the authorized methods used by owners in the LIHTC program. It allows users to calculate allowance schedules by housing type after inputting utility rate information.⁵⁹ The 2013 regulations provide no further detail on the alternate method. In commentary on the Final Rule, HUD merely notes that the utility allowances cannot be based on a PHA utility allowance schedule, and must be project-specific in order to better-represent actual utility costs, especially as units are retrofitted for energy-efficiency.⁶⁰ Presumably then, utility allowances for HOME-assisted units can be calculated using actual tenant utility costs or with other methods, including energy consumption models like the California Utility Allowance Calculator.

The new utility allowance calculation requirements do not apply to existing developments, but participating jurisdictions must update

written agreements, policies, and procedures to ensure that all new projects that receive HOME funds comply with the new utility allowance requirements. In addition, when a participating jurisdiction updates a written agreement to add additional HOME funding to an existing project, the project is then subject to the new utility allowance requirements.⁶¹ Owners of HOME-funded developments should thus be sure to stay in close communication with their local Participating Jurisdiction to ensure they are aware of any changes to utility allowance methodologies for these properties.

Required Adjustments:

Regardless of the calculation method the Participating Jurisdiction selects for new projects, it must update the utility allowances annually.⁶²

Implications for Energy Efficiency:

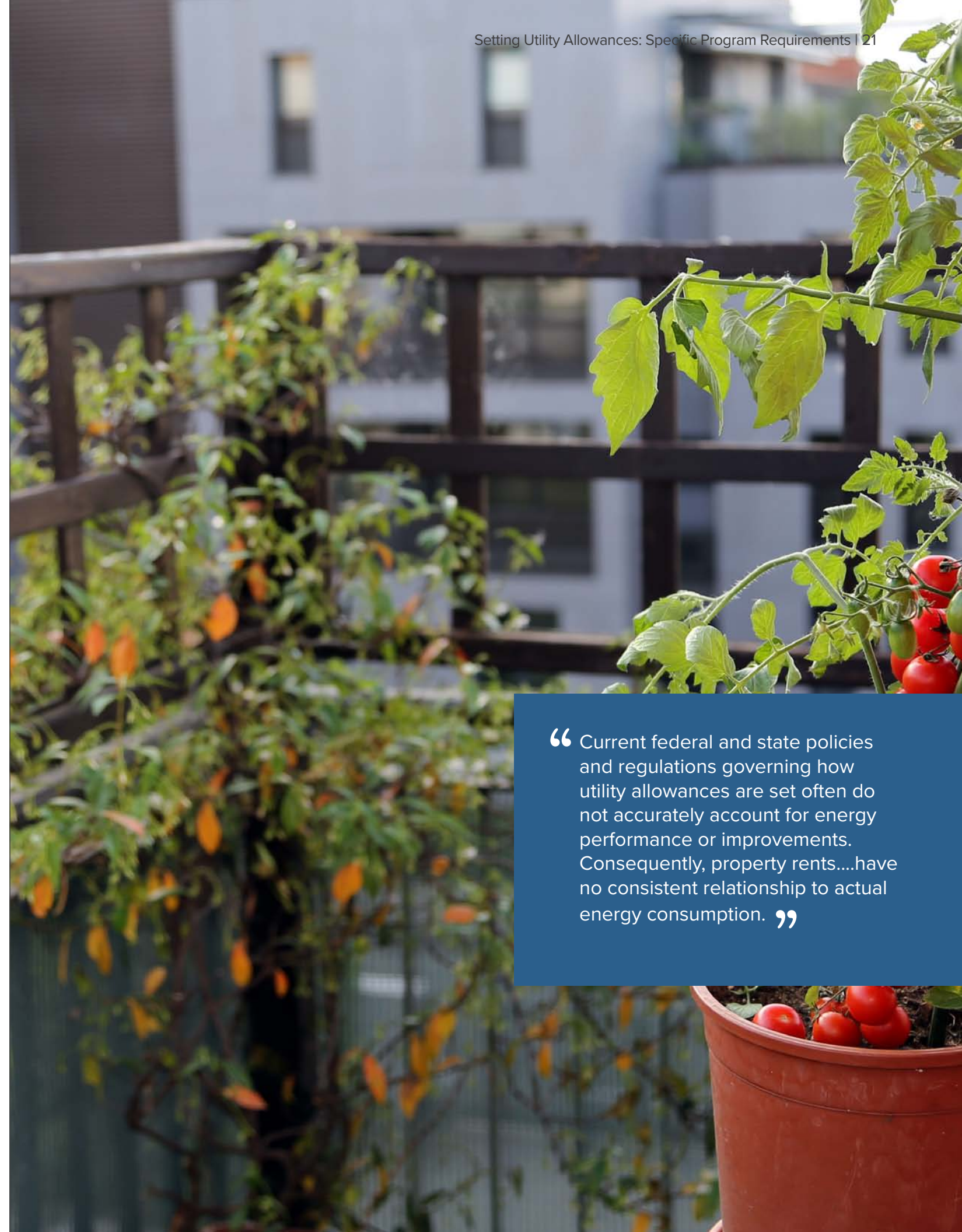
Because most existing HOME units rely upon the PHA voucher schedule to establish utility allowances, there is little incentive for owners to invest in energy efficiency, unless they can take advantage of a separate energy-efficiency based utility allowance schedule developed by the PHA. Newer HOME units that choose to using a project-specific method authorized by the 2013 regulations (either actuals or an engineering model) could reduce allowances for energy cost-saving improvements, and possibly retain such rental income depending on the terms of their agreements with the local jurisdiction providing the HOME funds.



Summary of Allowable Utility Allowance Methods Under Federal Programs

Method	Description	Applicable Federal Program
Utility Allowance Schedule	<ul style="list-style-type: none"> • Set by the Public Housing Authority • Rough estimate of reasonable consumption • Sometimes based upon HUD’s Utility Schedule Model • Not usually based on project-specific energy characteristics or performance • Could include a separate schedule for more efficiency, e.g., Energy Efficiency-Based Utility Allowance (EEBUA) 	<ul style="list-style-type: none"> • LIHTC • Section 8 Vouchers • Project-Based Vouchers • Public Housing
Actual Consumption Data	<ul style="list-style-type: none"> • Calculated by owner or consultant • Project-specific • Based on billing data 	<ul style="list-style-type: none"> • Project Based Rental Assistance (PBRA) • USDA Rural Development (RD) Rental Assistance • HOME • Public Housing • Low Income Housing Tax Credit (LIHTC)
Energy Consumption Model (ECM)	<ul style="list-style-type: none"> • Engineering-based estimate of reasonable consumption • Calculated by expert • Project-specific 	<ul style="list-style-type: none"> • Low Income Housing Tax Credit • Certain Federal Housing Authority (FHA)-Insured Mortgages with PBRA • HOME • USDA RD Rental Assistance

Figure 4: Summary of Allowable UA Methods



“ Current federal and state policies and regulations governing how utility allowances are set often do not accurately account for energy performance or improvements. Consequently, property rents....have no consistent relationship to actual energy consumption. ”

3. Utility Allowance Barriers & Next Steps

The reality is that current federal and state policies and regulations governing how utility allowances are set often do not accurately account for energy performance or improvements. Consequently, property rents—whether set on the basis of area median incomes, on budgets, market comparable studies, or applicable formulas under rental assistance programs—have no consistent relationship to actual energy consumption. Since utility allowance adjustments cannot provide property owners with clear signals or certainty regarding future project cash flows, utility allowance policies do not currently provide a straightforward route for driving investments in energy efficiency.

HUD currently spends over \$7 billion annually on utility expenses in public and assisted housing. The impact of underestimating utility costs can adversely affect the financial stability of both low-income residents and the properties in which they live. To address this challenge, we must find ways to more accurately measure and determine utility expenses and to allow property owners to capture energy savings from energy improvements that they finance.

In 2016, CHPC and NHLP will collaborate with affordable housing organizations and energy stakeholders to review utility allowance policies and practices, identify barriers that prevent or impede the capture of energy savings resulting from energy improvements, and assess best practices. Over the next year, we will focus our efforts on a set of strategic initiatives:

1. Assist national advocacy efforts around utility allowance reform:

An immediate effort will focus on the implementation of HUD's Methodology for Completing a Multifamily Housing Utility Analysis (Notice 2015-04) to address a number of issues affecting utility allowance calculations in California, including the use of California Alternate Rates for Energy (CARE) Program tariffs; accounting for solar production credits; allowing for the retention of solar benefits as mandated by state policies; and phasing-in utility allowance reductions impacting tenant rent payments.

2. Validate the accuracy of Energy Consumption Models:

Low Income Housing Tax Credit, HUD, and USDA programs allow the use of energy consumption models (ECMs) to set allowances in certain situations (primarily new construction), but the use of energy models has been limited and requires greater quality assurance to ensure that modeling results are accurate. Further modeling refinement and appropriate validation should precede expansion of ECMs to existing properties. Minimum standards for ECMs should be established for both new construction and existing properties. CHPC and NHLP will work in conjunction with other partners to promote the continued improvement of cost-effective ECMs.

3. Evaluate merits of using actual utility consumption:

Federal and state policies allow the use of actual consumption data to adjust utility allowances to ensure that they are fair to tenants. Use of actuals can provide a clear and real-time method to update utility allowances to reflect energy consumption and cost reductions resulting from energy investments. Actuals can also be used to verify the performance of ECMs. The merits and methods for using actuals should be evaluated and, where appropriate, promoted in housing programs.

4. Promote utility allowances policies supporting solar:

In California, Solar PV systems can provide measurable financial benefits to residents. Recent Internal Revenue Service rulings on sub-metering and solar utility allowance schedules adopted by PHAs provide pathways for improving the economics of solar investments. NHLP and CHPC will work to promote the adoption of these innovative policies into LIHTC, HUD and USDA-RD housing programs, while protecting the economic benefits provided to tenants under state-based initiatives.

“ In 2016, CHPC and NHLP will collaborate with affordable housing organizations and energy stakeholders to review utility allowance policies and practices, identify barriers that prevent or impede the capture of energy savings resulting from energy improvements, and assess best practices. ”

4. Utility Allowances Checklist

To assist housing providers in navigating the complexities of federal regulations, CHPC and NHLP developed a set of tips to help housing organizations assess whether utility allowance adjustments can be included in the financing strategy for your energy improvement project (tips organized by funding program).

I. Low Income Housing Tax Credit (LIHTC) Program

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: LIHTC rules allow property owners to set utility allowances using one of 5 methods. The choice of utility allowance method can materially affect the utility allowance levels at the property. The chief advantage is to incorporate energy saving in the project underwriting. A project-specific utility allowance is the best method for aligning utility allowances with energy-efficiency investment plans. In California, owners can use the California Utility Allowance Calculator (CUAC) to set a project-specific allowance for new construction.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Check Public Housing Authority (PHA) Utility Allowances: The CUAC is an effective strategy where PHA utility allowances are high (i.e. utility allowances assumes higher levels of utility consumption than appropriate for new construction). The CUAC is not effective in jurisdictions where PHA utility allowances are low. • Check Household Income Levels: The CUAC is usually not effective in jurisdictions where some tenant incomes are higher than the CARE program (200% of federal poverty level for state), because in that case TCAC policy requires standard rates to be used in setting utility allowances. • If the new construction property has HUD or USDA Rural Development (RD) assistance or regulation, closely evaluate the governing rules to see if a project-specific method (actuals or ECM) is authorized. 	<p>Issue: Once utility allowances are set, most LIHTC properties cannot modify utility allowances and tenant payments to account for energy-efficiency investments because the use of CUACs is limited to new construction or projects implementing MASH solar retrofits, and actuals are not authorized in California. Utility allowances set per ordinary PHA Schedules would not change.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Adopt CUAC at time of LIHTC financing. Properties that used the CUAC at initial development can use the CUAC to adjust UAs for future energy improvements. • Check PHA Schedule. Some PHAs have alternative utility allowance schedules (EEBUAs) for properties with enhanced energy characteristics. • Phase Energy-Efficiency Improvements with Solar Installations. (See LIHTC Solar chart, <i>infra</i>). • Include Energy-Efficiency Improvements in Planned Resyndication.

II. FHA Financing and Section 8 Project-Based Rental Assistance

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: Properties undertaking refinancing with certain FHA-insured mortgages can use engineering models to set property utility allowances. The chief advantage is to incorporate energy saving in the project underwriting at the time of project refinancing.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Ensure Quality Assurance and Reliability of Energy Model. If modeling significantly overstates energy savings, subsequent adjustments may be required. These adjustments may adversely affect property cash flows. 	<p>Issue: A new HUD Notice requires existing Project Based Rental Assistance (PBRA) properties to adjust utility allowances based on an annual utility allowance analysis. This method DOES NOT yet permit properties to capture energy savings through adjustments to tenant or property rents and may pose financial challenges to property owners and tenants.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Check Utility Rates Used. If rates used for establishing utility allowances are higher than those in actual use at the property, the adjusted UA can adversely affect property cash flows. • Adjust utility allowance Calculation for Certain Energy Assistance Payments. Utility allowance adjustments should exclude utility payments or credits provided to low-income tenants pursuant to utility regulations or requirements. • Align Energy-Efficiency Investments with Scheduled Equipment Replacement. Align energy investment with property operations, maintenance, and equipment replacement. • Seek Energy-Efficiency Incentive Programs that Fully Fund Investment Costs. Energy-efficiency retrofits undertaken outside of property financing will usually require deep incentives to cover energy investment costs. • Investigate participation in HUD's new Multifamily Energy Savings Demonstration (up to 20,000 units, starting in 2016).

III. Public Housing

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: PHA may use engineering models to set property utility allowances.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Consider Using Engineering Models for Projects Undergoing Financing. PHAs have Alternative Financing Methods to Support Energy Improvements 	<p>Issue: PHA utility allowances may be adjusted based on actual utility costs. However, the recovery of energy savings from energy investments is limited. The “Rolling Base Formula” limits benefits over a three-year period. Only properties under Energy Performance Contracts (EPCs) can fully capture energy savings.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Assess Feasibility of EPCs. EPCs leverage energy savings to finance capital improvements. HUD guidelines allow up to 25% of savings to be retained by PHAs for other uses. Leverage Utility Energy-Efficiency Programs with 5-Year Capital Plans-Physical Needs Assessment. Utility company energy-efficiency programs can support portfolio-wide improvement plans.

IV. Section 8 Housing Choice Voucher

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: PHA sets utility allowance schedules for vouchers used in LIHTC and other assisted housing projects, including those with Project-Based Vouchers. A PHA Schedule may be used by many LIHTC owners for an entire LIHTC project. PHA schedule may differ from utility allowances set by other methods such as the CUAC.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Request PHA Use of Alternative Method. Property owners can request PHAs to seek waiver from HUD to use project-specific utility allowances at LIHTC properties with PBVs. Precedent already set for HUD approvals. PHA may also permit use of a separate schedule for more energy-efficient properties (EEBUA). 	<p>Issue: PHAs have inconsistent methods for developing utility allowance schedules for Section 8 vouchers. This inconsistency can produce low utility allowances that impair the effectiveness of project-specific methods such as the CUAC.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Encourage PHAs to Adopt HUD Utility Schedule Model (HUSM)-based utility allowances. The HUSM provides a standardized method for PHAs to set utility allowance schedules. HUSM uses energy data from national EIA database.

V. HOME

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: HOME requires use of a project-specific method or the HUSM to set utility allowances for HOME-assisted units.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Select Approach that Fits Project Design. If the project scope includes significant energy-efficiency investments, the CUAC should be used. Also, if a CUAC is not used for any LIHTC units, the owner should use the HUSM for all units at the property. The HUSM is the least costly option for setting project utility allowances. 	<p>Issue: The ability to recover energy savings from energy-efficiency retrofits depends on whether the CUAC or HUSM is used. The HUSM does not enable the recover of site-specific energy savings, although it accounts for some Energy Star savings.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Consider Level of Energy Savings in Selecting Approach. The CUAC is an expensive approach (\$4,000 to \$6,000) and can affect the cost-effectiveness of an energy retrofit. If only HOME units are subject to the CUAC, the HUSM may be a more cost-effective approach.

VI. USDA RD Programs (Secs.514,515,516,521)

New Construction and Substantial Rehabilitation Projects	Energy Efficiency Retrofit Projects
<p>Issue: Properties undertaking USDA-RD financing can use engineering models to set utility allowances. The chief advantage is to incorporate energy saving in the project underwriting at the time of project financing.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Ensure Quality Assurance and Reliability of Energy Model. If modeling significantly overstates energy savings, subsequent adjustments may be required. These adjustments may adversely affect property cash flows. 	<p>Issue: USDA-RD requires existing property owners to update utility allowances annually. This is generally accomplished by sampling tenant utility cost/ consumption, but unlike HUD no specific method is prescribed. USDA-RD requirements DO NOT permit properties to capture energy savings through adjustments to tenant or property rents.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> Align Energy-Efficiency Investments with R for R Plans. Align energy investment with property operations, maintenance, and equipment replacement. Seek Energy-Efficiency Incentive Programs that Fully Fund Investment Costs. Energy-efficiency retrofits undertaken outside of property financing will likely require deep incentives to cover cost.

VII. Overview of Program Requirements for Solar PV Installation

Program Area	Solar PV Projects
<p>Low Income Housing Tax Credit (LIHTC) Program</p>	<p>Opportunity: Properties in California undertaking solar PV installations under the MASH program can request adjustments to utility allowances. Utility allowance adjustments must be based on a CUAC. Additionally, standard utility rates must be used unless 100% of the tenants at the property have incomes low enough to qualify for California’s CARE program.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Check PHA Utility Allowances: The CUAC utility allowance is an effective strategy where PHA utility allowances are high (i.e. CUAC utility allowance assumes higher levels of utility consumption than needed for new construction). The CUAC is not effective in jurisdictions where PHA utility allowances are low. • Check Household Income Levels: The CUAC is not effective in jurisdictions where tenant incomes do not qualify for the CARE program (200% of federal poverty level for state) because standard rates must be used for setting utility allowances. • Transition Issues: Where CUAC can be used and the resulting utility allowance is lower than the prior utility allowance, tenants may experience a rent increase that is not necessarily offset by energy cost savings. While directed tenant benefits available under the current version of MASH (Dec. 2015) could offset a portion or all of any rent increase, the tenant impact of any balance should be carefully assessed.
<p>Project-Based Section 8</p>	<p>Opportunity: The annual utility allowance analysis method required by HUD poses challenges to the recovery of solar credits generated by PV systems paid for by the property that are provided to low-income tenants. Alternative methods may be necessary.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Evaluate Sub-Metering Strategies. HUD-assisted properties can explore sub-metering of solar production provided to tenants. Compliance with utility sub-metering policies required. Some administrative hurdles exist to implement accounting programs to bill tenants. Sub-metering would change payment relationships, but should not affect the amount of tenant consumption or the resulting utility allowance.
<p>Public Housing Authority (PHA)</p>	<p>Opportunity: HA can adjust utility allowance for 100% of any savings in tenants’ actual consumption, splitting the savings 50/50 with HUD. PHAs may retain 50% of energy savings generated from renewable energy systems.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Leverage Solar Incentive Program. Since only 50% of the energy savings from common area and tenant unit units can be recovered, the financial feasibility for solar PV investments depends on access to utility incentives and investment tax credits. The Low-Income Weatherization Program (LIWP) solar program and AB 693 will provide PHAs opportunities for scaling solar across PHA portfolios.

Program Area	Solar PV Projects
<p>Section 8 Vouchers</p>	<p>Opportunity: The opportunity for solar investments under the voucher program is very limited, but can be accomplished where Community Solar programs exist. Properties with Project-Based Vouchers (PBVs) might have additional options.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Assess Community Solar Strategies. PHAs and Multifamily property owners should assess what community solar opportunities exist and work with utility companies to develop pilot programs. • Evaluate Options for PBV properties. Owners could engage PHAs to create separate utility allowance schedules for solar properties, or to seek waivers from HUD to permit utility allowances to be established by alternative methods (e.g., CUAC) that recognize both solar and other efficiency measures. (Note cost considerations of CUAC, below).
<p>HOME</p>	<p>Opportunity: Properties undertaking solar PV installations can undertake utility allowance adjustments to support solar investments through the use of the CUAC.</p> <p>What to Consider:</p> <ul style="list-style-type: none"> • Consider Level of Energy Savings in Selecting Approach. The CUAC is an expensive approach (\$4,000 to \$6,000) and can affect the cost effectiveness of an energy retrofit. If only HOME units are subject to the CUAC, the HUSM will likely be a more cost-effective approach.

Notes

1. Regulatory barriers included: (1) applicable rules may not allow proper adjustments, (2) the baseline allowances established under the rules might be too low, (3) the absence of a consistent methodology for measuring allowances; and (4) no requirement that the subsidy provider (HUD or RD) share savings with the owner. Administrative barriers included: (1) difficulty obtaining data on tenant consumption and billing from tenants and/or utilities, and (2) performing the required calculations. The main cost barrier involved project-specific allowances based upon actuals or an energy consumption model, which included the upfront cost of establishing the amount of the adjustment, and the cost of actually securing any required agency approval.

2. 24 C.F.R. § 965.505(a) (2015) (Public Housing); 24 C.F.R. § 5.603(b) (2015) (FHA-subsidized and project-based Section 8 subsidies); 24 C.F.R. § 982.517 (2015) (Vouchers). See also 26 C.F.R. § 1.4210 (2015) (requirements for LIHTC developments, not explicitly mentioning “energy conservative households” or “reasonable consumption,” but permitting various methods often involving allowances set by HUD programs).

3. TCAC rules allow this narrow subset of MASH properties to set utility allowances via an energy consumption model called the California Utility Allowance Calculator.

4. Allowances may be too low because they were based upon a method, such as a schedule, which is not property-specific and does not reflect property characteristics or actual consumption, or because they have not been adjusted to reflect current rates.

5. HUD, *Utility Allowance Guidebook 3* (Sept. 1998) [hereinafter “HUD Utility Allowance Guidebook”].

6. *Id.*

7. *Id.* The utility allowance provided in sub-metered buildings is usually set in terms of units of utility consumption, such as kilowatt hours of electricity (kWh) or therms of gas. For example, if a tenant has a monthly allowance of 400 kWh of electricity and consumes 450 kWh, the tenant will be assessed a utility surcharge for the excess 50 kWh. For example, in public housing, the surcharge is based upon “the PHA’s average utility rate,” 24 C.F.R. § 965.506(a) (2015), and HUD has stated that it should be based upon “the actual costs of excess consumption.” 49 Fed. Reg. 31,406 (Aug. 7, 1984).

8. 24 C.F.R. § 965.505(a) (2015) (Public Housing); 24 C.F.R. § 5.603(b) (2015) (FHA-subsidized and project-based Section 8 subsidies); 24 C.F.R. § 982.517 (2015) (Vouchers).

9. 24 C.F.R. § 982.517(a)(1) (2015). If a tenant must supply her own refrigerator or stove, the allowance should also cover the lesser of the cost of either leasing or installment purchasing. HUD, *Housing Choice Voucher Guidebook*, 7420.10G, at 18-7 (Apr. 2001) [hereinafter “HUD Guidebook 7420.10G”]; 24 C.F.R. § 982.517(a)(1) (2015); see also HUD, *Public Housing Occupancy Guidebook*, supra note *, § 10.7 (for public housing, utility allowance must include the cost of ranges or refrigerators, where not furnished by PHA).

10. See, e.g., 26 C.F.R. § 1.4210 (2015) (LIHTC requirements, while not explicitly mentioning “energy conservative households” or “reasonable consumption,” permit various methods to reach reasonableness, including those under HUD programs).

11. The HUD Utility Schedule Model (HUSM) is also a permissible method for many programs, but it produces a schedule that is not based upon the actual energy characteristics of a property and thus does not yield a project-specific utility allowance.

12. HUD Notice H 2015-04, “Methodology for Completing a Multifamily Housing Utility Analysis” (June 22, 2015) (applicable not only to project-based Section 8, but also to other rental assistance programs, including Rent Supplement, Section 236 RAP and rental assistance associated with Section 202 properties).

13. In lieu of actuals, the guidance also permits some properties (those few that qualify as new construction or substantial rehabilitation) to use an energy consumption model per the Internal Revenue Service rules to establish initial allowances only, but they must later follow the required methodology for establishing the baseline after one year’s consumption data is available. HUD Notice H 2015-04.

14. E.g., 24 C.F.R. §§ 880.610 (New Construction) and 881.601 (Substantial Rehabilitation) (2015); Memorandum for All HUD Directors from Carol Galante, HUD Deputy Assistant Secretary for Multifamily Housing (June 20, 2011).

15. 24 C.F.R. §§ 880.610 (New Construction) and 881.601 (Substantial Rehabilitation) (2015). Note that the 10% trigger is based upon the change in the allowance, not the rate for each separate fuel source, so that an increase of more than 10% in only one of the utilities (e.g., electricity) comprising the allowance may not be enough to trigger an adjustment.

16. 24 C.F.R. § 886.126 (2015). See also Galante Memo, supra note 14.

17. 24 C.F.R. § 886.126 (2015).

18. *Id.*

19. 7 C.F.R. § 3560.202(d) (2015); USDA RD Asset Management Handbook, HB-2-3560, ¶ 7.3 (2005); see also § 3560.11 (definition of utility allowance); § 3560.303 (budgeting requirements).

20. Although some tenants without rental assistance may still benefit from a utility allowance, this situation is not common. Like in the HUD-subsidized mortgage programs (e.g., Section 236), if there is no rental assistance, only those tenants paying more than basic rent benefit from a utility allowance because their contribution is based upon 30% of adjusted income.

21. 7 C.F.R. § 3560.202(b); USDA RD Asset Management Handbook, HB-2-3560, ¶ 7.3(A) & (B) (setting and monitoring UAs) and ¶ 4.26(C) (review of proposed UA change); USDA Form RD 3560-7

22. 7 C.F.R. § 3560.11 (“An amount determined by a borrower as the amount to be considered a tenant’s portion of utility cost in the calculation of a tenant’s total shelter cost when utility costs are not included in the rent.”); § 3560.202(d) (“borrowers must establish utility allowances for each size and type of rental unit in the housing project based on estimated utility costs.”).

23. Former 7 C.F.R. § 1944, Subpart E, Ex. A-6, Instructions, ¶ II (2005).

24. 7 C.F.R. § 3560.202(d) & § 3560.205; USDA RD Asset Management Handbook, HB-2-3560, ¶ 4.26(C).

25. 7 C.F.R. § 3560.202(d), § 3560.205 (2015); USDA RD Asset Management Handbook, HB-2-3560, ¶ 7.13(B). USDA field staff are to spot check leases to confirm that they reflect the budget-approved UA levels. USDA RD Asset Management Handbook, HB-2-3560, ¶ 7.3(C).

26. 24 C.F.R. § 965.505(a) (2015); see also HUD, *Public Housing Occupancy Guidebook*, supra note 4, § 10.7 (“Existing technical standards (i.e., local building codes) should be used where available in determining what is necessary to provide for safe, sanitary and healthful living.”).

27. 24 C.F.R. § 965.505(d) (2015); see also HUD, *Public Housing Occupancy Guidebook*, supra note 4, § 10.7 (“Utility allowance amounts will also vary by residential demographic characteristics affecting home energy usage.”).

28. 24 C.F.R. § 965.507(a).

29. *Id.* § 965.507(b). HUD *Public Housing Occupancy Guidebook*, supra note 4, § 14.3 (“Changes in costs passed through an automatic adjustment clause (such as, for example, a fuel adjustment clause, a purchase gas adjustment clause, or a gas recovery clause) shall be considered a ‘rate change’ for this procedure.”).

30. Introductory Comments, 49 Fed. Reg. 31,404 (Aug. 7, 1984). The precise definition of necessities and luxuries and what uses must be included in the allowance are left to each PHA’s discretion, but HUD has stated that such categorization should reflect local usage and custom. *Id.* See also HUD, *Public Housing Occupancy Guidebook*, supra note 4, § 14.3 (“In making the determination of what consumption is to be attributed to an energy conscious household, a PHA should distinguish between necessary appliances and luxury appliances. A PHA must be mindful of additional utility use by individuals with disabilities due to the need for and use of medical equipment or other needs. This distinction should reflect local usage and custom patterns.”).

31. 24 C.F.R. § 965.508.

32. *Id.* § 982.517(b)(1).

33. *Id.* § 982.517(b)(2).

34. HUD Guidebook 7420.10G, at 18.2 and 18.3.

35. *Id.*

36. See HUD Form 52667, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=52667.pdf>

37. HUD Guidebook 7420.10G, at 18.2 to 18.4

38. 24 C.F.R. § 982.517(c) (2015) (this requirement differs from PBRA, where an adjustment is required only where the rate changes would cumulatively result in a change of 10% or more in the UA itself). See *Johnson v. Housing Authority of Jefferson Parish*, 442 F.3d 356 (5th Cir. 2006) (finding utility allowance adjustment requirements of rules implementing Voucher statute are privately enforceable via § 1983; case ultimately settled with retroactive refunds).

39. Waiver Request of 24 CFR 982.517(b)(1) Housing Authority of the City of Alameda (CA062) Memorandum, for Girard Windt, Acting Director, San Francisco Office of Public Housing, 9APH, from Sandra B. Henriquez, Assistant Secretary, Office of Public and Indian Housing (July 28, 2011).

40. 24 C.F.R. § 983.301(f)(1) (2015) (“[T]he PHA shall use ... the utility allowance schedule in effect at execution of the Housing Assistance Payment contract,” which presumably refers to the voucher schedule.) See the discussion of voucher utility allowances at p. 14.

41. 26 U.S.C.A. § 42(g)(2)(A) (West 2015).

42. 26 C.F.R. § 1.42-10(a) (2015). “Tenant-paid” includes both tenants in tenant-metered buildings, as well as those in sub-metered buildings, where owners use meters to measure each unit’s consumption and billing. IRS, Notice 2009-44 (May 5, 2009); Utility Allowances Sub-metering, 77 Fed. Reg. 46,987 (Aug. 7, 2012). The utility rates charged to each sub-metered tenant must be limited to the utility company rates incurred by owners, and building owners may not charge fees exceeding \$5 per month for the administrative costs of sub-metering.

43. 26 U.S.C.A. § 42(g)(2)(B)(ii) (West 2015); 26 C.F.R. § 1.42-10(a) (2015). For some properties in softer markets, LIHTC rents charged are less than the maximum allowable, which reduces both the benefit actually received by tenants from utility allowances, and the positive impact of energy improvements on the rent stream available to the owner.

44. *Id.* §§ 1.42-10(b)(1)-(3).

45. *Id.* § 1.42-10(b)(4)(i).

46. *Id.* § 1.42-10(b)(4)(ii)(A). Although this provision of the regulation does not clearly specify whether it is the PHA allowance for its voucher program, or for its public housing program, which could deliver very different amounts, we have found that the voucher schedule is commonly used.

47. *Id.* § 1.42-10(b)(4)(ii)(B). Apparently, if any interested party (including a tenant, owner, or the agency) obtains the written estimate, that estimate becomes the allowance for all rent-restricted units in the building. § 1.42-10(b)(4)(ii)(A). The owner must make copies of the utility company estimate available to tenants. This method is rarely used, because utilities often don’t have this type of information (e.g., broken down by unit type and size, appliance configuration and end uses) and it’s not a regular business activity.

48. *Id.* § 1.42-10(b)(4)(ii)(C). This estimate must take into account local utility rates, property type, climate and degree-day variables by region in the State, taxes and fees on utility charges, building materials, and mechanical systems. Or, the agency may also use (or apparently permit owners to use) actual recent utility usage data and rates for the property.

49. *Id.* § 1.42-10(b)(4)(ii)(D). The Utility Schedule model is available at <http://www.huduser.org/portal/resources/utilmodel.html>. The HUSM is based upon the DOE EIA database, which permits calculations by geographic area, unit type, and approximate age, as well as appliance energy efficiency characteristics. It is often also used to create PHA voucher schedules, which are governed by more vague standards.

50. Other currently authorized uses for the CUAC include projects installing solar PV that is subsidized under the MASH program of the California Solar Initiative. <http://www.sto.ca.gov/ctcac/cuac/index.asp>; <http://www.treasurer.ca.gov/ctcac/cuac/faq.pdf> (Q&A #6).

51. These are set out at 24 C.F.R. § 1.42-10(c), and state allocating agencies may impose additional procedural requirements.

52. *Id.* § 1.42-10(c)(2).

53. *Id.*

54. 42 U.S.C.A. § 12721 et seq.

55. 78 Fed. Reg. 44,628, 44,651 (July 24, 2013) (amending 24 C.F.R. § 92.252). The final rule does not affect utility allowances for HOME tenant-based rental assistance, upon which the HOME regulations are silent.

56. Former 24 C.F.R. § 92.252(c) (effective Aug. 22, 1997 to Aug. 23, 2013).

57. 78 Fed. Reg. 44,651 (July 24, 2013).

58. 24 C.F.R. § 92.252(d)(1) (2015).

59. The HUD Utility Schedule model is available at <http://www.huduser.org/portal/resources/utilmodel.html>.

60. 78 Fed. Reg. 44,651 (July 24, 2013).

61. The applicability charts for the 2013 HOME final rule requirements are available at <https://www.hudexchange.info/home/home-final-rule/requirements-applicability-charts/>.

62. 24 C.F.R. § 92.252(d)(1) (2015).



The Green Rental home Energy Efficiency Network (GREEN) is a coalition of mission-driven and service organizations across California working collaboratively for the inclusion of multifamily rental housing as a priority in federal- and state-funded energy efficiency and renewable energy programs. For more information, please visit us online at www.chpc.net