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advancing housing justice

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MEMORANDUM

New HUD Utility Allowance Calculation Methodology

HUD's Notice H 2015-04 (June 22, 2015) establishes a required methodology for calculating utility allowances.

The Notice applies to: Project-based Section 8, and Section 101, 202, 811, 236 and 221(d)(3) assisted projects. New construction and substantial rehabilitation projects (e.g. under the Rental Assistance Demonstration program) can use an energy consumption model to establish an initial UA, but must follow the new HUD guidelines once one year's consumption data is available. It does NOT apply to: Public housing or Section 8 vouchers, including project-based vouchers.

HUD provides utility allowances to tenants in assisted multifamily properties through owners. Allowances are defined in 24 CFR § 5.603 as the estimate of the "monthly cost of a reasonable consumption" of utilities for "an energy-conservative household of modest circumstances." With this new methodology, HUD aims to make utility allowance calculations more consistent and project-specific. This will provide a better foundation for owners to pursue energy and water efficiency improvements, but it also has the potential to impact tenants by driving their utility allowances up or down.

Going forward, owners must calculate baseline utility allowances for each bedroom size every three years using the average of a sample of actual tenant utility costs. In the two years between baseline analyses, owners may adjust the utility allowances using an increase factor provided by HUD. Finally, owners must continue to request utility allowance increases any time that a utility rate increase results in a cumulative increase of 10 percent or more from the most recently approved utility allowance.

We expect that this new methodology will to begin affect utility allowance amounts in early 2016. Starting December 18, 2015 (180 days after the notice was published), owners must perform a new baseline utility analysis at their contract anniversary dates. *To determine when properties in your area will be affected, search the NHLP spreadsheet of contract start dates (note that "contract anniversary date" under HUD's Notice may not always be the same as the "Start Date" indicated in the database*.)

Potential Impacts on Tenants

Information Requests and Reporting Requirements:

- Owners may require tenants to sign releases to obtain their utility data. Failure to sign a release is considered a lease violation and may result in termination of tenancy.
- Tenants are required to disclose whether they are receiving "utility assistance" from sources other than HUD. Assistance that falls under a federally mandated exclusion from income – such as assistance from the Low-Income Home Energy Assistance Program – still must to be reported but will be excluded from income calculation.

Utility Allowance Increases:
Utility allowances may increase if they were too low under the old methodology.

Practice Pointer: A large utility allowance increase may be a sign that tenants paid too much for utilities in the past. It may be possible to stay pending evictions for non-payment of rent until tenants are appropriately reimbursed.

Utility Allowance Decreases:
Utility allowances may decrease if they were too high under the old methodology. Tenants whose utility allowances decrease will need to pay more of their income on utilities.

Practice Pointer: Ensure that procedural requirements are met:

- Under 24 CFR 245.405(a) and 245.410, 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
- Utility allowance decreases of more than 15% AND at least $10 must be phased in.

Practice Pointer: Encourage any resident with medical equipment to seek a reasonable accommodation for a higher utility allowance so that they will be buffered from utility allowance decreases.

Practice Pointer: Encourage tenants to enroll in low-income rate programs such as California Alternate Rates for Energy. The new methodology requires that utility allowances be calculated based on average tenant utility costs, with no instructions to separate out units where tenants receive a low-income rate. Tenants in these units have lower utility bill costs and thus will skew the average cost down. This could lead owners to set utility allowances lower than what might reasonably be expected to cover utility costs for tenants on standard rates. Any tenants that are on a standard rate, but eligible for a lower rate, should enroll in the lower rate program.

Practice Pointer: Ensure that utility allowances are calculated properly. Certain mistakes—like including units that have been vacant for two or more months, including units that have a flat utility rate, or using a sample size that is too small—can drive utility allowances down. In California, another mistake practitioners are likely to see is the inclusion of the "California Climate Credit" in the net utility costs used to determine the utility allowance. Because the California Climate Credit is not a reduction in the cost of utility service but instead is delivered on the utility bill for administrative convenience, the credit should not be counted in determining the tenant's utility allowance.

Please reach out to NHLP to keep us apprised of how the new notice impacts tenants that you work with. We need your help to inform our advocacy with HUD.