U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

JUN 20 2011

MEMORANDUM FOR: All Multifamily Hub Directors
All Multifamily Program Center Directors
All Contract Administrators

FROM: Carol J. Galante, Deputy Assistant Secretary for Multifamily Housing Programs, HT

SUBJECT: Clarification Utility Allowance Regulations

The purpose of this memorandum is to provide clarification to existing statutes, regulations and policies regarding utility allowances in multifamily housing properties. This memorandum does not discuss methodologies used to determine utility allowances, but rather addresses the questions most often received relating to current utility allowance requirements. Additional guidance regarding analysis methodologies and energy efficiency goals will be addressed in the future and may result in regulatory clarifications and or changes.

The Department of Housing and Urban Development (HUD) provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. Utility allowances are a representation of the owner's best estimate based on an analysis, and approved by the Project Manager/Contract Administrator (PM/CA), of the average monthly utility cost that an energy-conscious tenant will incur for the year. These allowances are provided to the owner by the Department, passed through to the tenant, and are not considered an element of rent under the Multifamily Assisted Housing Reform and Affordability Act (MAHRA). To determine the utility allowances for the property, owners are required to perform yearly analyses of their projects' utilities.

Owners of multifamily housing properties that receive subsidy assistance, and for which HUD provides a utility allowance, are required to adjust their properties' utility allowances every year at the time of the annual and special adjustments of contract rents. This is true regardless of the percentage or amount of the adjustment and includes Operating Cost Adjustment Factor (OCAF), Annual Adjustment Factor (AAF), and Budget Based adjustments. The adjustment, which may result in an increase or decrease (or no change) from the current utility allowance, must be supported by an analysis of the project's utility allowances and must be submitted to the PM/CA at the time of the annual or special adjustment of contract rents. If the owner does not submit the utility analysis with the rent adjustment submission, the PM/CA must withhold the rent adjustment until receipt of the utility analysis and all other required submissions. Once the required documents are received, the PM/CA retroactively implements the rent adjustment in accordance with Section 524(c) of MAHRA. HUD does not permit submission of a certification by an owner indicating that a utility analysis has been conducted with no resulting change in the current utility allowances in lieu of submitting an actual utility analysis.

Regulations at 24 CFR §245.405(a) and §245.410 require the owner to serve notice, as defined in 24 CFR §245.410, to the tenants of a proposed decrease in utility allowances. This notice must be made at least 30 days prior to submitting the request for a utility allowance decrease to HUD for approval and must provide the tenants with the right to participate in and comment on the proposed decrease in utility allowances. Note that a decrease in the tenant's utility allowance does not constitute a change in the amount a tenant is statutorily required to pay as rent (known as the "total tenant payment"). The decrease does, however, increase the amount a tenant will be paying monthly (or "tenant rent"). It is important to educate tenants on the difference between total tenant payment and tenant rent especially when a utility analysis will result in a decrease of utility allowances.

As stated above, adjustments in utility allowances are not considered changes in rent under MAHRA. Because of this, multiple adjustments in utility allowances can be made throughout the contract year and must be requested by an owner any time changes in utility rates result in an increase of 10 percent or more from the most recently approved utility allowance.

If you have any questions regarding this memorandum, please contact Yvette Viviani at (202) 402-2366, or Michael Sharkey at (202) 402-6788.