

February 14, 2008

UTILITY ALLOWANCE ANNOUNCEMENT FOR GEORGIA HOME AND TAX CREDIT PROJECTS

Georgia Utility costs have substantially increased due to the increased cost of natural resources. The Georgia Department of Community Affairs has significantly increased the required energy efficient materials and appliances for tax credit developments. PHA utility allowances (including DCA's Section 8 utility allowances) do not always accurately reflect the energy savings resulting from the efficient building of Georgia tax credit/HOME Developments. The Office of Affordable Housing believes that the probable increases in utility allowances exceed annual rent increases and are placing many tax credit/HOME properties at risk for substantial loss in operating revenue. This loss of revenue may adversely affect the financial viability of some projects.

Both HUD and the Internal Revenue Services are cognizant of the stresses that utility allowances have placed on affordable housing. The Internal Revenue Service published a proposed rule in June, 2007 which would also give state housing finance agencies more discretion in determining utility allowances for tax credit projects. Under the proposed rule, Section 1.42-10(b)(4)(ii) would be amended to permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building. The Agency's estimate would need to take into account the local utility rate data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency would also be able to use actual utility company usage data and rates for the building. Further, the regulations would be amended to permit a building owner to calculate utility allowances using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html>. The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate. A building owner who chooses to use the HUD Utility Schedule Model must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. The IRS has completed hearings on the proposed rule, but has indicated that the final rule will not be implemented until June, 2008. There are also questions regarding the effective date of the proposed regulation. As currently written, the final rule would not be implemented until 2009. The IRS has also indicated that they are contemplating additional changes to this rule prior to finalization. Therefore, while the IRS is aware of the utility rate issues, state housing agencies cannot yet rely upon this rule.

However, the 8823 Guide published by the Internal Revenue Service states as follows:

"State Agencies have reported that the local PHA utility allowances do not always reflect a fair approximation of actual utility costs for such buildings. Accordingly, until further guidance is provided through administrative ruling or regulation, taxpayers may calculate utility allowances for the rent restricted units in the building based upon an average of the

February 14, 2008

actual use of similarly constructed and sized units in the building using actual utility usage data and rates provided that the tax payer has written approval from the state agency. If an owner computes the utility allowance estimates based on the expected or historical use by the LIHTC buildings/units, the estimate must be calculated in a reasonable manner and contemporaneously documented to show how the estimate was determined.”

DCA has determined that in many cases the current Georgia PHA utility allowances do not reflect actual usage at DCA HOME and tax credit developments. The requirement of energy efficiency appliances and the use of energy efficient materials and building techniques are not reflected in the PHA allowances which utilize older, less efficient developments as models. Therefore, commencing immediately, DCA will allow Tax Credit and HOME Project Owners to establish specific allowances using an average of actual consumption information, or continue to use current HUD/PHA allowances. OAH will immediately begin accepting requests for changes in the utility allowance for a project or for a portfolio. Owner’s use of an approved allowance will be on a project or portfolio basis and is intended as an alternative to the current PHA allowances. If an Owner elects a portfolio approach, projects contained in a portfolio must be located in the same county, have the same General Partner, and have the same general construction and materials. Actual utility allowances must be based on an average of actual costs incurred for at least 50% of each bedroom type unit of the project or portfolio, over a period of 12 consecutive months. Projects that have not obtained at least 50% occupancy in each of the bedroom types for a period of 12 consecutive months, must continue to use the PHA utility allowances. Please note: changes cannot be instituted until approved by DCA. DCA will review all requests as quickly as possible.

In addition, tenant rent increases above the rent limits of the current tenant’s lease which are caused by the implementation of this policy should be made only at lease renewal.

The use of an owner-calculated allowance is not mandatory. The Owner can select an allowance that provides the greatest benefit to the viability of the project or Owner portfolio. Properties which are HUD-regulated or receiving RD assistance must continue to use the required utility allowance. The approved utility allowance alternative will be effective for one year or until such time as the Internal Revenue Service provides guidance to the contrary. After the first year, the Owner can submit a new request or use the HUD/PHA allowance. OAH reserves the right to deny a request for the following reasons and just cause:

1. Calculation errors
2. Insufficient sample size
3. Outstanding non compliance
4. Units that are not individually metered

In order to institute the alternate owner utility allowance, Owners are required to submit the following information:

February 14, 2008

- Cover letter indicating the requested alternative allowance for each project and property type and if the request is a portfolio or project approach. If the request is for a portfolio approach, sufficient information must be submitted to show the properties in the portfolio have the same General Partner, and have the same general construction and materials.
- Complete OAH's utility allowance tool (posted on our website). The consumption data must consist of a sample of fifty percent of the project or portfolio units (no less than 10 units), property type i.e. townhouse, apartment), and unit type (i.e. one bedroom).
- Utility documentation to support the requested utility allowance (billing statements) as follows:
 1. Documentation from utility companies that shows the average utility rate charged for the required number of units and unit types. If tenant utility information is unavailable from the utility company or only provided at cost, utility billings received by tenants are acceptable; and
 2. A list of tenant addresses used to complete the utility Allowance Tool for each property or properties contained within a portfolio and unit type. The Owner must indicate if any of the units contained within the sample size failed to have continuous twelve month occupancy.
 3. The use of actual allowances will only be allowed if there are actual utility bills for 50% of each bedroom type for a period of twelve consecutive months. (such documentation can include no more than one month of down time to account for move in's and move 'outs in a particular unit)
 4. OAH will accept only mailed or hand delivered documents. All documents should be sent to the attention of: Nan Maddux, Compliance Manager, 60 Executive Park