

Conquering LIHTC Utility Allowances

by Amanda Lee Gross, VP of Training and Compliance Policy, US Housing Consultants

What makes LIHTC housing truly affordable?

It isn't just the income limits that make Low-Income Housing Tax Credit (LIHTC) housing affordable, as income restrictions simply ensure that LIHTC housing is made available only to those who truly need affordable housing based on annual household income. The component that makes LIHTC housing truly affordable is the rent restrictions.

What makes rent affordable to a household?

A long-established standard in the United States considers rent to be affordable to a household if the rent does not exceed 30% of the household's income. That said, maximum rent limits for the LIHTC program are not calculated based on each household's income, nor is it computed based on the actual number of household members occupying a unit. Instead, the maximum allowable rents are based on 30% of the income limit that applies to a unit, the number of bedrooms in a unit, and by imputing 1.5 persons per bedroom. So, what exactly does that mean?

As an example, for a two-bedroom unit, the max rent would be based on 30% of the income limit that applies to a three-person household (1.5 persons per bedroom). Under the LIHTC program, owners must charge a gross rent that is at or below the maximum rent limit applicable to the LIHTC unit.

What is included in gross rent?

Gross rent in a standard LIHTC-only setting includes the following:

- Tenant paid rent
- Non-optional fees
- Utility allowance

Tenant Paid Rent is simply the monthly rent amount that a tenant actually pays for the low-income unit. However, there are additional considerations when certain federal subsidy programs are layered in the mix:

LIHTC and Section 8:

Many tenants residing in LIHTC units also receive tenant-based or project-based Section 8 assistance. If a tenant residing in a LIHTC unit receives a federal rental subsidy, the unit is not considered in violation of the gross rent restriction in

circumstances where the tenant's portion of the rent exceeds the maximum LIHTC rent restriction.

LIHTC and Rural Development:

For LIHTC units that are also covered by Rural Development (RD), if the project was allocated LIHTC after 1991, then any “overages” paid by the tenant are not included in the gross rent calculation. “Overage” refers to the portion of the tenant-paid rent that exceeds the RD Basic Rent for the project.

Non-optional fees – A non-optional fee is typically any fee that a tenant must pay as a condition of occupancy. Although many view month-to-month fees as an optional fee (as the tenant has an option to execute another lease or enter into a month-to-month lease), the IRS stated in the 8823 guide that month-to-month fees need to be included in the gross rent determination.

Does your property charge washer and/or dryer fees? If so, this fee is required to be included in the gross rent calculation if the property does not provide another onsite option for doing laundry (i.e., common area laundry room).

As we are discussing fees, it doesn't hurt to mention that fees should not be charged for tenant amenities, such as pools and other recreational facilities, if the costs of such facilities are included in the building's eligible basis.

Utility allowances – The estimate of any utilities that are required to be paid directly by the tenant must be included when calculating gross rent. This estimate is referred to as the utility allowance. If the owner pays for the utilities, there is no need for a utility allowance.

Optional utilities — such as internet service, telephone and cable — are not included as utilities for the purpose of determining a utility allowance.

In this series, we will delve deep into the utility allowance requirements applicable under the LIHTC program.

Before we dive in, let us first review the five utility allowance options allowable under the LIHTC program:

- A. **RD/LIHTC:** LIHTC buildings that have an RD loan or receive RD Rental Assistance must use applicable RD utility allowance.
- B. **Department of Housing and Urban Development (HUD)/LIHTC:** LIHTC buildings that are HUD-regulated (HUD regulates the rents and utility allowances) must use applicable HUD utility allowance.
- C. **LIHTC:** If a LIHTC building does not receive RD Assistance and is not HUD-regulated, the applicable utility allowance is determined using one of the following methods:

1. The schedule used by the local Public Housing Authority (always used for Section 8 voucher holders)
2. An estimate from a utility company
3. An estimate from the Housing Finance Agency
4. The HUD Utility Schedule Model – located on HUD’s website.
5. An energy consumption model

It is important to note that if utility allowance data is collected using methods two through five above, the utility allowance estimate determined must be used as the utility allowance for all LIHTC units of comparable size in the building.

Please join us for the next article in this series where we will discuss the following:

- HUD-Regulated Building – Utility Allowance Requirements
- RD-Assisted Building – Utility Allowance Requirements

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