

Chapter 5: ENERGY COST AND UTILITY ALLOWANCE DETERMINATIONS

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Summary: This Rule outlines the procedures which the Maine State Housing Authority (“MSHA”) will utilize to determine Energy Costs and Utility Allowances, as defined in this Rule, for residents of multi-unit housing projects whose rents are subsidized under Section 8 of the United States Housing Act of 1937 or restricted by the funding source or requirements of MSHA multifamily housing programs.

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1. Definitions.
  - A. “Baseline” is the per-unit amount of anticipated energy consumption established through an initial energy audit and subsequent changes based on actual usage data.
  - B. “Energy Costs” means the reasonable estimate of the average monthly utility bills (except telephone) for an energy-conscious household of modest circumstances living in a particular type of unit.
  - C. “Gross Rent” is an amount equal to the rental amount plus housing-related utilities for a particular unit.
  - D. “Owner” means the individual or entity, including any agent of such individual or entity, who owns the project containing the subject unit(s).
  - E. “Rule” means the MSHA rule entitled “Chapter 5 – Energy Cost and Utility Allowance Determinations”.
  - F. “Utility Allowance” is an amount of money equal to the estimated reasonable Energy Costs for a unit of a particular size and construction in a particular geographic area. The Utility Allowance for a unit is determined at initial occupancy and can be modified under circumstances described in this rule.
  - G. “Rent-restricted” means that the maximum rent an owner may charge for a unit is restricted under the terms of MSHA program requirements.

2. Applicability.

Section 3 of this Rule applies to all dwelling units for which MSHA administers a federal rental assistance contract pursuant to Section 8 of the United States Housing Act of 1937, excluding any tenant-based subsidy programs.

Section 4 of this Rule applies to low-income housing tax credit projects, MSHA-financed rental loan program projects, MSHA-financed rent restricted projects, and MSHA-financed supportive housing projects.

3. Section 8 Units.

A. Annual Review.

The Owner is responsible for gathering information and data necessary for the performance of an annual review of the projected Energy Costs for each unit and to compare the results of such annual review with the Baseline for each unit. Based on the results of each annual review and Baseline comparison, the Owner must annually recommend a Utility Allowance for each unit and unit type. The recommended Utility Allowance must represent the Owner's best estimate of Energy Costs for that particular unit type. The recommended Utility Allowance is not intended to equal all utility costs but rather it is intended to equal an amount necessary to reimburse to the tenant an amount equal to the Energy Costs for that particular unit type. If the results of an annual review require a Baseline adjustment, the Owner must submit to MSHA a summary containing certain information, including, but not limited to, the following information supporting the proposed Baseline change (increase or decrease), and the Owner must receive MSHA approval prior to implementing the proposed Baseline change:

- 1) description of the type of utilities covered by the Utility Allowance;
- 2) statement of whether any utility rate increase or decrease took effect during the past 12 months or is expected to be implemented in the next 12 months and the amount of those increases or decreases; and
- 3) statement of how any energy conservation initiatives have or will impact energy consumption.

B. Utility Allowance Adjustments; Tenant Notice.

- 1) If at any time throughout the year the Owner determines that there has been a change in applicable Energy Costs, or there have been changes in the costs of other utilities which would result in a 10% or greater increase or decrease in Energy Costs, 5% or greater where the increase or decrease

includes heating costs, as compared to the Utility Allowance currently in effect, the Owner shall notify MSHA of such changes and upon receipt of MSHA approval make necessary Utility Allowance adjustments in accordance with any MSHA directive and only after the delivery of any tenant notice as may be required by this Rule.

- 2) In all cases, tenants must be given at least thirty (30) days prior written notice of any change in the amount of his/her rental payment and Utility Allowance, if applicable. Such notice should include a brief explanation as to how the new amount was calculated, and a request for comments by the tenant. Such comments shall be reviewed by the Owner and the Owner shall provide an appropriate written response to the tenant. Prior to the implementation of any such change the Owner shall submit a written request for revision to MSHA along with copies of any supporting documentation including tenant comments.

C. Change in Responsibility for Payment of Utilities; Heating System Conversion.

- 1) Upon MSHA's approval, the Owner may convert from tenant-paid utilities to Owner-paid utilities after initial project occupancy where the highest cost utility is paid by the tenant. In such cases MSHA may require the Owner to engage the services of a certified engineer to conduct an energy audit in accordance with all applicable state recommended standards and/or codes for multi-family developments. The audit will include comprehensive data including but not limited to actual usage data for the previous 12 months for each unit and projected utility usage for each unit. MSHA may require a heating system conversion where such audit shows that actual energy usage for the project exceeds 120% of that which is determined to be reasonable by comparison to the energy usage of comparable projects.
- 2) In those cases where MSHA has approved a post-occupancy change in the responsibility for the payment of utilities or a heating system conversion, the Owner must provide notice to the tenants at least 60 days prior to such change or conversion outlining the specifics of the proposed change or heating system conversion. If the effective date of the adoption of the change in responsibility for payment of utilities is other than the lease renewal date and the current lease does not provide for such change in responsibility, such notice must also state that any tenant may decline to execute any document seeking to shift the responsibility for utility payments prior to the lease renewal date.
- 3) MSHA recommends that the Owner hold a meeting of all affected tenants to discuss the proposed Utility Allowance change forty-five (45) days prior to implementation of the proposed change or start of any heating system

conversion. The Owner shall retain all tenant comments and Owner recommendations in their files for a minimum of three (3) years.

- 4) Tenants must be provided a new lease or lease amendment reflecting any change in the responsibility for utility costs.
- 5) Insofar as possible, any change in responsibility for payment of utilities between Owner and tenant shall take place between the months of May and September.

#### 4. Rent Restricted Units.

If the cost of any utilities (other than telephone) for a residential rental unit are paid directly by the tenant, the Gross Rent for that unit shall include the applicable Utility Allowance as determined under this Section 4. This Section 4 is applicable only for purposes of determining Gross Rent for rent restricted units administered or financed by MSHA. In determining Gross Rent, MSHA will recognize three (3) options for determining the applicable Utility Allowance amounts:

- A. Department of Housing and Urban Development (“HUD”) Utility Allowance. In the event it is determined that the subject project will utilize the published HUD Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services, the applicable Utility Allowance for all rent restricted dwelling units in the project shall be the applicable HUD Utility Allowance.
- B. Local Public Housing Authority (“PHA”) Utility Allowance. In the event it is determined that the subject project will utilize a PHA Utility Allowance, the Utility Allowance for all rent restricted units in such project shall be the applicable PHA Utility Allowance.
- C. Local Utility Company (“LUC”) Estimate. Any interested party (including a tenant, an Owner, or MSHA) may obtain an estimate from a LUC for purposes of establishing utility usage for a particular unit or unit type and thus determining the appropriate Utility Allowance. The LUC estimate must be in writing and must provide the estimated cost for utility usage for a unit of similar size and construction for the geographic area in which the project containing the unit is located. The LUC estimate may be obtained by an interested party at any time during the project’s compliance period, as determined by MSHA. Unless the parties agree otherwise, costs incurred in obtaining the estimate are borne by the initiating party. The interested party that obtains the LUC estimate (the initiating party) must retain the original of the LUC estimate and must furnish a copy of the LUC estimate to the Owner. The Owner of the project must make available copies of the LUC estimate to the tenants in the subject project.

D. Utility Allowance Changes. If at any time during the project's compliance period, as determined by MSHA, the applicable published Utility Allowance for a residential dwelling unit changes, the new Utility Allowance must be used to compute Gross Rents within ninety (90) days after the change.

5. MSHA Approval.

Notwithstanding anything contained in this Rule, any change in the responsibility for payment of utilities from Owner-paid to tenant-paid or tenant-paid to Owner-paid must be approved by MSHA prior to implementation.

6. Energy Conservation.

To facilitate energy conservation the Owner should provide tenants with information regarding proper use of appliances and recommended thermostat settings. The Owner should advise and assist tenants wherever possible in the most energy efficient use of their apartments.

7. Budget Plans.

The Owner should provide tenants with information regarding local fuel or utility company budget plans, which may ease charges incurred during high usage months.

8. Federal Regulations.

These procedures are subject to Federal Regulations including 24 CFR Part 813.108 and 24 CFR Part 880.610 and 24 CFR Part 883.

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AMENDED:

September 3, 1985

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 8, 1996

STATUTORY AUTHORITY: 30-A M.R.S.A. § 4741.1

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