



400 North Columbus Street  
Suite 203  
Alexandria, VA 22314  
(703) 683-8630  
(703) 683-8634 FAX  
[www.nahma.org](http://www.nahma.org)

**Draft Notice, “Methodology for Completing a Multifamily Housing Utility Analysis”  
Comments from NAHMA Members  
January 13, 2015**

Thank you for the opportunity to provide preliminary feedback on a draft methodology for calculating utility allowances (UAs) for certain HUD multifamily programs. NAHMA received several thoughtful and substantive responses about the draft notice. In the spirit of partnership, our members’ feedback is submitted for the Department’s consideration.

**Draft Notice, Section III**

**Required adjustments to the utility allowance (UA):** A utility allowance change involves recertifying all tenants and adjusting the HAP. The administrative burden should be weighed against the value of the change. NAHMA recommends implementing a minimum threshold of a 10 percent change in the UA before a UA adjustment would be required.

**Draft Notice, Section IV**

**Three Year Baseline:** Rather than completing a baseline utility analysis every three years, NAHMA recommends conducting the analysis every five years to coincide with the rent comparability study. The cost of this study should also be included in the rent comparability study.

**Baseline determined for bedroom sizes per building:** The required sample size will be administratively burdensome, particularly for garden-style properties that have multiple buildings. We recommend excluding units with less than 12 months of continuous occupancy and utility service, and we strongly urge the Department to include a work-around when the required sample size cannot be attained. Our reasons are discussed in greater detail under the Section V comments.

**Treatment of High and Low Outliers:** NAHMA urges the Department to remove outliers from the baseline. Thought should be given to reinstating weighted averages which dropped high and low outliers. In small properties, one unit can greatly affect the utility allowance. High outliers can be the result of excessive or careless utility consumption, while low outliers could be the result of a prolonged hospital stay. In either case, the outliers can disproportionately skew the average in small properties.

**Sample Format for Utility Allowance Submissions:** NAHMA recommends including directions for using the form. A sample calculation would also be useful for this purpose. The form should break down the calculation to account for each utility paid by the tenant, and the notice should more carefully explain how O/As should calculate the UA when there are multiple tenant-paid utilities.

**Implementation Dates:** Increases in sample size requirements will make the proposed implementation dates difficult to achieve. Projects with contract anniversary dates 150 days after publication must use the new methodology, and since the renewal packages are due 120 days prior to anniversary date, it will be difficult to meet this deadline.

**Period Covered by the Utility Analysis:** Some HUD offices require that the data can't be more than 18 months from the contract anniversary date. Such requirements vary across the HUD offices. In the final notice, please consider adding a specific time period the Utility Allowance Analysis should cover.

**Factor-Based Utility Analysis:** NAHMA supports the concept of having an adjustment factor in lieu of a new baseline analysis in the off years. Unfortunately, the Utility Allowance Factor (UAF) referenced in the draft notice does not appear to be available on the HUDUser website at this time. Without a citation and the ability to view the UAF, NAHMA is unable to offer specific feedback on its utility as an adjustment factor. One member wrote, "I would want to review this report and its differences over a couple of years before I can comment on the use of this as an 'adjustment factor.'"

Several NAHMA members requested clarification of the instructions:

"After determining the property's utility analysis under the factor-based utility analysis method, **O/As should compare the adjusted utility analysis to their paid utilities over the previous twelve months.** If, in the O/A's determination, the results indicate a significant disparity between the two, the O/A should complete a baseline analysis to help ensure the allowance(s) provided are accurate." (Emphasis added.)

The most common point of confusion on this subject was whether an O/A has to do a baseline analysis in order to determine what the paid utilities were and whether the factor based analysis is reasonable. One member wrote:

"The paragraph that says the O/A should compare the Factor Based Analysis with the actual paid analysis could be interpreted that you have to do both. I think the intention is you can always do a baseline analysis, but you may use the Factor Based Adjustment in years 2 and 3. I suggest this paragraph be rewritten so requirements and options are clear."

Another stated:

"It is good to have some mechanism to adjust the allowances if the factor-based method is unreasonable, however, owners should not have to conduct an analysis each year to determine if it is reasonable. If the owner knows of facts in their market that would indicate the new utility allowance is unreasonable, then the owner should be able to conduct an analysis and compare the two. Absent any external information, owners should be able to accept the factor-based result."

Other questions included:

- "What constitutes a "significant disparity" between the adjusted UA and the paid utilities over the previous 12 months?"
- "Are we being asked to compare the rate of change over the previous twelve months on the common area utilities paid by the project?" and
- "Can the factor be positive or negative or is it only an increase factor?"

**Utility Rate Increases:** Absent further guidance, there may be confusion among O/As, PBCAs, and tenants about whether utility rates have increased 10 percent since the last UA was set. A NAHMA member explained:

"Typical utility bills have tiered rate structures based on consumption, frequently include time of day add-ons, and frequently include significant other add-ons such as fuel surcharges, not to mention various taxes and fees. As a result, it's often difficult to determine a reasonable effective rate (per kwh, per gallon, per BTU). One problem is

that while it's easy to calculate an effective rate for a single bill (total cost divided by total consumption), that effective rate might vary over the year and might vary by number of bedrooms. [This] means that when a utility increases its rates, O/As will sometimes have difficulty figuring out whether there has been a 10%+ increase since the last utility allowance was set. Note that the utility allowance baseline analysis does not include determining an average effective rate. This may put O/As over a barrel, because tenants may argue that rates have gone up 10%+ when a balanced analysis would suggest otherwise. Similarly, HUD might decide that rates have gone up 10%+ when the O/A thinks otherwise.

One potential solution is for the Notice to say that the O/A's analysis is not subject to challenge by tenants or by HUD or by a CA unless the O/A's analysis is grossly unreasonable. Another solution is to say that the O/A can rely on information from the utility company (typically when utility companies propose rate increases, they include information that shows the impact on typical bills)."

NAHMA urges the Department to minimize the burden on cites by adopting the recommendations noted in the comment above. Without further guidance describing which methods are acceptable to determine whether there has been a 10 percent increase, O/As may be forced to complete multiple labor intensive UA analyses per year.

## **Draft Notice, Section V**

**Utility Analysis Sample Size:** Nearly all of the comments NAHMA received expressed the same concerns with the proposed utility analysis sample size. The specific concerns are listed below.

**Turnover and vacancy** -The draft notice provides no adjustment for tenants with less than 12 months of utility consumption. NAHMA strongly urges HUD to exclude vacant units and tenants with less than 12 continuous months of occupancy and utility service from the sample. This revision is extremely important. Utility invoices are in the resident's name. In our members' experiences, utility companies will not provide information for a resident that has moved out--even with the resident's release. This revision would also be consistent with current practices. Members report HUD field offices instruct them to use residents with a full 12 months of utility history for their utility analyses.

**Treatment of utility payment assistance programs** – Please clarify whether households that receive utility assistance through federal, state, local or private charitable programs should be included in the baseline analysis. Similarly, should households that pay fixed monthly payments (with once-per-year adjustments to the utility companies be included in the sample?

**Impact on small and/or garden-style properties** – The new sample size was the most important concern identified by the NAHMA commenters. Under the draft notice, sample sizes are determined by the number of units of a particular bedroom size per building in the property. Properties with less than 20 units of a particular type (studio, 1 bedroom, 2 bedroom), will have to include all of the units for that bedroom type in the sample. The burden is multiplied when the property has several buildings with less than 20 of each unit type. The draft notice will effectively require garden style properties to include all of their units in the sample because they will not be able to meet the required sample size per building. One NAHMA member estimated privately-owned project-based Section 8 properties “would end up having to provide between 66% and 75% of total units for each baseline.” According to another O/A, the largest building in one of his garden-style properties has only 18 total units, which include efficiencies, 1 bedroom and 2 bedroom apartments. Under the draft notice, he “would need to obtain 224 utility invoices (one for each unit) AT LEAST once per year. That is a huge administration and cost burden.” Another NAHMA member wrote:

“The sample size requirements are much more extensive and would require a lot more data than is currently required. For example, the current sample size requirement is

20% of all unit types, and 100% for unit types that have 1-10 units. Now, all units must be sampled for units 1-20, and the sampling must be performed for each bedroom size for **each building**. Previously, the unit sampling size per building was not required; it was for the entire property, not per building. If the requirements are per building, then does this mean that a property which has 248 units and 23 buildings, with each building [having] under 20 units, would require that 100% of the building needs to be sampled? This would pose an extreme burden and be nearly impossible to implement.”

NAHMA recommends basing the sample size upon the bedroom size in the *property* rather than the *building*. Also, we request that the sample sizes for the 0 to 20 range be reduced to 50% of the units.

**Work-Around or Safe Harbor if the Required Sample Can't be Achieved** - NAHMA believes that basing the samples on properties rather than buildings, reducing the required sample for unit types in the 0-20 range, and excluding tenants that did not have 12 months of continuous utility service will help O/As achieve the necessary baseline samples. However, we strongly urge HUD to provide some sort of work-around or safe harbor for situations when O/As, despite their best efforts, cannot obtain the utility data.

A commenter's description of the quandary his property will face under the new sample size requirements demonstrates the need for alternative methods. According to this O/A:

“Based on this [draft notice], the sample utility allowance must be attained for every unit in that building. There is bound to be one unit that had a turnover during a given period. Remember the utility invoice is in the residents name and if the resident refuses to comply, moved out of the complex or something similar - then this cannot be accomplished.”

NAHMA members also caution that many utility companies will not give detailed billing information for residents. In these cases, O/As should have an alternative method of verification, such as a letter from the utility provider of rate changes.

### **Draft Notice, Section VII and the Sample Release of Tenant Utility Information Form**

**Sample Letter** - This sample letter is helpful, and O/As especially liked that it is applicable for the household's term of tenancy. If HUD does not exclude from the baseline analysis vacant units and those with less than 12 months of continuous utility service, the Department might consider extending the applicability of this consent to one year following a move-out or transfer from the unit.

**Utility Company's Consent Forms** -The draft notice acknowledges that utility companies may require a tenant's signed release more frequently. Please consider adding some additional guidance to address situations in which utilities have their own consent forms.

### **Draft Notice, Section VIII**

**Good Summary, but Eviction Unlikely** - NAHMA members applauded the restatement of tenants' obligations under the HUD rules and the HUD Model Lease to provide utility data and disclose utility assistance. Nevertheless, they requested more immediate and enforceable consequences for noncompliance because, “The probability of Judge evicting a tenant for this refusal [to provide utility data] is probably minimal at best while the owner still does not receive the rent increase.”