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# A Practical Guide for Advocating on Behalf of Public and Subsidized Housing Tenants Who Receive Utility Allowances

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# TABLE OF CONTENTS

<b>I.</b>	<b>Introduction</b>	4
<b>II.</b>	<b>What is a utility allowance?</b>	4
<b>III.</b>	<b>Overview of Recent Rise in Energy Prices</b>	5
	A. Gas	5
	B. Electricity	6
	C. Water and sewer prices	6
	D. Trash/garbage	6
	E. Oil/propane	6
<b>IV.</b>	<b>Determining the Current Utility Allowances</b>	7
<b>V.</b>	<b>Summary of Rules Requiring Setting and Review of Allowances</b>	7
	A. Public housing	8
	B. Housing Choice Voucher Program	9
	C. Project-based Section 8	10
	<i>Practice tip when working with individuals with disabilities or unique circumstances</i>	10
<b>VI.</b>	<b>Determining Whether the Current Allowances Are Adequate</b>	11
	A. <i>There is little guidance, and no firm benchmark, for where the PHA or owner sets the assumed level of “reasonable” consumption by tenants.</i>	11
	B. <i>The two methods for setting the reasonable consumption level</i>	12
<b>VII.</b>	<b>How to approach the advocacy work; practice tips.</b>	12
	A. <i>Involve tenants from the very beginning</i>	12
	B. <i>Set up a meeting with the regional HUD office</i>	12
	C. <i>Gather relevant information</i>	12
	D. <i>Focus on the goal</i>	13
	E. <i>Consider lining up potential allies</i>	13
<b>VIII.</b>	<b>Potential Litigation</b>	13
	<b>Additional Resources</b>	13
	<b>Endnotes</b>	14

## I. INTRODUCTION

This Guide is meant to assist advocates in Pennsylvania who work with public and subsidized tenants, with a focus on those living in federal public housing or who benefit from project-based section 8 assistance or mobile vouchers known as Housing Choice Program Vouchers. It is written in an environment of sharply-rising energy prices (see section III, below), one in which many tenants may have clearly inadequate utility allowances and the PHA or owner has the obligation to increase the allowance. This Guide is meant to be accessible and readily usable by the reader. It is not an in-depth treatment of all of the legal and factual issues that arise in assisting tenants who deserve to have their utility allowances increased. It is intended to be a practical resource for advocates seeking to engage housing authorities and owners to achieve increases in utility allowances so as to reflect current prices. Those wishing to more deeply explore various legal and factual issues should refer to the “Additional Resources” at the end of this Guide.

## II. WHAT IS A UTILITY ALLOWANCE?

Utility allowances are a tool intended to limit the **sum** of rent paid to the property owner by the tenant **plus** tenant payments on utility bills to an affordable amount, with caveats noted below in the discussion of utility allowances of the Housing Choice Voucher Program (HCVP). Utility allowances recognize that in order to stay safely and affordably housed, tenants need to be able to pay both the rent and utility bills.

For those living in federal public housing and in units subsidized by project-based section 8, rent is set at 30% of income [42 U.S.C. 1437a(a); 24 CFR 5.628(a)(1)]; but for tenants who pay for utilities, rent is set at 30% of rent less the utility allowance. Increasing the utility allowance in these programs thus always benefits the tenant, as rent to the housing authority or owner decreases as the utility allowance increases, and a higher utility allowance helps the tenant pay the utility bills by decreasing the amount paid directly as rent. The sum of tenant-paid rent and utility allowance is a constant function (30%) of the tenant’s income.

To the extent tenants pay directly for various utilities (versus are included in rent), utility allowances should be set to include electricity, gas, delivered heating fuel (oil, propane), water and sewer service, and garbage/trash collection. Tenants are responsible for the cost of telephone service, Internet and cable TV. See, e.g., 24 CFR 5.603(b)(definition of “utility allowance”).

The utility allowance is defined (with somewhat different wording for the various housing programs) as “an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.” 24 C.F.R. 5.603(b).

For Housing Choice Voucher tenants, while they are also eligible to get a utility allowance, it is not always true that an increase in the utility allowance benefits the tenant given how the “payment standard” interacts with the utility allowance and tenant payments to the property owner. The sum of tenant-paid rent and utility allowance is **not** a constant because the tenant is allowed to rent a unit that rents for higher than the “payment standard.”<sup>ii</sup> For example, assume a tenant has zero income, for purposes of simplifying the analysis. If the “payment

standard” is \$1,000, the maximum assistance the public housing authority (PHA) will provide for the **sum of rent plus utilities** is \$1,000. In many areas --- where rents are very high, or the housing authority has set the payment standard low relative to market rents -- the tenant might rent a unit for \$1,200; the HCVP allows the tenant to rent units that exceed the payment standard<sup>iii</sup>. If the utility allowance for that unit is \$200, the PHA will pay a maximum of \$1000 to the owner for rent, and the tenant must make up the difference, because the apartment rents for \$200 more than the payment standard. Moreover, if the utility allowance is increased to \$300, because the tenant demonstrates that the utility allowance is inadequate, the tenant gets no benefit because, again, the maximum subsidy for the tenant is \$1,000. The HCVP tenants may be better off not seeking an increase in their utility allowance, and instead enrolling in various utility assistance programs to offset higher energy and water costs. In addition, tenants in many cases would benefit if the payments standard was increased.

It is not only voucher tenants whose rent exceeds the payment standard who will not benefit if the utility allowance increases: many tenants whose rent is close to the payment standard (for example, rent is \$950 and payment standard is \$1,000) will not benefit if the sum of the actual rent plus utility allowance exceeds the payment standard, as the payment standard is the maximum assistance that will be provided to the tenant.

**PRACTICE TIP:** Advocates working with HCVP tenants will need to carefully consider whether the tenants are living in units where the sum of rent paid by the tenant plus the current utility allowance exceeds the payment standard, as increasing the utility allowance may not benefit those tenants. For any housing authority with large numbers of Housing Choice Voucher tenants, some may benefit from a utility allowance increase because their rents are sufficiently below the payment standard, but some may not benefit because their rents are close to or exceed the payment standard. Therefore, advocates will need to carefully investigate the factual circumstances of any tenants they represent.

### III. OVERVIEW OF RECENT RISE IN ENERGY PRICES

Retail energy prices for residential customers have risen sharply in recent months, due in large part to Russia’s invasion of Ukraine. It is likely that as summer heat increases the demand for electricity and for the natural gas used to fire many electrical generating facilities, prices will continue to rise over the summer and into fall for both electricity and natural gas. While NCLC does not consider itself to be an expert forecaster of energy prices, we present some data below that underscore the value in 2022 of working with public and subsidized housing tenants and advocating for increased utility allowances.

Notably, increased utility costs are not just impacted by what may be shorter-term inflationary pressures on energy supply. Distribution prices have also risen precipitously over the last several years to pay for increased infrastructure costs. Our electric, natural gas, and water systems are aging, and increased severe weather events are putting strains on critical utility infrastructure systems – necessitating increased investments to rebuild and fortify systems.

#### A. Gas

As seen in the Energy Information Administration chart in the endnote<sup>iv</sup>, for several years between 2010 and 2020 retail natural gas prices in Pennsylvania showed a fairly consistent

pattern of seasonal variation, with the annual high price being roughly double the annual low price, and the high and low prices being fairly consistent year-to-year. That pattern changed at the end of the 2021. Where the annual low prices (around December) had tended to be around \$10/mcf, the low price in December 2021 was \$12.23/mcf, 25% higher than the previous year. Moreover, the last reported data was for May, only a few months after the war in Ukraine drove natural gas prices higher. It is not yet clear how high natural gas prices will go.

**PRACTICE TIP: It will be important to gather information from Pennsylvania's major gas companies as to actual residential retail prices through all of 2021 and 2022 to date. [NOTE that PULP can assist local advocates in gathering that information.]**

There is good reason to believe that, at most housing authorities and for most tenants, natural gas prices have increased well more than 10% since the PHA last set the utility allowances, a level that triggers a review by the PHA of its allowances.<sup>vi</sup>

## **B. Electricity**

The Energy Information Administration also publishes data on average residential electric prices, by state.<sup>vii</sup> In Pennsylvania, May 2022 average residential electric prices were close to 10% higher than 2021. Also, because utility bills include charges, e.g., for delivery, supply, various surcharges, etc., advocates should carefully review the extent to which charges, in the aggregate, may have exceeded 10%. It is very likely that at many PHAs and for many tenants, the last- set utility allowances are too low and need to be revised.

**PRACTICE TIP: It is important to gather information from Pennsylvania's major electric companies as to actual retail prices through all of 2021 and 2022 to date.**<sup>viii</sup>

## **C. Water and sewer prices**

NCLC has no insight as to the extent that those prices may have risen sharply in the past year or two. We do understand that there have been sharp increases at some of the public and private water utilities, including Pennsylvania American Water, Aqua Pennsylvania, Philadelphia Water Department, and the Pittsburgh Water and Sewer Authority. For example, an average residential water and wastewater customer in Pittsburgh, using 3,000 gallons of water each month, would have been charged \$39.90 in 2017. Five years later, in 2022, the same customer is now charged \$81.23 – a 104% increase.

Because utility allowances should include the cost of water if the tenants pay directly for water, we encourage advocates to investigate water rate increases relevant to particular tenants and the cities or towns in which they live. Since water bills may include a variety of charges and fees in different categories, advocates should carefully calculate whether, overall, the charges for a particular volume of usage have increased more than 10%. (For example, if the volumetric rate for water has not changed, but the water company has instituted a new \$50 monthly customer charge, that could result in an overall increase of greater than 10%).

## **D. Trash/garbage**

NCLC has no insight into any trash or garbage pickup or disposal rates in Pennsylvania, nor the extent to which tenants, rather than owners, pay for these services. However, we encourage local advocates to explore with tenants whether they do pay for these services, and whether the PHA provides a utility allowance to any such tenants. Trash or garbage collection fees should be treated the same as charges for electricity, gas, water/sewer service, heating oil or propane:

there should be an adequate utility allowance.

## E. Oil/propane

[This EIA chart](#) shows that residential heating oil prices have risen sharply since the war in Ukraine started, 30% between February and March 2022 alone. Utility allowances for oil are almost certainly out of date and should be adjusted upward. Local advocates should explore (i) the basis for current heating oil allowances and (ii) current heating oil prices in the local area.

## IV. DETERMINING THE CURRENT UTILITY ALLOWANCES

There are two routes to determine the current utility allowances. First, any tenant or advocate could use the Pennsylvania Right to Know Law, 65 P.S. § 67.101 et seq., to request from entities covered by that law the actual schedule of utility allowances and any underlying reports or analyses prepared by – or presented to – the PHA to develop that schedule. There are consulting firms that do this analysis, but a PHA could, in theory, do that analysis on its own.

**PRACTICE TIP:** Whether the analysis is done in house or contracted out, advocates relying on the Right to Know Law should ask for:

“Any and all schedules or tables reflecting the utility allowances currently offered or provided to tenants [the advocate can be more specific about specific addresses, or specific types of housing, e.g., public housing, project-based section 8, HCVP, to the extent relevant to a particular PHA], and all research, analysis or documents provided to or relied upon by the PHA to develop those utility allowances. This request specifically includes the source documents which formed the basis for (i) the rates or charges assumed in developing the utility allowance and (ii) the assumptions made as to the volume or amount of the relevant utility service, e.g., assumptions re: kWh/month of electricity or therms/cubic feet of gas, gallons (or other measure) of water; gallons of oil or propane; frequency of trash or garbage pickup; etc.”<sup>x</sup>

PHAs operating public housing are in fact required to “maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.” 24 C.F.R. 965.502(b).

Second, and where possible, it would be preferable to work with tenants at the particular PHA and seek a meeting with the E.D. or other relevant staff, at which the PHA or owner would provide the relevant documents and answer questions. Assuming PHA staff would meet with the tenants, the tenants/advocates might quickly learn what might be harder to learn from documents alone. For some programs, like Project Based Rental Assistance, the property owner or HUD might have the relevant information. If the owner resists releasing relevant information, advocates should consider filing a Freedom of Information Act request with HUD, which might have the most recent utility allowance schedule and back up data.

Tenants and their advocates should think about how to build allies. Have the tenants or their advocates worked with the Executive Director (E.D.) or property owner in the past? Are there elected or appointed officials who will lend their support to the tenants? Are there community-based organizations, other than the tenants themselves, whose voices might help achieve the tenants’ goals? Is there opportunity, and reason, to develop a media strategy? The answers to these questions will vary significantly from locale to locale, as in some locales, the PHA E.D. or property owners may be cooperative; in other areas hostile. Gaining the vocal support of non-PHA officials, or other community groups, may help get the E.D.’s or owner’s attention in one locale, versus alienate them in another. It is worth exploring these questions carefully.

## V. SUMMARY OF RULES REQUIRING SETTING AND REVIEW OF ALLOWANCES

All tenants in federal public housing, the HCVP, and project-based section 8 units are entitled to receive utility allowances. While the wording varies somewhat from program to program, the essence is the same.

### A. Public housing

The standard for setting utility allowances in public housing is contained in 24 C.F.R. 965.505(a): “The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.” However, the rule also vests the PHA with discretion as to exactly how it determines that amount of consumption. 24 C.F.R. 965.505(c). For example, there is little or no guidance as to where the PHA sets consumption if, for example, the consumption data yields **median** usage (the point at which ½ of the tenants use less, and ½ more, than that amount) of 500 kWh/month, but the **arithmetic mean** (average) usage is 700 kWh/month. Median usage will be less than mean usage if tenants who are above the median use much more than the median amount, but those who use less than use close to that median amount.<sup>x</sup>

The public housing rule does provide detail on the factual matters the PHA must consider, which can be helpful to advocates:

“In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

- (1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or space heating, or any combination of the three;
- (2) The climatic location of the housing projects;
- (3) The size of the dwelling units and the number of occupants per dwelling unit;
- (4) Type of construction and design of the housing project;
- (5) The energy efficiency of PHA-supplied appliances and equipment;
- (6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;
- (7) The physical condition, including insulation and weatherization, of the housing project;
- (8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and
  
- (9) Temperature of domestic hot water.

24 C.F.R. 965.505(d).

As is generally true for all of the public and subsidized housing programs, PHAs must review



the utility allowances for public housing tenants annually (24 C.F.R. 965.507(a)), and **must** revise the allowances if a change in rates “results in a change of 10 percent or more from the rates on which such allowances were based” (24 C.F.R. 965.507(b)). Given the sharp increases in most energy prices noted in Section III, above, this is a powerful tool for tenants seeking to have their allowances adjusted upward, as PHAs do not have the discretion to leave current allowances in place if rates have increased at least 10%.

Determining whether the PHA’s assumptions regarding consumption (e.g., kWh [electricity], therms or cubic feet [gas], or gallons [oil/propane]), are reasonable is a much more difficult exercise, whether in the public housing, HCVP, or project-based section 8 programs.

**PRACTICE TIP:** There are two sources of data that will help advocates initially check whether consumption assumptions are reasonable, or, conversely, worth challenging. First, local advocates can research average consumption for the relevant local and gas utilities.<sup>xi</sup> These averages can sometimes be obtained informally simply by speaking with knowledgeable company employees. Otherwise, average consumption can often be derived from public filings at the utility commission.

Second, the PHA’s assumptions regarding amounts of energy consumed can be compared to actual consumption amounts on tenants’ bills. This of course requires obtaining a reasonable sample of those bills from the tenants. Advocates should make sure those bills are not skewed either in the direction of very low usage (a 1-person household where the household member is employed full-time, out of the home) or very large usage (a large family where most family members are home during the day and one or more household members have medical equipment that draws a lot of energy, such as an oxygen concentrator).

These two methods are no more than rough tools. For example, if the PHA assumes tenants in a particular unit size use 350 kWh per month, but the average of tenant bills is 360 kWh per month, a challenge to the consumption assumption is unlikely to succeed. But if the PHA sets the allowance at 350 kWh and average residential consumption at the relevant utility is 750 kWh, that suggests digging much more deeply into how the PHA derived its assumption and into actual average consumption at the property in question.<sup>xii</sup>

Advocates may learn of what appear to be inadequate utility allowances in two other ways. First, tenants facing eviction, whether for non-payment of rent or failing to maintain utility services, may complain that they couldn’t afford the rent (or utility bills) because the utility allowances are so low. This is clearly a flag to investigate the adequacy of utility allowances. Second, tenants in “check-metered” units<sup>xiii</sup> may complain about being routinely billed for excess usage.

## **B. Housing Choice Voucher Program**

The Housing Choice Voucher Program (HCVP) is governed by regulations contained in 24 C.F.R. Part 982.<sup>xiv</sup> Similarly to the public housing program, PHAs operating the HCVP must provide utility allowance for tenant-paid utilities (excluding telephone/Internet/cable TV) and for related services such as trash collection. 24 C.F.R. 982.517. However, because HCVP tenants choose where they live, and their units that vary quite widely in terms of overall building configuration, unit size, levels of insulation, age of appliances, etc., the PHA does not set the allowances at a building-specific level but rather for a geographic area, with the caveat that allowances will vary by unit size, and general building configuration (e.g., high-rise, low-rise, etc.), and by fuel type.<sup>xv</sup>

Note that while the HCVP regulations require the PHA to “maintain information supporting its

annual review of utility allowances and any revisions made in its utility allowance schedule”, those rules are silent as to any obligation of the PHA to make any such records available to tenants.<sup>xvi</sup> However, the PHA would be subject to a public information request. Note that the HCVP rules do not require the PHA to give any notice of, or opportunity to comment upon, proposed changes to utility allowances.

As with the public housing program, PHAs must revise their HCVP utility allowances “if there has been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised.” 24 C.F.R. 982.517(c).

### **C. Project-based Section 8**

There are various project-based programs in which utility allowances may be set. This Guide is not intended to be a detailed reference for the differences that may exist in these programs regarding the setting of utility allowances. Rather, this Guide will summarize the rules that are generally applicable. In 2015, HUD published memorandum H-2015-4 (“HUD Memo”), [“Methodology for Completing a Multifamily Housing Utility Analysis”](#), which generally applies to a broad range of project-based rental assistance programs.<sup>xvii</sup>

For those working with project-based section 8 tenants seeking utility allowance adjustments, the salient points of the memo are:

1. Owners of the covered multifamily properties “are required to adjust their properties’ utility allowances every year at the time of the annual and special adjustments of contract rents.”
2. “A utility allowance must be increased mid-year when changes in utility rates result in an increase of 10 percent or more to the utility allowance from the most recently approved utility allowance.” HUD memo, pp. 2-3.

Moreover, the utility allowance schedule must be supported by a “proper analysis,” and the Memo goes on to explain how that analysis is to be performed.

Notably, while HUD’s rules require 30-day advance notice to certain multifamily tenants of any decrease in utility allowances,<sup>xviii</sup> neither the published rules nor HUD Memo give tenants a broader right to obtain documentation of existing utility allowances nor to participate in any efforts of the owner to review or increase utility allowances. But to the extent relevant information is contained in files of the PHA or at HUD, advocates could file a public records request.

### **Practice tip when working with individuals with disabilities or unique circumstances:**

The public housing program rules provide:

“Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate.” 24 C.F.R. 965.508.

Similarly, the HCVP rules also requires a “higher utility allowance as reasonable accommodation for a person with disabilities.” 24 C.F.R. 982.517(e).

However, it is our understanding that such relief is rarely sought – perhaps due to tenant lack of

knowledge of these rules – and infrequently granted.

## VI. DETERMINING WHETHER THE CURRENT ALLOWANCES ARE ADEQUATE<sup>xix</sup>

### A. There is little guidance, and no firm benchmark, for where the PHA or owner sets the assumed level of “reasonable” consumption by tenants.

While utility allowances must be reviewed annually<sup>xx</sup> and PHAs or owners must revise those allowances if utility or other supplier rate changes would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, HUD has provided little or no guidance as to where the PHA or owner sets the assumed consumption level that forms the basis for the monetary amount of the allowance, once it has collected the relevant data. For example, may (or must) the PHA set the allowance at the arithmetic mean (average) of the data; at the median point of the data; at a level where no more than X% of tenants will have inadequate allowances; or at a level where no more than Y% will have more than adequate allowances? The HUD Memo, pp. 4-5<sup>xxi</sup> appears to require that the consumption assumptions on which allowances are based should be set at the average of the data collected, but the Memo does not explicitly mandate that, and the relevant rules for public housing, HCVP, and project-based programs are mostly silent on the point. In fact, and to the contrary, the public housing rules [24 C.F.R. 965.505(c)] vest substantial discretion with the PHAs:

“The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective [setting utility allowances] will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.”

Nor, to our knowledge, has any court directly approved, or prohibited, a particular methodology for setting the level of the consumption amounts assumed in establishing a base allowance.<sup>xxii</sup>

**PRACTICE TIP:** In the current context in which energy prices have risen sharply, and more than 10% for most energy sources, we recommend that advocates focus on the legal requirement that owners and PHAs must adjust their allowances when increases in rates have been greater than 10%. We do not recommend challenging PHA assumptions regarding amounts of energy consumed (electricity, gas, oil, propane, etc.) unless those assumptions are in gross variance with amounts actually charged to tenants by their energy suppliers. It is often hard, but not impossible, to collect a sufficient sample of tenant bills to have a credible claim that baseline consumption assumptions violate the relevant HUD rules.

It is obviously far easier to demonstrate that rates/prices have changed by more than 10%, and to then argue that the PHA must adjust the allowances, than to demonstrate that the consumption volumes assumed do not properly reflect “a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.”<sup>xxiii</sup>

## **B. The two methods for setting the reasonable consumption level**

While, in the current environment, we strongly recommend focusing on recent price increases as the basis for seeking higher utility allowances, and do not recommend challenging assumed consumption levels (unless specific, local facts strongly merit such a challenge), it is worth briefly summarizing the two methods PHAs or owners can use when determining consumption levels that form the basis for the allowances. Some PHAs and owners will do this analysis in-house, while others will employ outside experts or consultants. In either case, they will either rely on actual consumption data collected from utility companies, other energy suppliers, or tenants; or they will take an engineering approach based on various characteristics of the relevant properties and associated utility services.

If local advocates intend to challenge assumed consumption levels, developed under either model, we encourage those advocates to contact NCLC for further advice, as there have been few, if any, successful such challenges.

## **VII. HOW TO APPROACH THE ADVOCACY WORK; PRACTICE TIPS.**

### **A. Involve tenants from the very beginning**

While this is an obvious point, as advocates need clients on whose behalf they can advocate, it is also important to recognize that having active tenant support may prove critical as the advocacy proceeds. Many PHAs will be more responsive, e.g., to requests for information or even simple requests to meet, if they know that an organized group of tenants are asking, rather than a single tenant. It will be easier to get the attention of the regional HUD office or the media, if the tenants are organized as a group. It will be easier to demonstrate the harm tenants suffer from outdated allowances, if advocates can show the actual bills for a large group of tenants.

### **B. Set up a meeting with the regional HUD office**

It is much better to get the sense of the local HUD office regarding utility allowance adjustments **before** the PHA takes a hardened position (e.g., on giving tenants access to relevant information) that the HUD office may instinctively support.

Local advocates and tenants will need to decide whether to arrange a one-on-one meeting with the relevant HUD staff, perhaps sending an advocate who is known to the HUD staff; or whether it is better to seek a meeting that includes tenants. The goal is to gather relevant information about the leanings of the regional office (pro-tenant? pro-PHA? Understanding that recent price increases require allowance adjustments, or not supportive of any utility allowances revisions?), and local people will be best placed to decide how to structure such a meeting.

### **C. Gather relevant information**

This may include a reasonable sample of tenant bills; average consumption information obtained from utilities and other energy suppliers, or possibly state agencies; and the current utility allowance schedules and their underlying documentation.

## D. Focus on the goal

As noted more than once above, the far easier goal is to have the utility allowances adjusted based on recent increases in energy prices. HUD's rules require adjustments when prices increase sufficiently, and it's far easier to message around facts everyone understands: energy prices have soared, especially since Russia invaded Ukraine.

## E. Consider lining up potential allies

Are there community groups, elected officials, media contacts who will be supportive? This can be especially important if the tenants and advocates expect to be dealing with a difficult PHA.

## VIII. POTENTIAL LITIGATION

We consider a discussion of potential litigation to be outside the current scope of this Guide. Any litigation would be far down the road, given that the near-term focus would be on the steps just outlined and engaging with the PHA, relevant property owners and/or HUD. Litigation obviously would not come into play until tenants and advocates have built their case, and the PHA or owners refuse to act.

We are not aware of any requirements to exhaust any administrative remedies before filing a lawsuit; there are not generally applicable procedures for tenants to challenge inadequate utility allowances either at HUD or at the local housing authority.

We therefore simply refer the reader to the "Green Book," chapter 5, which includes extensive citation to and discussion of much of the utility allowance litigation to date.

## ADDITIONAL RESOURCES:

1. National Housing Law Project, "HUD Housing Programs: Tenants' Rights" (5<sup>th</sup> ed. 2018) (often referred to as the "Green Book"), *available at*: [www.nclc.org/library](http://www.nclc.org/library).
2. "[Advocating for Higher Utility Allowances in Federally Subsidized Housing: A Practical Guide](#)" (2007) NOTE that this Guide was published 15 years ago, but is still a useful resource.
3. National Consumer Law Center, "[Access to Utility Service: Disconnections, Metering, Payments, Telecommunications, and Assistance Programs](#)" (6<sup>th</sup> Ed. 2018).

## ENDNOTES

<sup>i</sup> 24 CFR 5.601 provides that “[t]his subpart [which includes 5.628] states HUD requirements on the following subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs...”. However, HCVP tenants may end up paying more than 30% of income for rent, as discussed below in this section.

<sup>ii</sup> “Payment standard” in the HCVP is defined as “The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).” 24 CFR 982.4.

<sup>iii</sup> See, e.g., [“Housing Choice Voucher Program Guidebook, Payment Standards:”](#)

“The level at which the payment standard is set directly affects the amount of subsidy a family will receive, and, therefore, the amount of rent paid by program participants. If the family leases a unit with a gross rent at or below the payment standard for the family, the family’s share of the rent plus an allowance for utilities will be equal to the family’s total tenant payment (TTP) (see the Income Determination chapter). **If the gross rent for the unit is higher than the payment standard, the family is responsible for the difference. In this case, the total family share will be higher than the family’s TTP.**” (emphasis added).

<sup>iv</sup> [Pennsylvania Price of Natural Gas Delivered to Residential Consumers.](#)

<sup>v</sup> Mcf = thousand cubic feet, a standard unit of measurement for consumption of natural gas.

<sup>vi</sup> We encourage local Pennsylvania advocates to investigate and document recent increases in residential gas and electric prices. It is often easier to document such increases in conversations between advocates and contacts they have at the relevant companies, with the company then providing any relevant documents, than trying to determine those retail prices from formal regulatory filings. It is often difficult, and sometimes near-impossible, for advocates to determine prices on their own, given the complexity of tariffed utility rates and related tracker clauses, fuel clauses, and other charges that affect customer bills. It can even be difficult to locate filed tariffs in the absence of being familiar with a company’s recent general rate case and other dockets.

<sup>vii</sup> Electric Power Monthly, [Average Price of Electricity to Ultimate Customers by End-Use Sector.](#)

<sup>viii</sup> See endnote vi..

<sup>ix</sup> This is sample wording and should be amended to match the local circumstances of the tenants who the advocates are assisting. As for the request to get underlying documentation, note that in the Housing Choice Voucher Program, “The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.” 24 C.F.R. 982.517(c). In the public housing program, HUD rules require PHAs to provide notice of all “proposed allowances . . . and revisions thereof” and “shall describe with reasonable particularity the basis for determination of the allowances.” 24 C.F.R. 965.502(c).

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<sup>x</sup> For example, suppose a PHA studies electric usage in a small, 7-unit building. If three tenants use 475 kWh per month, one tenant uses 500 kWh per month, and three tenants use 900 kWh per month, the median is 500 kWh because three tenants use less than that amount and three tenants more. But the average (arithmetic mean) is 660 kWh, that is, the total of each tenant's usage divided by 7. This is more than a math exercise, as it highlights that the PHA could arguably use its discretion to set the allowance based at 500 Kwh/month, even though this would cause the three higher-consumer tenants to be faced with electric bills very much higher than the PHA assumes in setting the allowance. Moreover, tenants could argue that even setting the utility allowance at 660 kWh is too low. There is no case law or guidance from HUD on where the allowed usage level should be set.

<sup>xi</sup> It is much harder to research average consumption for water, propane and oil since these entities are not regulated nor required to make filings where those averages might be contained. Moreover, with the possible exception of certain water companies (i.e., municipally owned), there would be no obligation to comply with a Right to Know request.

<sup>xii</sup> Utility customers, in most instances, can obtain information regarding their consumption for the past 6 or 12 months from the utility. Thus, with permission from their clients, advocates can calculate average consumption for tenants who either obtain that usage information themselves or give the utility permission to release it to the advocates.

<sup>xiii</sup> Check-meters are installed by some PHAs, if the PHA has a master meter for the property and pays the utility bills. If check-meters are installed, the tenants are not charged if the usage on the check-meter is less than allowed by the PHA, but the tenants receive surcharges if their usage exceeds that allowed amount. PHAs with check meters must provide a reasonable allowance for usage, just as they must if the tenants pay directly. 24 C.F.R. 965.502(a), 965.506. A full discussion of check-meters is outside the scope of this Guide.

<sup>xiv</sup> 24 C.F.R. 982.2.

<sup>xv</sup> See 24 C.F.R. 982.517(b)(1).

“The utility allowance schedule must be determined based on **the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality**. In developing the schedule, the PHA must use **normal patterns of consumption for the community as a whole** and current utility rates.”

<sup>xvi</sup> See 24 C.F.R. 982.517(c). There is a Housing Choice Voucher Handbook chapter covering utility allowances that was published in May 2020, available [here](#), but it is also silent on the question of whether PHAs must make utility allowance documentation available to tenants.

<sup>xvii</sup> The project-based programs include: New Construction, State Agency Financed. Substantial Rehabilitation, Section 202/8, Rural Housing Services (RHS) Section 515/8, Loan Management Set-Aside (LMSA), and Property Disposition Set-Aside (PDSA). The HUD Memo also provides guidance for the Section 202, 221(d)(3) and 236 programs.

<sup>xviii</sup> See, e.g., 24 C.F.R. 245.405(a), 245.410.

<sup>xix</sup> Chapter 5 of The National Housing Law Project's “Green Book” [See “Additional Resources,” #1] is an invaluable resource on the question of how a utility allowance should be calculated.

<sup>xx</sup> See, e.g., 24 C.F.R. § 965.507(a) (Public Housing); 24 C.F.R. §§ 880.601 & 881.610 (Project-Based Section 8); 24 C.F.R. § 982.517(c) (Housing Choice Vouchers).

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<sup>xxi</sup> [Utility Allowances](#), May 2020.

<sup>xxii</sup> This discussion assumes that the PHA has set the baseline assumptions for energy consumption by relying on actual data obtained from utilities and/or other suppliers of energy services. PHAs and owners may, in some circumstances use an engineering approach, a topic largely outside the current scope of this Guide.

<sup>xxiii</sup> 24 C.F.R. 965.505(a).





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