

**IN THIS ISSUE****HUD Section 8 Review Fails on Utility Allowance Adequacy****NOTE TO READERS****ON-LINE DELIVERY**

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**THE FAILURE OF SEMAP TO ENSURE APPROPRIATE UTILITY ALLOWANCES FOR SECTION 8 RENTAL HOUSING IN PENNSYLVANIA**

A recent review by Fisher, Sheehan and Colton (FSC) of Section 8 utility allowances in Pennsylvania reveals that those utility allowances do not appropriately track home energy bills and, moreover, that the HUD process established to ensure appropriate allowances fails to ensure compliance with federal utility allowance regulations.

**HOUSING AFFORDABILITY UNDER THE SECTION 8 RENTAL PROGRAM**

Section 8 is a federal housing subsidy program. Through the largest component of the program, involving the most units of housing, Section 8 provides housing "vouchers" to participating tenants. Those tenants use their Section 8 vouchers to find housing in the private market. Within certain limits not relevant to this discussion, Section 8 tenants pay 30% of their income toward their contract rent. The difference between their full "contract rent" and this percentage of income payment represents the housing subsidy paid by the Section 8 program.

In addition to the housing subsidy, Section 8 tenants receive what is termed a "utility allowance" each month (assuming the tenant pays his or her own utility costs). The utility allowance is designed to cover all components of a tenant's utility bill. Rather than being simply a heating allowance, in other words, a utility allowance is designed to pay for all utilities (energy, water/sewer, trash) except telephone service.

Since by law the tenant's total shelter expenses (which are to include contract rent plus all utilities except telephone) are to be limited to 30%

of income, and since the household's contract rent is set *equal* to 30% of income, in order for the Section 8 program to comply with the federal statute, the utility allowance must pay a tenant's entire utility bill to keep total shelter costs under the statutory ceiling.

## **THE IMPORTANCE OF UTILITY ALLOWANCES**

Providing adequate utility allowances to Section 8 housing units is particularly important in Pennsylvania given the age and relative energy inefficiency of assisted housing units. The age of housing structures subsidized through an assisted housing program reveals an older housing stock that is likely to be energy inefficient. Roughly half of all assisted housing is 60 years old or older, while more than 60% is at least 50 years old. Very few assisted housing units have been built in the past 25 years.

Corresponding to the age of the housing unit is the age of the heating unit. A substantial proportion of assisted housing tenants do not know the age of their heating unit. Of those who do know, the number of heating units aged 20 years or older was by far the largest proportion of heating units by age. Indeed, the number of heating units aged 20 years or older is nearly twice the number of heating units aged 10 years or younger.

Similar results exist for domestic hot water heaters. While a sizable proportion of assisted housing tenants do not know the age of their water heater (or do not use a separate water heater for their unit), nearly one-in seven of the total assisted housing tenants report having water heaters aged 10-years old or older.

The need for adequate utility allowances is particularly important in Pennsylvania's Section 8 housing. While direct information on the energy efficiency of existing systems is not available for Section 8 housing, the extent to which tenants of assisted housing are vulnerable to changes in prices can nonetheless be reasonably inferred from the data that is available. In particular, the age of the building structure, the heating system,

and the hot water system used in Section 8 housing makes clear the risk of uncompensated bills if utility allowances are not set to appropriately reflect underlying energy prices. Moreover, the risk of uncompensated bills is significant if utility allowances are not appropriately updated to track changes in prices over time.

## **THE SEMAP REVIEW OF UTILITY ALLOWANCES**

In its Pennsylvania analysis, FSC examined how HUD's Section 8 Management Assessment Program (SEMAP) was used to monitor the compliance by Pennsylvania's Local Housing Authorities (LHA) with federal regulations regarding the promulgation of utility allowances. The discussion below presents a summary of the results of that analysis.

### ***The SEMAP Review Process***

The purpose of SEMAP is "to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost."<sup>1</sup> SEMAP identifies 14 key indicators through which to measure LHA performance. Indicator #4 is to report whether the LHA maintains a current schedule of allowances for tenant utility costs.<sup>2</sup>

The SEMAP utility allowance indicator allows for no ambiguity. The LHA's SEMAP rating is based on whether: "The PHA's certification states that the PHA reviewed utility rate data within the last 12 months and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised."<sup>3</sup>

If the LHA cannot make that statement, it receives a score of 0 points on this SEMAP indi-

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<sup>1</sup> 24 CFR §985.1 (2009).

<sup>2</sup> 24 CFR § 985.3(d), citing 24 CFR § 982.517.

<sup>3</sup> 24 CFR §985.3(d)(3)(i).

cator.<sup>4</sup> The SEMAP utility allowance indicator is an either/or proposition. If the LHA has made a review within the past twelve months and adjusted its utility allowances, it receives a full SEMAP score of five (5) points; if it has not, it receives a SEMAP rating of 0 points.

It is important to note the multiple aspects of the SEMAP utility allowance indicator.

- First, the SEMAP indicator creates a conjunctive test which the LHA must certify has been met. The regulation uses the word “and.” The local LHA must have reviewed utility rate data *and* adjusted its utility allowance schedule if appropriate.
- Second, the SEMAP indicator imposes a specific time frame within which the conjunctive test is to be measured. In order for the LHA to certify that it has met this SEMAP indicator, its review and adjustment of the utility allowance schedule must have occurred “within the last 12 months.”
- Finally, the SEMAP indicator imposes a specific requirement of *what* must be reviewed. According to the regulation, the LHA must have reviewed “utility rate data.” The LHA cannot have examined some “cost-of-living” data; it cannot make decisions based on some articulated (or unarticulated) policy determination; it may not consider simply the rate of inflation. Within the last twelve months, the LHA must have reviewed “utility rate data.”<sup>5</sup>

### ***The Housing Authority SEMAP Steps***

The SEMAP rating is based initially on an annual self-certification by the local LHA to HUD. Each local LHA distributing \$300,000 or more in tenant assistance must submit a “SEMAP cer-

tification form”<sup>6</sup> within 60 days after the end of its fiscal year.<sup>7</sup> The certification must be approved by a resolution of the LHA’s board of directors (or board of commissioners) and signed by both the LHA board chair and the LHA executive director, unless the LHA is a “unit of local government or a state.”<sup>8</sup> In that instance, no resolution is needed, but the LHA certification must be signed by the chief executive officer of the unit of government (or his/her designee) and the Section 8 program director.<sup>9</sup>

HUD “verifies” the LHA’s certification by comparing the LHA’s independent audit (IA) to the SEMAP certification.<sup>10</sup> LHAs are required to submit independent audits under the Single Audit Act.<sup>11</sup> A SEMAP score based on an LHA’s certification will be subject to change “based on HUD’s review of the LHA’s annual audit.”<sup>12</sup>

In sum, the SEMAP process creates a substantial paper trail that documents the extent to which, if at all, a local LHA has complied with federal regulations regarding the updating of Section 8 utility allowances.<sup>13</sup> The series of local sign-offs on the SEMAP utility allowance indicator includes:

- The LHA’s Board must adopt a resolution saying that the LHA has reviewed utility rate data and made changes to the LHA’s utility allowance schedules based on that review within the previous twelve months.
- The LHA board chair and the LHA executive director must both sign the certification saying that the LHA has reviewed utility rate data and made changes to the LHA’s utility allowance

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<sup>6</sup> See, 24 CFR §985.2 (defining “SEMAP certification”).

<sup>7</sup> 24 CFR §985.101(a).

<sup>8</sup> 24 CFR §985.101(a)(i).

<sup>9</sup> 24 CFR §985.101(a)(i).

<sup>10</sup> 24 CFR §985.3(d)(2).

<sup>11</sup> See e.g., 24 CFR §985.103(2).

<sup>12</sup> 24 CFR §985.103(1)(d).

<sup>13</sup> This discussion relates only to Section 8. It does not encompass public housing utility allowances.

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<sup>4</sup> 24 CFR §985.3(d)(3)(iii).

<sup>5</sup> 24 CFR §985.103(d)(2).

schedules based on that review within the previous twelve months.

- The independent auditor must provide an independent basis upon which HUD can confirm that the LHA has reviewed utility rate data and made changes to the LHA's utility allowance schedules based on that review within the previous twelve months.

### *The HUD SEMAP Steps*

Once the local LHA submits its SEMAP certification to HUD, HUD (through its regional staff)<sup>14</sup> must give an initial SEMAP score on each SEMAP indicator within 120 days after the end of the LHA's fiscal year.<sup>15</sup> The HUD notice must be in writing and give a score on each indicator in addition to an overall SEMAP score.<sup>16</sup>

The HUD notification letter must identify any indicator on which the LHA received a score of 0 points and require the LHA to correct the deficiency within 45 days.<sup>17</sup> Upon receiving the HUD notification letter, the LHA must correct any deficiency – a “deficiency” is an indicator on which the LHA received a score of 0 points—within 45 days;<sup>18</sup> it must provide a written report to HUD describing its correction.<sup>19</sup>

If the LHA fails to correct the deficiency within 45 days, HUD may require the LHA to submit a “corrective action plan.”<sup>20</sup> Note, however, that while the “corrective action plan” provision is in a section titled “*required actions* for SEMAP deficiencies,”<sup>21</sup> the permissive use of the word “may” in this regulation might seem to allow HUD the discretion either to require a corrective action plan or not. The PIH notice on SEMAP procedures further buttresses this non-mandatory

nature of corrective action plans. That PIH notice provides that “HUD Directors and Program Center Coordinators *may require, where warranted* non-troubled LHAs. . .that do not correct all SEMAP deficiencies during the 45 calendar day period following notification to submit a corrective action plan.”<sup>22</sup> As can be seen, a corrective action plan is not automatic. It “may” be required “where warranted” as determined by HUD.

Whether or not a corrective action plan is ordered, however, HUD is not without recourse against an LHA that fails to adjust its utility allowance (and thus receives a SEMAP score of 0 points on Indicator #4). The HUD regulations provide that “HUD may determine that an LHA's failure to correct identified SEMAP deficiencies *or* to prepare and implement a corrective action plan required by HUD constitutes a default under the [Annual Contributions Contract].”<sup>23</sup> Moreover, in identifying what enforcement HUD may take, the PIH notice setting forth SEMAP procedures states:

HUD may take further enforcement action against the PHA if it does not correct identified SEMAP deficiencies *or* prepare and implement a viable corrective action plan where required, *or* demonstrate sufficient program improvement by the third SEMAP reporting cycle. HUD may determine that these actions constitute a default under the Annual Contributions Contract (ACC). Enforcement action by HUD may include a transfer of the troubled PHA's housing choice voucher program to another PHA, or HUD may solicit bids from contractors to manage the PHA's troubled housing choice vendor program.<sup>24</sup>

In sum, there is a series of mandatory HUD actions relating to utility allowances and Section 8 programs. In particular:

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<sup>14</sup> Notice PIH 2005-33 (HA), at 4.

<sup>15</sup> 24 CFR §985.105(b).

<sup>16</sup> *Id.*

<sup>17</sup> 24 CFR §985.105(b).

<sup>18</sup> 24 CFR §985.106(a).

<sup>19</sup> 24 CFR §985.106(b).

<sup>20</sup> 24 CFR §985.106(c).

<sup>21</sup> 24 CFR §985.106 (emphasis added).

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<sup>22</sup> PIH Notice 2005-33 (HA), at 5 (October 25, 2005).

<sup>23</sup> 24 CFR §985.109 (emphasis added).

<sup>24</sup> *Id.*

- HUD must review each LHA’s independent audit and compare that audit on each SEMAP indicator for which the audit is the method of verification to determine if the SEMAP score based on the LHA’s self-certification is warranted.
- HUD must notify each LHA of any SEMAP “deficiency,” with a “deficiency” being a SEMAP indicator generating a score of 0 points.
- HUD must give each LHA notice of the LHA’s obligation to remedy the deficiency within 45 days.
- Should HUD order a “corrective action plan” for a SEMAP deficiency, HUD must require such plan to be submitted within 30 days. HUD must subsequently review the adequacy of the corrective action plan and monitor the implementation of any such corrective action plan.

**THE HUD SEMAP REVIEW OF  
PENNSYLVANIA SECTION 8 UTILITY  
ALLOWANCES**

The discussion below examines the extent to which HUD has reviewed the annual SEMAP filings by Pennsylvania’s LHAs with respect to the adjustment of Section 8 utility allowances. Each SEMAP rating for a Pennsylvania LHA was obtained through a federal public records request to the Philadelphia HUD regional office and Pittsburgh HUD regional office respectively.

A review of the SEMAP ratings for the years 2006 through 2009 inclusive reveals that HUD gave no SEMAP rating of “0” to a Pennsylvania LHA in that four-year period for SEMAP Indicator #4 (i.e., the SEMAP indicator involving utility allowances). Since SEMAP ratings for Indicator #4 are either/or propositions (i.e., either the LHA has reviewed utility data and made adjustments to its utility allowances where appropriate, thus receiving a SEMAP rating of “5”,

or it has not, thus receiving a SEMAP rating of “0”, for Indicator #4), by necessary implication, the full SEMAP rating necessarily indicates that:

- HUD found that each Pennsylvania LHA submitted a resolution passed by the LHA board indicating the LHA’s compliance with SEMAP Indicator #4 for all four years (2006 – 2009 inclusive);
- HUD found that each Pennsylvania LHA certified to HUD, signed by the LHA board chair and executive director, its compliance with SEMAP Indicator #4 for all four years (2006 – 2009 inclusive);
- That each Independent Auditor provided an independent basis to HUD upon which HUD could verify each LHA’s full compliance with SEMAP Indicator #4 for all four years (2006 – 2009 inclusive).

A review of the data places the accuracy of these findings and certifications in doubt. The fact that full SEMAP scores were given to all Pennsylvania LHAs for all four years calls into question the viability and legitimacy of the SEMAP process and HUD’s administration of that process.

***Changes in Utility Allowances vs. Changes in  
Utility Prices***

The analysis below examines utility allowances promulgated by Local Housing Authorities (LHAs) throughout Pennsylvania for the four years 2006 through 2009 inclusive. A list of the Pennsylvania LHAs was obtained from the U.S. Department of Housing and Urban Development (HUD). In May 2009, a written request was submitted to the Executive Director of each LHA, pursuant to Pennsylvania’s Public Records Act, asking for a single written copy of all utility allowance schedules for either Section 8 or Public Housing units, or both, as applicable,

in effect for Fiscal Years 2006, 2007, 2008 and 2009 inclusive.<sup>25</sup>

Sixty (60) LHAs responded to the public records request. The data provided by these LHAs documents that Pennsylvania housing authorities frequently failed to adjust their utility allowances in years in which home energy bills increased. Data was first examined with respect to the direction of change in the utility allowance in those instances where the energy bill increased from one year to the next. In the light of an increased utility bill, the utility allowances could remain the same, increase or decrease.

**Natural gas space heating:** Pennsylvania's Local Housing Authorities did not consistently respond to higher natural gas heating bills with increased natural gas heating utility allowances. Matched with the 246 instances of increased natural gas prices were only 148 corresponding instances of increased natural gas heating utility allowances (60%).<sup>26</sup>

In contrast, a substantial proportion of increased natural gas prices were met with a lower utility allowance. One-in-five instances (19%) of increased natural gas heating prices were associated with a decreased natural gas heating utility allowance. A roughly equal proportion (21%) of instances of increased natural gas bills were matched with utility allowances that remained identical to the preceding year with lower utility bills.

**Electric Space heating:** Pennsylvania's Local Housing Authorities increased their utility allowances in response to higher electric heating prices at about the same rate as they increased their natural gas heating utility allowances. In only 60% of the 355 instances of higher electric

heating prices, Pennsylvania's LHAs also implemented higher electric heating utility allowances.

That does not mean, however, that electric heating tenants faced identical LHA responses to increased electric prices. Only half as many electric space heating utility allowances decreased (11%) in the face of increasing electric prices as did natural gas utility allowances in light of increased natural gas prices (19%). Substantially more electric heating utility allowances remained constant than did natural gas utility allowances. In nearly three-of-ten instances of increased electric heating prices (29%), electric space heating utility allowances remained identical to the preceding year.

**Electric non-heating:** Annual changes in electric non-heating utility allowances, in light of corresponding increases in bills for non-heating electricity usage, mirrored the treatment of space heating bills. In the three comparison study periods, electric non-heating bills increased in 355 instances. Pennsylvania's LHAs, however, increased their utility allowances for miscellaneous electric usage (generally referred to as "other" electric usage), in only three of every five instances where electric non-heating bills increased.<sup>27</sup>

In contrast, it was uncommon for electric utility allowances to *decrease* when non-heating electric bills were escalating. Such decreases occurred in only six percent (6%) of all instances of increased bills. In 120 instances of increased bills (34%), utility allowances for "other" electric use remained the same from one year to the next even though the underlying non-heating electric bills increased.

#### ***Changes in Utility Allowances vs. 10%+ Changes in Utility Prices***

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<sup>25</sup> Some Local Housing Authorities administer Section 8 units but not public housing units. Some Local Housing Authorities administer public housing units but not Section 8 units.

<sup>26</sup> Each "instance" involves both a year and a housing type. Since three housing types were selected for each Local Housing Authority studied, each Local Housing Authority could provide three "instances" per year.

<sup>27</sup> "Other" electric usage stands in contrast to electric space heating and electric water heating. "Other" electric use involves appliances, which also includes lighting and refrigeration.

Unlike the section above, which considered only the direction of change in utility allowances and energy prices, the discussion below considers changes in utility allowances promulgated by Pennsylvania's Local Housing Authorities while accounting for the magnitude of the change in the underlying home energy bill. While the discussion above considers whether utility allowances changed at all (of any magnitude, up or down) to reflect a change (of any magnitude) in home energy bills, this section considers the change in utility allowances limited to those years in which the underlying bill increased by 10% or more relative to the immediately preceding year.<sup>28</sup>

The ten percent figure has legal significance. Under HUD regulations, a Local Housing Authority is required to revise its Section 8 utility allowances whenever the underlying utility prices have changed by 10% or more, retroactive to the date of the change in prices.<sup>29</sup> The discussion below considers the direction of change, if any, in the utility allowance in those instances where the 10% price threshold was met in the study years of 2006 through 2009. As above, the discussion at this point does *not* consider the magnitude of the change, if any, in the utility allowance, merely the direction of change.

**Natural gas space heating:** Pennsylvania LHAs frequently failed to modify their utility allowances in years in which the underly-

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<sup>28</sup> For example, if the 2009 natural gas heating prices were 10% higher than the 2008 natural gas heating prices, this section considers whether the corresponding 2009 natural gas heating utility allowance was higher or lower than the 2008 natural gas heating utility allowance.

<sup>29</sup> According to HUD regulations, "a PHA must review its schedule of utility allowances each year, and must revise its allowance 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 CFR 982.517(b)(4) (2009). Moreover, the Housing Authority's SEMAP Rating is supposed to be based in part on whether "the PHA's SEMAP certification states that the PHA reviewed utility rate data within the last 12 months and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised." 24 CFR 985.3(d) (2009).

ing utility rates increased by 10% or more. In 77 instances from 2006 to 2009, natural gas prices increased by 10% or more from the preceding year. When natural gas heating bills increased by 10% or more in a given year, utility allowances were also increased in only 60% of the cases.

When natural gas heating utility allowances did *not* increase in response to 10% increases in natural gas prices, the number of instances when utility allowances remained identical outnumbered those instances where allowances actually decreased in response to increasing bills by a two-to-one ratio. In 21 instances (27%), the utility allowance remained the same in light of an increase in natural gas space heating prices. In 10 instances (13%), the utility allowance decreased in light of an increase in natural gas space heating prices of 10% or more.

**Electric space heating:** Changes in electric space heating utility allowances relative to 10% changes in the underlying electricity bill closely mirrored changes in natural gas heating allowances and bills. A nearly identical proportion of electric space heating utility allowances (61%) increased in those instances where electric space heating bills increased by 10% or more. Roughly one-third of utility allowances stayed the same (31%) when the corresponding electric heating bill increased by at least 10%. Proportionately, somewhat fewer electric space heating utility allowances decreased (8%) when electric heating bills increased.

**Electric non-space heating:** Pennsylvania's LHAs were much more likely to make no change in electric non-heating utility allowances,<sup>30</sup> even when the underlying electric bill increased by 10% or more. A noticeably smaller proportion (51%) of electric non-heating utility allowances increased when the underlying bill increased by 10% or more. Moreover, the proportion of utility allowances that stayed constant

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<sup>30</sup> As noted above, "non-heating" usage does not include domestic hot water consumption.

in light of increasing electric non-heating bills was substantially greater (46%).

It is not the case that LHAs were more likely (or even as likely) to reduce their utility allowances in light of increasing prices for electric non-heating consumption. The difference in LHA behavior involved the propensity of LHAs to do nothing, even when electric non-heating prices increased by 10% or more. While there were fewer overall instances of increased electric non-heating prices of 10% or more, in nearly half of those instances with price increases, the corresponding utility allowance remained identical to the prior year.

### SUMMARY AND CONCLUSIONS

Utility allowances for Section 8 tenants represent a critical source of energy assistance to some of Pennsylvania's lowest income households. Section 8 tenants in Pennsylvania tend to live with income considerably below the Federal Poverty Level. In dollar terms, incomes are below \$10,000 a year in a substantial majority of cases. For these low-income households, unless utility allowances are properly set (and maintained), shelter costs will routinely exceed the statutory affordability standard of 30% of income.

Pennsylvania's Local Housing Authorities (LHAs) routinely fail to adjust their home energy utility allowances when the underlying home energy bills escalate. Whether for natural gas space heating, electric space heating, or miscellaneous electric usage, changes in home energy bills are not reflected in changes in utility allowances. This conclusion flows from a multifaceted review of utility allowances and home energy bills over a four year period (2006 – 2009).

The HUD process charged with enforcing LHA requirements designed to maintain adequate utility allowances is a failure. Over the four year period 2006 through 2009, not one Pennsylvania LHA received a rating indicating a failure to comply with federal Section 8 utility allowance

regulations. The HUD finding of 100% compliance came in the Section 8 Management Assessment Program (SEMAP) which, by law, is designed to “assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost.”

HUD's finding of 100% compliance with SEMAP Rating #4, relating to utility allowances, despite the routine failure of Pennsylvania LHAs to appropriately adjust their home energy utility allowances, calls into question both the efficacy of the SEMAP self-certification process and the efficacy of the HUD review of that self-certification.

Overall, the utility allowance program in Pennsylvania needs significant reform. It is not doing what the law, on its face, requires to be done.

For a complete copy of the FSC analysis of Section 8 utility allowances in Pennsylvania, please write:

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Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) provides economic, financial and regulatory consulting. The areas in which FSC has worked include energy law and economics, fair housing, affordable housing development, local planning and zoning, energy efficiency planning, community economic development, poverty and telecommunications policy, regulatory economics, and public welfare policy.