U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

Special Attention of:	**Notice: CPD-17-11**
All CPD Directors	**Issued: October 23, 2017**
HUD Field Offices	**Expires:** This notice is effective until amended, superseded, or rescinded.
HUD Regional Offices	
All Continuums of Care	
All CoC Program Recipients and Subrecipients	**Cross Reference:** 24 CFR Part 578, 42 U.S.C. 11371, et seq.

Subject: Determining a Program Participant's Rent Contribution, Occupancy Charge or Utility Reimbursement in the Continuum of Care (CoC) Program when the Program Participant is Responsible for the Utilities

A. Purpose of this Notice

This Notice clarifies HUD's expectation that recipients and subrecipients will consider reasonable monthly utility costs when calculating rent contributions or occupancy charges for program participants who are responsible for paying their own utilities. For the purpose of this notice, "utilities" exclude telephone but include gas, oil, electric, sewage, water, and trash removal.

This notice applies to recipients and subrecipients that are providing Transitional Housing (TH), Permanent Supportive Housing (PSH), and Rapid Re-Housing (RRH) funded through the Continuum of Care (CoC) Program (24 CFR part 578). Specifically, this notice applies to TH, PSH, and RRH projects in which some or all of the costs of utilities are the responsibility of the program participant.

This Notice:

1. Clarifies how to take into account a reasonable amount for utilities paid by a program participant when calculating that program participant's rent contribution or occupancy charge in TH or PSH that uses CoC Program funds for leasing, rental assistance or operating costs; and
2. Provides guidance on how to pay a "utility reimbursement" to program participants who are responsible for their own utilities.

B. Background

TH and PSH projects. On July 31, 2012, HUD published the CoC Program interim rule, which went into effect on August 30, 2012, and applies to grants awarded in the FY 2012 CoC Program Competition and beyond. The interim rule provides that recipients can use CoC funds to provide rental assistance on behalf of program participants in TH or PSH (24 CFR 578.51), lease units and structures to provide TH or PSH (24 CFR 578.49), provide supportive services in TH or PSH (24 CFR 578.53), and pay operating costs for TH or PSH units or structures the recipients lease or own (24 CFR 578.55).

The utility costs in TH and PSH projects may be paid in a number of ways. If the recipient owns the building or unit, the recipient may generally decide whether to pay the utility costs with CoC operating funds (or non-CoC funds) or make the program participant responsible for utilities for which the units are individually metered. The same options apply if the recipient leases the building or unit and the utilities are not included under the recipient's lease. If the recipient uses rental assistance funds to provide TH or PSH, the recipient may pay the utility costs using CoC rental assistance funds (or non-CoC funds) or make the program participant responsible for paying the utility costs that are not included in the program participant's rent. However, as explained in further detail below, when a program participant is made responsible for paying utility costs in TH or PSH, the recipient must incorporate those costs into the program participant's occupancy charge or rent contribution and must reimburse the program participant if the reasonable utility costs exceed the applicable amount under 24 CFR 578.77.

Section 578.77 of the CoC Program interim rule establishes how recipients and subrecipients must calculate rent contributions and maximum occupancy charges for program participants in TH and PSH projects. The rent contribution requirement in 24 CFR 578.77(c) applies to TH and PSH projects in which CoC rental assistance funds are used. The maximum occupancy charge requirement in 24 CFR 578.77(b) applies to all other TH and PSH projects for which CoC funds are used. These requirements are based on section 3(a) of the U.S. Housing Act of 1937 (1937 Act) and section 426(c) of the McKinney-Vento Homeless Assistance Act (McKinney-Vento Act). The 1937 Act determines the amount a tenant must contribute toward rent in HUD's Section 8 programs. The McKinney-Vento Act prohibits CoC-funded supportive housing from charging occupants in excess of the rent contribution amount determined under the 1937 Act.

Consistent with HUD's interpretation of the rent contribution requirement in the 1937 Act, the CoC Program's rent contribution and maximum occupancy charge requirements apply to the program participant's total share of the housing costs, including the reasonable costs of utilities paid separately. Therefore, recipients and subrecipients must incorporate the reasonable costs of utilities paid separately when determining the amount a program participant must pay to reside in a TH or PSH unit. In addition, recipients and subrecipients must reimburse program participants for any amount that their reasonable utility costs exceed their rent contribution or maximum occupancy charge under 24 CFR

578.77. This "utility reimbursement" may be paid using CoC program funds. For program participants receiving rental assistance, the utility reimbursement may be paid using rental assistance funds. For program participants in other CoC-funded TH or PSH projects, the utility reimbursement may be paid using operating funds.

Rapid Re-housing (RRH) projects. RRH projects may use CoC funds to provide up to 24 months of tenant-based rental assistance and/or supportive services as needed to help a program participant quickly move into permanent housing and acheive housing stability. Utilities that are not included in the program participant's rent may be paid using rental assistance funds (or non-CoC funds). RRH projects are not subject to the occupancy charge and rent contribution requirements in 24 CFR 578.77. Instead, RRH projects must follow the written policies and procedures established by the CoC, including standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance (24 CFR 578.37(a)(1)(ii)(A)). This means that CoCs have broad discretion over the amount of rental assistance that can be provided to a program participant receiving RRH assistance.

For example, a CoC may design RRH rental assistance so that:

- each program participant pays a fixed percentage of income toward rent;
- each program participant pays a rent contribution based on an incremental, sliding scale;
- each program participant pays a fixed amount or percent of the rent (e.g., $1000 per month or 50% of the monthly rent); or
- each program participant pays a rent contribution that increases over time until the program participant is paying 100% of the monthly rent.

However, the CoC interim rule explicitly requires RRH projects to calculate rent as the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities established by the public housing authority (PHA) for the area in which the housing is located (24 CFR 578.37(a)(1)(ii)(B)). Therefore, if utilities are not included in a program participant's rent, and rent is part of the CoC's rental assistance calculation, that calculation must incorporate the applicable utility allowance, and the program participant must be reimbursed for any amount that the allowance exceeds the program participant's share of rent. This utility reimbursement may be paid using rental assistance funds.

C. Determining the Appropriate Rent Contribution, Occupancy Charge, or Utility Reimbursement for Program Participants who are Responsible for their own Utilities

TH and PSH projects. Determining the applicable tenant rent contribution, occupancy charge, or utility reimbursement for a program participant **residing in TH or PSH** who is responsible for the utilities is a three-step process. Each step of the process is outlined below in additional detail:

1. Calculate the Program Participant's Rent-Contribution or Maximum Occupancy Charge;
2. Determine the Reasonable Utility Consumption Amount; and
3. Determine the Rent Contribution, Occupancy Charge, or Utility Reimbursement Amount.

1. Calculate the Program Participant's Rent Contribution or Maximum Occupancy Charge. 24 CFR 578.77(c) establishes the following as the rent contribution that program participants *must* pay when the recipient or subrecipient is providing rental assistance payments on the program participant's behalf in TH and PSH projects. 24 CFR 578.77(b) establishes the maximum occupancy charge that recipients or subrecipients *may* charge program participants where the recipient or subrecipient is providing the program participant TH or PSH with funds other than rental assistance funds (e.g., by using leasing funds). There is no requirement, however, that recipients or subrecipients charge occupancy charges and many recipients and subrecipients choose not to impose occupancy charges on their program participants.

   The rent contribution or the maximum occupancy charge is the highest of the following amounts (rounded to the nearest dollar):

   a. 30 percent of the family's monthly adjusted income (as outlined at Part 5.609 and 5.611(a));
   b. 10 percent of the family's monthly gross income; or
   c. If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

   Please keep in mind that for TH and PSH projects in which rental assistance is provided, the rent contribution is not optional and must equal the rent contribution specified above. For projects that provide TH or PSH using funds other than rental assistance funds, the occupancy charge is optional and can be lower but not higher than the maximum occupancy charge specified above.

2. Determine the Reasonable Monthly Utility Consumption Amount. For the purposes of determining the reasonable monthly utility consumption, recipients or subrecipients must use the local PHA's schedule of utility allowances, which are based on unit size and the utilities the program participant is expected to pay. Contact your local PHA to obtain the schedule of utility allowances and exception utility allowances.

3. Determine the Rent Contribution, Occupancy Charge, or Utility Reimbursement Amount.

   Rental Assistance: As detailed above, each program participant in transitional or permanent supportive housing on whose behalf rent is paid with CoC Program rental assistance funds must pay rent in the amount determined in 24 CFR 578.77(c). This amount, however, must be adjusted by the pre-determined reasonable utility consumption amount when the program participant is required to pay for utilities. For example, if the program participant's rent contribution is $300, as determined above, and the reasonable monthly utility consumption amount is $40 then the program participant is only required to contribute $260 in rent. The recipient must pay the difference between $260 and the rent specified on the program participant's lease.

   Housing Leased or Owned by the Recipient: Similarly, if a program participant is residing in transitional or permanent supportive housing where an occupancy charge could be imposed (e.g., in housing leased by the recipient or subrecipient or in housing owned by the recipient or subrecipient), any utilities paid by the program participant must be considered in the amount of the occupancy charge, which cannot exceed the amount determined in 24 CFR 578.77(b). For example, if the recipient calculates the maximum occupancy charge permitted and the program participant's occupancy charge calculation is $200, but the reasonable monthly utility consumption amount is $50, then the program participant's occupancy charge payment is reduced to $150.

   Since occupancy charges are optional in the CoC Program, in instances where occupancy charges are not imposed, but where utilities are the responsibility of the program participant, the recipient or subrecipient still must ensure that the reasonable monthly utility consumption amount is not more than the maximum occupancy charge in 24 CFR 578.77(b).

   Reimbursement: If, when the recipient or subrecipient deducts the reasonable monthly utility consumption amount from the program participant's rent contribution or maximum occupancy charge amount (as determined by 24 CFR 578.77(c) or 24 CFR 578.77(b) respectively), the calculation equals a number less than $0, then the recipient or subrecipient must provide a utility reimbursement to the program participant in accordance with the methods outlined in Section D of this Notice. For example, if a program participant's maximum occupancy charge would be $0 because the program participant does not have any income and the reasonable

monthly utility consumption is $30, then the recipient or subrecipient must provide the program participant a utility reimbursement of $30 paid in accordance with the methods in Section D of this Notice.

4. Examples.

This section provides examples to assist recipients and subrecipients in understanding the calculation described in Section C.3 above.

Rent Contributions. This calculation is used when rental assistance is provided on behalf of program participants, but utilities are not included in the rent and are the responsibility of the program participant.

Example 1

A	Contract Rent	$500
B	Tenant Rent Calculation in 24 CFR 578.77(c) *before* making adjustments for utilities	$80
C	Reasonable Monthly Utility Consumption	$30
	Calculation B-C	$50
D	Program Participant Rent – to be Paid Directly to Landlord or Property Owner	$50
E	Recipient Rental Assistance Payment to Landlord or Property Owner	$450 (A-D)
F	Utility Reimbursement to be Paid to Program Participant	$0

In the above example, the program participant owes the landlord or property owner rent because the calculation of B minus C resulted in a positive number ($50). This also means that the recipient does not owe the program participant a utility reimbursement.

Example 2

A	Contract Rent	$600
B	Tenant Rent Calculation in 24 CFR 578.77(c) *before* making adjustments for utilities	$30
C	Reasonable Monthly Utility Consumption	$50
	Calculation B-C	-$20
D	Program Participant Rent – to be Paid Directly to Landlord or Property Owner	$0
E	Recipient Rental Assistance Payment to Landlord or Property Owner	$600 (A-D)
F	Utility Reimbursement to be Paid to Program Participant	$20

In the above example, the recipient owes the full contract rent to the landlord or property owner because the calculation in B-C resulted in a negative number (-$20). Therefore, the amount the program participant owes to the landlord or property owner is $0, and the amount the recipient owes to the program participant for a utility reimbursement is $20.

Occupancy Charges. This calculation is used when program participants are expected to be responsible for utilities and an occupancy charge could be imposed. Note: In these examples, the contract rent is not applicable to this calculation because the recipient or subrecipient is paying the full cost of the housing directly to the landlord or property owner.

a. **Occupancy Charges ARE imposed on program participants at maximum allowable amount**

Example 3

A	Occupancy Charge Calculation in 24 CFR 578.77(b) *before* making adjustments for utilities	$100
B	Reasonable Monthly Utility Consumption	$30
	Calculation A-B	$70
C	Program Participant Occupancy Charge – to be Paid to the Recipient or Subrecipient	$70
D	Utility Reimbursement to be Paid to the Program Participant	$0

In the above example, the recipient does not owe a utility reimbursement to the program participant because the calculation of A-B resulted in a positive number

($70). The program participant owes $70 to the recipient or subrecipient as the occupancy charge.

Example 4

A	Occupancy Charge Calculation in 24 CFR 578.77(b) *before* making adjustments for utilities	$25
B	Reasonable Monthly Utility Consumption	$40
	Calculation A-B	-$15
C	Program Participant Occupancy Charge – to be Paid to the Recipient or Subrecipient	$0
D	Utility Reimbursement to be Paid to the Program Participant	$15

In the above example, the recipient/subrecipient does owe a utility reimbursement to the program participant because the calculation of A-B resulted in a negative number (-$15). Therefore, the recipient or subrecipient owes the program participant $15 and the program participant does not have to pay an occupancy charge to the recipient or subrecipient

b. Occupancy Charges are NOT imposed on program participants.

Example 5

A	Maximum Occupancy Charge Calculation in 24 CFR 578.77(b) *before* making adjustments for utilities	$35
B	Reasonable Monthly Utility Consumption	$20
	Calculation A-B	$15
D	Utility Reimbursement to be Paid to the Program Participant	$0

In the above example, the program participant does not pay an occupancy charge because the recipient does not impose occupancy charges as a condition of occupancy. Additionally, the recipient does not owe the program participant a utility reimbursement because the reasonable monthly utility consumption amount is less than the maximum amount the program participant could pay as an occupancy charge per 24 CFR 578.77(b).

Example 6

A	Maximum Occupancy Charge Calculation in 24 CFR 578.77(b) *before* making adjustments for utilities	$55
B	Reasonable Monthly Utility Consumption	$60
	Calculation A-B	-$5
D	Utility Reimbursement to be Paid to the Program Participant	$5

In the above example, the program participant does not pay an occupancy charge because the recipient does not impose occupancy charges as a condition of occupancy. However, the recipient does owe the program participant a utility reimbursement because the reasonable monthly utility consumption amount is more than the maximum amount the program participant could pay as an occupancy charge per 24 CFR 578.77(b).

D. Paying the Utility Reimbursement

For program participants residing in RRH, if the PHA's monthly allowance for utilities exceeds the amount the program participant is required to pay for a rent contribution, the program participant must be reimbursed for the difference. Similarly, for program participants residing in TH or PSH if reasonable monthly utility compensation alone exceeds the amount the program participant is required to pay for a rent contribution or the maximum amount the program participant could be required to pay, or is required to pay, in an occupancy charge, the program participant (or the utility company on behalf of the program participant) must be reimbursed for the difference (this would occur wherever the calculation in Section C.4 above resulted in the program participant being owed a utility reimbursement).

Where a utility reimbursement is owed to the program participant this amount would need to be paid in one of the following ways:

1. Pay the program participant directly. The recipient or subrecipient can pay the utility reimbursement directly to the program participant.

2. Pay the Utility Company on Behalf of the Program Participant. The recipient or subrecipient can pay the utility reimbursement to the utility company on behalf of the program participant. If the recipient or subrecipient chooses to do this, the recipient or subrecipient must have the permission of the program participant and notify the program participant in writing of the amount paid to the utility company (to allow the program participant to pay any outstanding amounts). Note: the recipient or subrecipient must maintain records of the program participant's permission to pay the utility company directly and the notification(s) to the program participant of the amount(s) paid on their behalf.

In either method, the budget line item that the recipient uses to pay the utility reimbursement depends on the type of assistance provided. If the program participant is receiving rental assistance the utility reimbursement may be paid with rental assistance funds. If the program participant lives in TH or PSH for which leasing or operating funds are used, the utility reimbursement may be paid with operating funds. In no case may leasing funds awarded under the CoC Program be used to pay for those utilities that are not included in the recipient or subrecipient's lease. Note: To the extent the utility reimbursement would be an eligible cost under the CoC Program, recipients or subrecipients may also use program income or matching funds to pay for the utilities.

E. **Maintaining Records.**

HUD expects recipients and subrecipients that operate projects where the utilities are the responsibility of the program participant to maintain records demonstrating compliance with the requirements clarified in this Notice. All records must be maintained in compliance with 24 CFR 578.103.

The following is a list of records that should be maintained to demonstrate compliance:

1. Recipient records. The following records should be maintained in the recipient or subrecipient's records.
   a. Utility schedules used to determine the reasonable monthly utility consumption amount.
   b. Occupancy Charges policy, if applicable:
      1) Is a charge imposed (yes/no)?
      2) If yes, what percent will be charged of the participants?; and
      3) Are there any exceptions?

2. Program participant records. The following records should be maintained in each program participant's record.
   a. The annual income calculation as set forth in 24 CFR 578.103(a)(6).
   b. The amount of the program participant's rent contribution, occupancy charge, or utility reimbursement and how the amount was determined.
   c. Where a utility reimbursement is due to the program participant, evidence that the utility reimbursement was paid in accordance with Section D of this Notice. Where the utility reimbursement is paid directly to the utility company, the written permission of the program participant to pay the utility company directly as well as the documentation provided to the program participant that the utility was paid.