July 27, 2009

CC:PA:LPD:PR (Notice 2009-44)
Room 5205
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

To Whom It May Concern:

The Institute of Real Estate Management (IREM) is pleased to submit comments on Notice 2009-44 relating to utility allowance regulations. IREM has been the source for education, resources, information, and membership for real estate management professionals for more than 75 years. An affiliate of the NATIONAL ASSOCIATION OF REALTORS®, IREM is the only professional real estate management association serving both the multi-family and commercial real estate sectors. Collectively, IREM CPM®Members in the United States manage over $1.5 trillion in real estate assets, including 8.4 million residential units and 8.4 billion net square feet of commercial space. An additional 977,400 residential units are managed by IREM ARM®Members.

IREM applauds the Department for recognizing that there are a number of valid ways to determine utility costs in affordable housing projects. We especially thank you for including submetering information in the utility cost determination. IREM would like to recommend that you also consider Ratio Utility Billing System (RUBS) for the same purpose. For many properties, submetering is simply not feasible. Aggregate or averaged data obtained through a RUBS system does provide insight into the actual utility usage of tenants. We urge you to include this as a tool for determining actual utility costs.

IREM members also report that while the IRS notice provided a variety of tools states can use to determine utility costs, some states are not taking full advantage of these options. In fact, several states have chosen to not allow some of the methods provided under §1.42-10. Are states allowed to discredit certain methods, despite IRS approval? IREM urges IRS to provide consistency across the country by requiring states to consider all approved methods of determining utility costs.

IREM believes there may still be confusion related properties with mixed-financing. In these buildings, there may be multiple programs in use, all using different utility allowances. IREM would like IRS to clarify which methods to use in buildings with multiple programs.

Lastly, the Notice refers to a “HUD-regulated building”, as one with rents and utility allowance that are reviewed by HUD. Could you please clarify what this means? Which federal programs would fall under this definition?

IREM welcomes the opportunity to comment on the Notice. Please contact Chuck Achilles at IREM (312-329-6020 or cachille@irem.org) for further information.

Sincerely,

Michael Uccellini, CPM
Chair IREM's Federal Housing Advisory Board