REG-128274-03

NAHMA™

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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LEGAL PROCESSING DIVISION
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BRANCH

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Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

**RE: Section 42 Utility Allowance Regulations Update, REG-128274-03, RIN 1545-BC22**

The National Affordable Housing Management Association (NAHMA) appreciates the opportunity to comment on this important proposed rule to update the Section 42 utility allowance. NAHMA represents management agents and owners involved in federal affordable multifamily housing programs. Executives of property management companies, owners of affordable rental housing, public agencies and vendors that serve the affordable housing industry constitute NAHMA's membership. Our members have considerable experience with the Low Income Housing Tax Credit (LIHTC) program, both in developing the properties and in ensuring compliance.

NAHMA's comments are guided by the following important premises. First, achieving long-term sustainability of LIHTC properties is our chief goal. Over the past 20 years, the LIHTC has helped finance nearly two million affordable apartments for low income families. The program is widely considered one of the most successful public-private partnerships the federal government has ever created. In the interest of ensuring that attractive, well-maintained affordable apartments will continue to be available for low-income tenants, it is necessary to review and update regulations that affect long-term sustainability of the housing. The utility allowance certainly is a key factor which affects viability of affordable housing. Second, there may be no single solution to guarantee long-term sustainability of all LIHTC properties, but the proposed rule to update the utility allowance is a good step in the right direction. As the utility allowance increases, the net rent to the property owner decreases. Because the LIHTC program is intended to serve low income families, there are limited options for increasing cash-flow. Operating margins are thin and are further eroded by inaccurate, outdated or artificially high utility allowances. To the extent that the proposed rule expands the options for achieving a more accurate, stable utility allowance, it will help to improve the overall financial condition of the properties. This is an important point, because financial health is necessary to maintain the physical condition of the properties, as well as to provide attractive communities of quality for residents. Our last premise is the importance of increased flexibility to determine an accurate utility allowance, and ultimately, long-term sustainability of the properties. NAHMA is pleased that the proposed rule offers additional options to calculate the utility allowance; in a moment, these comments will discuss why it should go even further.

The proposed rule would make several important changes that NAHMA supports. Section 1.42-10(b)(4)(ii)(C) would allow an owner to use a utility estimate provided by the Agency that has jurisdiction over the building. Section 1.42-10(b)(4)(ii)(D) offers the option of using the "HUD Utility Schedule Model" found on HUD's Low-Income Housing Tax Credit page, http://www.huduser.org/datasets/lihtc.html. Likewise, Section 1.42-10(c)(1) allows properties to stabilize occupancy before changing the utility allowance. Specifically, this provision restricts changes in the utility allowance "until the building has achieved 90 percent occupancy for 90 consecutive days or the end of the first year of the credit period, which ever is earlier." NAHMA appreciates the thought that has gone into these proposed revisions, and we strongly urge the Internal Revenue Service (IRS) and Treasury Department to adopt these sections in the final rule.

On the other hand, NAHMA members have expressed reservations about the practically of Section 1.42-10(b)(4)(ii)(B), which requires cost estimates to be obtained from each of the multiple utility providers (when there are multiple utility services) to calculate the utility allowance. Our members have commented that this option will present an unworkable administrative burden in deregulated jurisdictions with multiple providers. The calculation of utility allowances is becoming increasingly difficult in those states and localities that have allowed complete utility supplier deregulation at the consumer level. Those states and localities that allow multiple providers in the Electric and Gas markets increase the complexity of doing utility analyses exponentially. To illustrate the problem, please consider the following example provided by a NAHMA member. A LIHTC community in a western suburb of Atlanta has only 88 units, and it has eight potential electric suppliers--all with slightly different rate schedules--from which residents can choose. With such a small property, no supplier has a dominant position. The work required to produce the utility allowance analysis under these circumstances is overtly complex and very time consuming. For these reasons, greater consideration to handling allowances in a deregulated multiple provider setting is needed. NAHMA would welcome the opportunity to work with IRS-Treasury toward that end.

Prior to finalizing the regulation, NAHMA strongly urges IRS-Treasury to add three essential provisions which were not included in the proposed rule. We are requesting revisions to the final rule which will provide additional flexibility for owners to determine accurate utility allowance calculations. A very useful addition to the final rule would allow owners to use utility consumption model estimates performed by a State-certified engineer or other qualified professional. Another appropriate modification would specify owners may use different calculation options for different utilities. Finally, we strongly urge that the final rule simplify implementation of utility allowance changes by making them effective at the time of other annual rent adjustments.

Thank you for considering these comments. NAHMA members appreciate the opportunity to work with the IRS and Treasury Department to update the utility allowance regulations, thereby ensuring LIHTC communities remain financially sustainable in the long-term and able to serve the low-income families Section 42 was created to assist.

Sincerely,

Michelle Norris

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President

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**RE: Section 42 Utility Allowance Regulations Update, REG-128274-03, RIN 1545-BC22**
**Outline of NAHMA's Public Testimony Presented by Ms. Michelle Norris on October 9, 2007**

**I. Introductions (1 minute)**
- A. Michelle Norris
- B. About NAHMA—who we are & why the proposed rule is important to us

**II. Premises Which Guide NAHMA's comments (2 minutes)**
- A. Long-term sustainability of Section 42 properties
- B. Updating the Utility Allowance is a good step toward ensuring long-term sustainability
- C. Importance of increased flexibility

**III. Changes in the Proposed Rule that NAHMA Supports (3 minutes, 30 seconds)**
- A. Use of an Agency Estimate
  - 1. Possible benefits to LIHTC properties in Ohio
- B. HUD Utility Schedule Model
- C. Ability to Stabilize Occupancy before Implementing Utility Allowance Changes
  - 1. A practical change

**IV. NAHMA's Concerns with the Proposed Rule (1 minute)**
- A. Requirement to obtain cost estimates from each utility provider (when there are multiple utility services) to calculate the utility allowance
  - 1. Example of associated administrative burdens

**V. Requested Additions to Include in the Final Rule (2 minutes)**
- A. Utility consumption model estimates performed by a State-certified engineer or other qualified professional
- B. Specify owners may use different calculation options for different utilities
- C. Make utility allowance changes effective at the time of other annual rent adjustments
  - 1. A practical change

**VI. Closing remarks (30 seconds)**

Respectfully Submitted,

Michelle Norris

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President, National Affordable Housing Management Association
PROTECTING THE INTERESTS OF AFFORDABLE HOUSING PROPERTY MANAGERS AND OWNERS