

September 13, 2007

RE: CC:PAPLPD:PR (REG-128274-03)

Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

To Whom It May Concern:

The National Multi Housing Council (NMHC) and the National Apartment Association (NAA) are committed to the development and preservation of safe, decent and affordable rental housing. The Low-Income Housing Tax Credit (LIHTC) program serves as the primary program for development of such housing and has been the driving force behind the bulk of affordable rental housing development over the past 21 years. NMHC and NAA are pleased to submit our comments to the Notice of proposed rulemaking (NPRM) and Notice of public hearing on June 18, 2007 (26 CFR Part 1) [Reg-128274-03] issued by the Department of the Treasury Internal Revenue Service (IRS).

NMHC and NAA have long supported addressing the current regulations that are in place to adjust the gross unit rent when the resident pays utilities for heating, cooling, cooking and for water and sewer services. Owners of LIHTC properties seek a more accurate and reliable means to adjust rents for the utilities paid by residents. The proposed regulations address many of the concerns with the existing regulation and we support action to implement many of the proposed actions as soon as possible.

The current regulation depends on processes that rely too heavily upon resources of public housing authorities and utility companies whose primary interest is not setting or estimating utility costs in rental properties, nor is the capacity to do so consistent across the markets. That said, the process may work in select locations and for some properties and proposed developments, so we support the concept of expanding the options to adjust gross unit rents to the current methods.

We fully endorse and support the NPRM recommendations to implement the following additions to the current regulation:

1. That state LIHTC allocation agencies be permitted to provide utility adjustments to owners and managers of properties in their jurisdiction.
2. That gross unit rent adjustments not be implemented until such time that a new property achieves a stabilized occupancy of 90 percent for 90 consecutive days or until the property is in service for a period of one year.

The American apartment industry...working together for quality, accessible, affordable housing.

3. That developers, property owners and managers have access and be permitted to use the HUD energy consumption model for the purpose of adjusting rents for resident-paid utilities for electric and gas usage. We also endorse the use of this model by public housing authorities to establish more accurate adjustments for their jurisdictions.

In addition, we ask the IRS to strongly consider the following measures to improve the process to adjust gross unit rents and its implementation:

1. Allow developers, property owners and managers to retain the services of certified engineers in the state where properties are located to prepare utility adjustments based on energy consumption and analysis models.

We support this method for the following reasons:

- a) The use of energy consumption models has become an accepted means in the building and real estate industry and can accurately identify energy use and consumption specific to buildings, as well as incorporate energy usage based on unit occupancy. Additionally, the models are routinely calibrated for local weather conditions and historical data.
- b) Property specific energy consumption models would be consistent with the proposed use of the HUD model and would be a more accurate means to identify energy cost.
- c) Energy consumption models applied at the property level are more accurate than general estimating techniques because they account for specific characteristics of buildings and locations. Energy consumption models take into consideration specific factors including, but not limited to: occupancy, orientation, building design and materials, mechanical systems, appliances, and characteristics of the building site and elevation.
- d) The use of energy consumption model data would not require changes by the allocation and compliance agencies and should provide a seamless means for adjusting rents.
- e) The use of energy consumption models will encourage owners and investors to make energy-saving improvements, as the model can identify where energy improvements can be made. The cost of the improvements can then be justified based on the potential energy savings.

2. Annual utility adjustments should accompany other rent adjustments.

Our recommendation submitted in 2005 supported not only additional methods to adjust the gross unit rent, but called for the utility adjustments to be implemented concurrently with the annual rent modifications associated with changes to the area median income.

This practice would reduce complications to the rent adjustment process for residents, property owners and managers and make compliance monitoring easier. The only reason the two are not implemented concurrently as a matter of regulation is that the utility adjustment is not required in some cases because the public housing authorities do not update their utility adjustment data annually.

Thank you for your consideration and we look forward to working with you in your efforts to support the development and preservation of affordable rental housing. Please contact David Cardwell, NMHC Vice President of Capital Markets and Technology, at (202) 974-2336 or dcardwell@nmhc.org, with any questions.

Sincerely yours,



Douglas M. Bibby
President
National Multi Housing Council



Douglas S. Culkin, CAE
President
National Apartment Association