REG-128274-03

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Internal Revenue Service
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To Whom It May Concern,

The Utah Housing Corporation (UHC) applauds the Internal Revenue Service for issuing these proposed regulations to address the methods used in determining utility allowances for low-income housing tax credit (Housing Credit) projects. It is imperative that more flexibility be made available in calculating these allowances considering the changes that have taken place in the utility industry.

Historically, apartments had central HVAC systems. The capital investment and cost of power and fuel for these systems was relatively low. Starting in the 1960s and1970s, these systems were replaced in newer projects with individual HVAC units. The capital cost and especially the overhead cost of power and fuel were pushed down to the user – the tenant. This allowed the owner to stabilize its cost of operations.

This change in HVAC implementation also provided an environment where efficiency of energy use was controlled by the user. It is also seen as an incentive for energy conservation by many.

As energy costs continue to rise, low-income tenants are looking for help in reducing heating and cooling costs. On the other hand, owners receive incentives to build more efficient units through Qualified Allocation Plan incentives and monetary incentives from government and utility companies. However, the greatest benefit for the owner is the increased rent to offset the cost of these improvements.

This is a win – win situation, where the owner can provide a more economically stable environment for tenant utility costs, which in turn provides lower turnover and a more stable revenue base for the project.

UHC believes that utility allowances in tax credit projects should be measurable and real. This serves the tenant, but also rewards developers who provide more energy efficient housing.

UHC has several comments regarding the proposed regulations:

1. **UHC strongly supports the proposed change:**

   The proposed changes incorporate a policy where, "An Agency may also use the actual utility company usage data and rates for the building." This will provide utility cost data that is appropriate for those living in the building.

   This is important from two perspectives: (i) it provides 'real' utility allowances for the owner and the tenant, and (ii) this policy gives a measurable incentive for the developer / project owner to construct or improve energy efficiency in Section 42 buildings.

2. **Regarding the exclusive use of the "HUD Utility Schedule Model" and "RECS"**

   The proposed models do a very good job. However, by articulating a specific model, this may create regulatory barriers in the future if improved models become accepted. Language should be added to allow for such changes or use of other models that are acceptable to the industry without creating the need for another regulatory change.

3. **Proposed delay in implementing new utility allowances for newly placed-in-service projects**

   The apartment industry and its financial partners understand that the period of initial lease-up is the most vulnerable period in a project's life-cycle. This proposed change enhances the stabilization of these projects and the low-income households they serve. This is an important change to the regulations.

   However, what utility allowance will a project use in applying for the credits and during the initial period of operation before survey data can produce an accurate allowance? Please see Item 4 below.

4. **Use of design based modeling software before a utility survey is possible**

   New construction and rehabilitation Housing Credit applications should not be limited to utility allowance calculations based on a survey model. This is not reasonable where the existing housing stock has not caught up to the current level of energy efficient design.

With over 100 energy enhancements that can be applied to a housing project's design to improve energy efficiency, utility allowances will be unique to each project or building. If a developer cannot apply a fair utility allowance, this becomes a disincentive to provide lower rents in the application.

Language should be added allowing the use of generally accepted design-based usage modeling software, such as the Energy Star rating system with usage calculations adopted by the Department of Energy. ENERGY STAR baseline calculations are calculated by an independent certified ENERGY STAR rater (using the REM 12.41 2007 software or more current version) or RESNET's equivalent model to create each unit's usage and utility allowance baseline.

After the project is in operation for at least one year, the project owner would be required to utilize one of the other usage calculation methods articulated in the regulation.

5. **A threshold should be established before requiring a new utility study**

HUD uses a 10% minimum change to trigger issuing a new utility allowance. However, HUD still requires a full study to establish the level of change, which is a monetary burden to Housing Credit projects and agencies.

UHC proposes, because of the expense burden required to obtain a valid survey, that a threshold be established based on published increases in utility rates that exceed a stipulated percentage, say 10%. This should be marked from the last issued utility allowance change.

There are independent utility rate sources available to determine if this threshold has been exceeded.

Several Examples include:

In most states, all publicly traded or privately owned utility companies must submit a notice to the applicable regulatory body and obtain approval before a rate change can be implemented.

There may be states where specific utilities have no regulators (e.g., co-operatives and municipalities). These utility companies will usually publish either a public notice or notify users in writing of any rate changes at least 30 days in advance.

Heating oil and propane prices are market driven in most states. These prices are measurable and are readily available from numerous public and private sources.

6. **<u>Other utility usage measurements</u>**

The apartment industry is adapting to the need to conserve water and the resultant sewer expenses. In the future, recycling and trash expenses in apartment projects may also come into play. Usage metering/measurement has been more common in market rate housing projects.

UHC believes that an open approach to these estimations would be advisable, including the services of an independent engineer to measure usage/cost. Housing Finance Agencies should be allowed to work with project owners to develop other fair estimates for these utility costs.

In most cases, water and sewer charges are either metered or a flat rate is applied and rents are reduced by a corresponding amount to foster conservation. Agencies should oversee these tenant utility costs and determine if they are reasonable, especially when rents are below the maximum allowable rent to prevent abuses.