



WASHINGTON STATE
HOUSING FINANCE COMMISSION

REG-128274-03

August 27, 2007

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH

SEP 6 2007 Karen Miller
Chair

Mr. Kim Herman
Executive Director

Internal Revenue Service
CC:PA:LPD:PR (REG-128274-03), Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Section 42 Utility Allowance Regulations update

I have read with great interest the proposed rules and new options for estimating annual utility costs for Section 42 LIHTC financed properties and have discussed these changes with colleagues in Washington and several other states. Owners, managers and housing finance agencies have been hoping for practical changes that will benefit this critical piece of the LIHTC program and we are excited to see that the IRS has published draft changes for comment.

As you know, Section 42 LIHTC property owners must limit rents to no more than 60% of the Area Median Gross Income (AMGI) based on Income Limit numbers published annually by HUD. Owners must include the cost of all resident paid utilities in the gross rent charged. To do this, they must obtain annual utility cost estimates for buildings in their Section 42 affordable housing property. Owners may obtain annual estimates from Public Housing Authorities that have jurisdiction for a particular area or they may obtain an estimate from the local utility company based on buildings with similar size and construction to buildings in the property.

Problem with current Utility Allowance estimate methods

Public Housing Authority published allowances often do not reflect actual usage of LIHTC properties. This is because they base costs on an average that includes older, energy inefficient properties that skew the costs upward. As a result, owners are forced to use high utility amounts and adjust rent accordingly. In recent years, published AMGI Income and Rent Limits have increased slowly, if at all, in many areas across the country, while utility costs have increased dramatically. This has resulted in owners needing to lower rents to remain under the gross rent limit – resulting in the potential for serious negative cash flow issues that affect the long-term viability of an LIHTC property.

Owners have turned to utility company estimates, which have been problematic as well. Owners must gather extensive data that demonstrates the energy efficiency of their buildings, then obtain letters from utility companies endorsing the rates. Many utility companies have complained and even refused to issue letters because they do not have the staff to review owner submissions.

Solutions

I believe the IRS proposals to allow state housing finance agencies to review estimates is a good alternative to a difficult problem, but present a new administrative burden for states to implement.



In general, state agencies do not have the staff to review utility estimates, nor do we wish to hire staff to do this function – as this would require that we pass that cost on to the owner in the way of higher fees. To succeed, this entire process must instead be based on certifications from the owner or, certifications from independent contractors - approved by the agency, that all figures are accurate.

The proposed regulations seem to offer three distinct options: Agency estimate based on a number of factors considered; Agency estimate based on actual data and rates; and the new HUD Utility Schedule Model.

The owner is ultimately responsible for ensuring their LIHTC properties remain in compliance with Section 42 requirements. States do have significant oversight and reporting responsibilities in this program, but the owner remains responsible. I suggest that the language of the proposed regulations be changed to reiterate that the Owner is responsible for ensuring and certifying the accuracy of estimates. If the language stays as proposed, I believe many states would be hesitant to implement the changes or would be forced to charge high administrative costs that would allow hiring additional staff, simply to review owner submissions.

I am recommending the following changes to the proposed regulations. I have bolded proposed language below beginning with section (C) "Agency Estimate" on page 33705.

(C) *Agency Estimate*. Change to "**Owner Estimates**". ...building owner may **provide**...The estimate **provided by the Owner must accurately reflect** per unit cost of utilities for units of similar...The **Owner** estimate may be **provided** at any time during...In establishing an accurate estimate...**the Owner (or independent private contractor approved by Agency)**...

An Agency may also **approve an Owner estimate based on actual utility company usage data for a twelve month period covering the most recent calendar year. Actual data must be based on all units continuously occupied during the calendar year.**

The Owner must certify to the Agency the accuracy of any estimate.

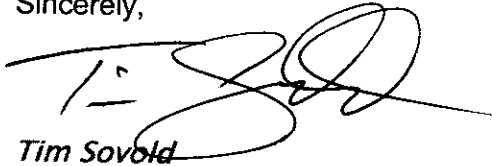
(D) *HUD Utility Schedule Model*. A building owner who chooses..., **using data for a twelve month period covering the most recent calendar year...over the building and must certify accuracy of all numbers.**

(c) *Changes in applicable utility allowance*. If at any time... rent-restricted units. **New rates must be implemented within 90 days after publishing of HUD Income Limits, but in no case later than June 30th of any year.....90 days after the date of published HUD Income Limits. Owners wishing to utilize Owner Estimates or the HUD Utility Schedule Model must provide all data to the Agency no later than February 15th of any calendar year. Agencies will inform owners whether their proposed rates are approved by March 30th of any calendar year in which they receive an estimate. Owners must implement new rates within 90 days of HUD published Income Limits and in no case later than June 30th of the calendar year. Owner Estimates and HUD Model may only be used after one full year of occupancy and one full year after the building is Placed-in-service for tax credits. (strike all of the language about 90 percent and first credit year).**

(2) *Annual Review*. A building owner must review (~~strike~~ "at least")...

In summary, I would like to emphasize that current language would add a significant administrative burden to state agency staff that agree to implement the Agency Estimate option. Unless agencies are able to rely on owner and contractor certifications as to accuracy of data, the cost we would need to charge for this is significant and, in Washington State, would require us to hire one full-time person to do just this. States should maintain an oversight position and the ability to deny an owner's submission based on incomplete information but this should be done as an audit vs. an actual full review and certification of each owners annual submission. Thank you again for the opportunity to comment on this important regulation change.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Sovold', with a stylized flourish extending to the right.

Tim Sovold

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cc. Jack Malgeri, IRS
Grace Robertson, IRS