

Final Regulations for LIHTC Utility Allowance Released

The IRS released final regulations that amend the utility allowances regulations concerning the low-income housing tax credit (LIHTC) to provide new options for estimating tenant utility costs. The final regulations affect owners of low-income housing projects who claim the credit, the residents in those low-income housing projects, and the state and local housing credit agencies that administer the credit. IREM has previously reviewed this issue with the U.S. Department of Treasury.

If the cost of any utility (other than telephone, cable television or Internet) for a residential rental unit is paid directly by the resident and not by the owner of the building, the gross rent for that unit includes the applicable utility allowance. The amendment extends the choice in applicable utility allowances to other buildings. Previously, the choice was limited to buildings assisted by the U.S. Department of Agriculture's Rural Housing Service (RHS), buildings with RHS assisted tenants and buildings regulated by HUD. The new regulations allow owners of LIHTC buildings that are neither RHS assisted nor HUD regulated, and in which no tenant in the building receives RHS tenant assistance, to choose from one of the following options when determining the applicable utility allowance:

1. Public housing authority (PHA) utility allowance.
2. The local utility company estimate.
3. Agency estimate—a building owner may obtain a utility estimate for each unit in the building from the agency that has jurisdiction over the building, provided that the agency agrees to provide the estimate. Costs incurred in obtaining the estimate are borne by the building owner.
4. HUD utility schedule mode—a building owner must calculate a utility estimate using the model available on the LIHTC Web site.
5. Energy consumption mode—a building owner may calculate utility estimates using an energy, water, sewage, consumption and analysis model.

New Federal Law Sets Standard For Pool And Spa Safety

Apartment and condominium managers and owners will soon be affected by a law that creates a new federal standard for swimming pool and drain covers. The recently signed Virginia Graeme Baker Pool and Safety Act defines "public pool and spa" as swimming pools and spas that are open exclusively to members of an organization and their guests; residents of a multi-unit apartment complex or residential real estate development; or other multi-family residential area. **The law goes into effect on December 19.**

Each public pool and spa must be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard. In addition, each public pool and spa with a single main drain must be equipped with one or more of the following devices or systems designed to prevent entrapment by pool or spa drains: safety vacuum release system, suction-limiting system, gravity draining system, automatic pump shut-off system, drain disablement or other systems determined by the Consumer Product Safety Commission. Violators will be subject to a civil penalty of up to \$5,000 for each violation.

For more information about the act, visit www.irem.org/publicpolicy and click on the October edition of "Legislative Bulletin."



Regional and State Standards Reduce Greenhouse Gas Emissions

Scientists believe climate change is a result of greenhouse gases, which trap heat in the atmosphere. Some greenhouse gases, such as carbon dioxide, occur naturally and are emitted to the atmosphere through natural processes and human activities, while others are created and emitted solely through human activities. According to the U.S. Environmental Protection Agency (EPA), commercial buildings account for 18 percent of our nation's greenhouse gas emissions.

In recent years, public interest in climate change has increased dramatically; this has led to an increase in related legislation. Recognizing the serious issues related to global warming, IREM supports the development of voluntary standards for reducing greenhouse gas emissions.

One option for reducing pollution and greenhouse gas emissions is a program called emissions trading, or "cap and trade." Under this approach, a government agency will typically set a limit on the amount of pollutants a company or organization can emit. Each company will be allocated a number of credits equal to its limit. Companies that reduce their emissions below the threshold can then sell or trade their credits to companies that exceed the cap.

Providing an economic incentive, in the form of credits, would encourage energy-efficiency improvements and assist in paying for those upgrades. IREM supports market-based incentives for energy efficiency. Further, IREM supports federal funding of a cost/benefit analysis and research into the feasibility of an emissions trading program for the real estate industry.

Other notable developments include:

- **Regional Initiatives.** The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort by 10 Northeast and Mid-Atlantic states to design a regional cap and trade program covering carbon dioxide emissions from power

plants in the region. RGGI seeks to implement the first mandatory U.S. cap and trade program for carbon dioxide (CO₂) that caps emissions of CO₂ from power plants and allows sources to trade emissions allowances. The program will begin by capping emissions at current levels in 2009, then reducing emissions 10 percent by 2019. In the future, the program may be extended to include other sources of greenhouse gas emissions, and greenhouse gases other than CO₂.

- **State Laws.** Massachusetts Gov. Deval Patrick recently signed the Global Warming Solutions Act into law. The act requires the state to reduce its greenhouse gas emissions at least 80 percent below 1990 levels by 2050. In implementing its plan for statewide greenhouse gas emissions limits, Massachusetts and its agencies must promulgate regulations that reduce energy use, increase efficiency and encourage renewable sources of energy in the buildings, transportation and energy generation sectors.

Connecticut has enacted a law that sets a statewide greenhouse gas emissions reduction target of 10 percent below 1990 levels by 2020. In addition, the law requires an 80 percent greenhouse gas reduction below 2001 levels by 2050, unless the federal government or the RGGI intervenes.

This past summer, the Wisconsin Task Force on Global Warming released its final report with recommendations for the state to address climate change and reduce its use of fossil fuels. The task force has recommended reducing greenhouse gas emissions to 2005 levels by 2014, a 22 percent reduction below 2005 levels by 2022 and a 75 percent reduction below 2005 levels by 2050. To achieve those ends, the task force has made several policy recommendations, including a federal or regional cap and trade program.

Housing and Economic Recovery Act Signed into Law

The "Housing and Economic Recovery Act of 2008," H.R. 3221, was signed into law by President Bush on July 26. The law has three provisions of interest to commercial real estate professionals.

First, the law provides for the development of a national afford-

able housing trust fund that will be funded by a percentage of the profits from government sponsored enterprises (GSEs). The trust fund will cover costs of any defaulted loans in Federal Housing Administration (FHA) foreclosure program. Later on, the trust fund will be used

for the development of affordable housing. Second, the Low Income Housing Tax Credit (LIHTC) program will be modernized to make it more efficient. Lastly, the law provides \$4 billion in neighborhood revitalization funds for communities to purchase foreclosed homes.

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