

# Understanding Conflicting Compliance Requirements with Multiple Subsidiaries: Utility Allowances

NCSHA 2019 HFA Institute

**Stephanie Naquin**

Multifamily Compliance

Novogradac & Company LLP

Stephanie.naquin@novoco.com

January 17, 2019

[www.novoco.com](http://www.novoco.com)



# Low Income Housing Tax Credit Program (LIHTC)

- IRC §42(g)(2)(B)(ii)

**(B) Gross rent**

For purposes of subparagraph (A), gross rent-

(i) does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii) includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii) does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services, and

(iv) does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949.

- Treasury Regulation §1.42-10

# Tax Exempt Bonds (Bonds)

- IRC §142(d)(4)(C)(ii)(II)

**(C) Definitions applicable to subparagraph (B)**

For purposes of subparagraph (B)-

**(i) Low-income unit**

The term "low-income unit" means any unit which is required to be occupied by individuals who meet the applicable income limit.

**(ii) Gross rent**

The term "gross rent" includes-

(I) any payment under section 8 of the United States Housing Act of 1937, and

(II) any utility allowance determined by the Secretary after taking into account such determinations under such section 8.

# HOME Program

- 24 CFR Part 92- §92.252(d)

(d) *Initial rent schedule and utility allowances.* (1) The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone) and update the allowances annually. The participating jurisdiction must use the HUD Utility Schedule Model or otherwise determine the utility allowance for the project based on the type of utilities used at the project.

- HOMEfires - Vol. 13 No. 2, May 2016

# National Housing Trust Fund (NHTF)

- 24 CFR Part 93- §93.302(c)

***(c) Initial rent schedule and utility allowance.***

**(1) The grantee must establish maximum monthly allowances for utilities and services (excluding telephone, television, and Internet service).**

**(2) The grantee must annually review and approve rents proposed by the owner for HTF units. For all units for which the tenant is paying utilities, the grantee must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities.**

# HUD Programs

- **Section 8 Project Based**
  - 24 CFR Part 245- §245.416
  - HUD Multifamily Notice H-2015-04
- **Housing Choice Voucher (HCV)**
  - 24 CFR Part 982- §982.517
- **Rental Assistance Demonstration (RAD)**
  - Follows Section 8 project-based vouchers (PBV) or Section 8 project based rental assistance (PBRA) depending on activity

# Annual Review Requirements

## LIHTC/Bond

- PHA Method- implement within 90 days rent due after new allowance is made available
- Alternate Methods- once a calendar year

## HOME/NHTF

- Review and update annually

## HUD Programs

- Review annually and required to revise if change  $\geq 10\%$

# How Does This Impact Your Monitoring?

- **Treasury Regulation §1.42-10(b)(3)**

(3) Buildings regulated by the Department of Housing and Urban Development. If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are regulated by HUD (HUD-regulated buildings), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

- **What does this mean?**



# Disclaimer

Novogradac & Company LLP (“Novogradac”) is the copyright owner of this slide deck. Novogradac is making the slide deck and accompanying presentation (collectively, the “Materials”) available to attendees and/or viewers of the NCSHA 2019 HFA Institute conference as a general learning opportunity and not as a substitute for professional advice. As a condition precedent for accessing the Materials, you agree to the terms of this disclaimer. You agree not to make business or financial decisions based solely on the Materials and you agree that we are not responsible for business or tax decisions made by you based on the information provided in the Materials. Other than as permitted under the Fair Use Doctrine of US copyright law, you may not copy, cite or distribute the Materials, in part or in whole, without the prior written consent of an authorized officer of Novogradac. All rights reserved 2019 by Novogradac & Company LLP. Novogradac & Company LLP is a registered trademark of Novogradac.