

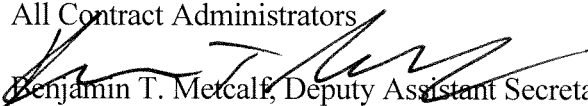


OFFICE OF HOUSING

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

JAN 12 2015

MEMORANDUM FOR: All Multifamily Regional Center Directors
All Multifamily Hub Directors
All Multifamily Program Center Directors
All Contract Administrators

FROM: 
Benjamin T. Metcalf, Deputy Assistant Secretary for Multifamily
Housing Programs, HT

SUBJECT: Occupancy Protections for HUD-Assisted Households in Properties
with Low-Income Housing Tax Credits

This memorandum provides guidance on tenancy protections for households when owners participate in both a HUD-assisted program (e.g., Project-Based Section 8, Section 236, Section 202) and Low-Income Housing Tax Credits (LIHTCs). This communication expands upon guidance currently published in regulations, HUD Handbook 4350.3, REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*, and the lease agreement signed by the owner and tenant.

This clarifying guidance is provided in response to reports that some owners may be attempting to terminate the tenancy of current HUD-assisted tenants (usually project-based Section 8) who do not meet LIHTC eligibility guidelines. For example, this may be the result of the HUD-assisted tenant having income in excess of the LIHTC eligibility level. An owner may only terminate tenancy in limited circumstances as prescribed by HUD regulations and by the lease, and must follow HUD and state/local procedures. Terminations for reasons other than those permitted by HUD are prohibited. The lease agreement details the grounds for termination of tenancy, which do not include failure to meet LIHTC requirements, including LIHTC-specific income and student eligibility rules.

This restriction also covers any proposed termination for criminal activity, which generally is limited to specified activity during the term of the lease or where an owner discovers there was fraud in the application process. Owners may conduct criminal background checks on existing tenants at recertification for lease enforcement or eviction, if permitted by house rules or any legally adopted changes to them, pursuant to HUD Handbook 4350.3, Ch. 8. However, if this practice constitutes a change to the existing house rules, owners must first notify tenants who have completed their initial lease terms, 30 days prior to implementation, of the modifications to the house rules. Notification is accomplished by forwarding a copy of the revised house rules to existing tenants. For those tenants who have not yet completed their initial lease terms, the owner must provide 60 days notice, prior to the end of their lease terms, of the change in the house rules.

Should an assisted household become over-income and no longer eligible to receive a HUD subsidy, i.e., the owner determines through the annual or an interim recertification that the tenant now has the ability to pay the full contract rent or market rent, the owner will terminate the

assistance to the tenant. However, in accordance with the lease agreement, the tenant retains all other rights under the lease, including the right to occupy the unit.

In many cases, owners of LIHTC properties have offered incentives to HUD-eligible households who become over-income for LIHTC or do not meet another LIHTC requirement, to move voluntarily. Owners may do so as long as the incentives are not paid from Section 8 or FHA project funds. In such cases, owners should first inform tenants in writing that they have the option of remaining in occupancy as HUD-assisted tenants under the terms of their lease, in order to ensure that the choice of moving with incentives is truly voluntary.

If you have any questions regarding this memorandum, please contact Kate Brennan at Catherine.M.Brennan@hud.gov.