



# Novogradac Journal of Tax Credits

News, Analysis and Commentary On Affordable Housing, Community Development and Renewable Energy Tax Credits

November 2015 • Volume VI • Issue XI

Published by Novogradac & Company LLP

## Can LIHTC Property Owners Offer Tenants Incentives to Leave HUD, LIHTC Properties

JIEYI CUI, CPA

NOVOGRADAC & COMPANY LLP

**Q**uestion: Can low-income housing tax credit (LIHTC) property owners offer monetary incentives to U.S. Department of Housing and Urban Development- (HUD-) assisted tenants for them to voluntarily terminate tenancy?

**A**nswer: Yes. LIHTC property owners can offer monetary incentives to HUD-assisted tenants for them to voluntarily terminate tenancy.

According to HUD, public housing properties in the United States have a \$26 billion nationwide backlog of deferred maintenance. Developments that participate in both HUD-assisted program (e.g., project-based Section 8, Section 236 and Section 202) and LIHTCs need to meet compliance requirements for both programs.

What if a current HUD-assisted tenant does not meet the LIHTC eligibility requirement in order to claim tax credits? For example, a HUD-assisted tenant is over the LIHTC income limit at the time of the acquisition and rehabilitation of the property or a HUD-assisted tenant is considered as a full-time student household for LIHTC. HUD issued a memorandum, dated Jan. 12, 2015, which clarified that, "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."

Offering LIHTC-ineligible tenants moving services, offering them other apartments in communities that the property owner manages and where the tenants might qualify or offering cash in exchange to leaving the property are some of the possible incentives for the ineligible tenants to move from a property voluntarily.

If a tenant does not agree to move out or relocate, even though incentives are provided, tenancy of HUD-assisted tenants cannot be involuntarily terminated just because they don't meet LIHTC requirements. The HUD memo specified that "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."

The memo further clarified that, "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

continued on page 2

continued from page 1

tenant retains all other rights under the lease, including the right to occupy the unit.”

In conclusion, HUD-assisted tenants who become ineligible for HUD subsidy or are ineligible for LIHTC still have the right of tenancy. The property owners can

encourage tenants to leave the property voluntarily with monetary incentives after they are notified of their option to stay. ❖

---

*This article first appeared in the November 2015 issue of the Novogradac Journal of Tax Credits.*

*© Novogradac & Company LLP 2015 - All Rights Reserved*

*Notice pursuant to IRS regulations: Any U.S. federal tax advice contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any advice expressed in this article is limited to the federal tax issues addressed in it. Additional issues may exist outside the limited scope of any advice provided – any such advice does not consider or provide a conclusion with respect to any additional issues. Taxpayers contemplating undertaking a transaction should seek advice based on their particular circumstances.*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.novoco.com](http://www.novoco.com).*

## EDITORIAL BOARD

PUBLISHER

**Michael J. Novogradac, CPA**

EDITORIAL DIRECTOR

**Alex Ruiz**

TECHNICAL EDITORS

**Michael G. Morrison, CPA**

**James R. Kroger, CPA**

**Owen P. Gray, CPA**

**Thomas Boccia, CPA**

**Daniel J. Smith, CPA**

## COPY

ASSIGNMENT EDITOR

**Brad Stanhope**

SENIOR WRITER

**Teresa Garcia**

STAFF WRITER

**Mark O'Meara**

EDITORIAL ASSISTANT

**Elizabeth Orfin**

CONTRIBUTING WRITERS

**Thomas Boccia**

**Jieyi Cui**

**Lawrence R. Kulig**

**Peter Lawrence**

**Forrest Milder**

**Ryan Rieger**

**John Tess**

**Jason Watkins**

## ART

CARTOGRAPHER

**David R. Grubman**

PRODUCTION

**Alexandra Louie**

**James Matuszak**

**Jesse Barredo**

## CONTACT

CORRESPONDENCE AND EDITORIAL SUBMISSIONS

**Alex Ruiz**

**alex.ruiz@novoco.com**

**415.356.8088**

ADVERTISING INQUIRIES

**Carol Hough**

**carol.hough@novoco.com**

**415.356.8040**

EDITORIAL MATERIAL IN THIS PUBLICATION IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED OTHERWISE.

ADVICE AND INTERPRETATION REGARDING THE LOW-INCOME HOUSING TAX CREDIT OR ANY OTHER MATERIAL COVERED IN THIS PUBLICATION CAN ONLY BE OBTAINED FROM YOUR TAX ADVISOR.

## ADVISORY BOARD

### LOW-INCOME HOUSING TAX CREDITS

**Bud Clarke**

BOSTON FINANCIAL INVESTMENT MANAGEMENT

**Jana Cohen Barbe**

DENTONS

**Tom Dixon**

BOSTON CAPITAL

**Rick Edson**

HOUSING CAPITAL ADVISORS INC.

**Richard Gerwitz**

CITI COMMUNITY CAPITAL

**Rochelle Lento**

DYKEMA GOSSETT PLLC

**John Lisella**

U.S. BANCORP COMMUNITY DEV. CORP.

**Philip Melton**

BELLWETHER ENTERPRISE

**Thomas Morton**

PILLSBURY WINTHROP SHAW PITTMAN LLP

**Mary Tingerthal**

MINNESOTA HOUSING FINANCE AGENCY

**Rob Wasserman**

U.S. BANCORP COMMUNITY DEV. CORP.

### PROPERTY COMPLIANCE

**Michael Kotin**

KAY KAY REALTY

**Michael Snowden**

HIGHRIDGE COSTA HOUSING PARTNERS

**Gianna Solari**

SOLARI ENTERPRISES INC.

**Kimberly Taylor**

HOUSING DEVELOPMENT CENTER

### HOUSING AND URBAN DEVELOPMENT

**Flynnan Janisse**

RAINBOW HOUSING

**Ray Landry**

DAVIS-PENN MORTGAGE CO.

**Denise Muha**

NATIONAL LEASED HOUSING ASSOCIATION

**Monica Sussman**

NIXON PEABODY LLP

### NEW MARKETS TAX CREDITS

**Frank Altman**

COMMUNITY REINVESTMENT FUND

**Merrill Hoopengardner**

ADVANTAGE CAPITAL

**Scott Lindquist**

DENTONS

**Matthew Philpott**

U.S. BANCORP COMMUNITY DEV. CORP.

**Matthew Reilein**

JPMORGAN CHASE BANK NA

**Ruth Sparrow**

FUTURES UNLIMITED LAW PC

**Elaine DiPietro**

ENTERPRISE COMMUNITY INVESTMENT INC.

### HISTORIC TAX CREDITS

**Jason Korb**

CAPSTONE COMMUNITIES

**John Leith-Tetrault**

NATIONAL TRUST COMM. INVESTMENT CORP.

**Bill MacRostie**

MACROSTIE HISTORIC ADVISORS LLC

**John Tess**

HERITAGE CONSULTING GROUP

### RENEWABLE ENERGY TAX CREDITS

**Bill Bush**

BORREGO SOLAR

**Ben Cook**

SOLARCITY CORPORATION

**Jim Howard**

DUDLEY VENTURES

**Forrest Milder**

NIXON PEABODY LLP

© Novogradac & Company LLP

2015 All rights reserved.

ISSN 2152-646X