



M E M O R A N D U M

TO: Owners and Management Agents of Assisted Multifamily Properties
FROM: Daphne Wells, Program Specialist *Daphne Wells*
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DATE: July 18, 2012
RE: HUD Releases Updated Bed Bug and Infestation Guidance

INTRODUCTION

HUD has updated its guidance to address infestations of bed bugs, insects and other vermin at assisted multifamily properties. The guidance in Notice H 2012-5 “Guidelines on Addressing Infestations in HUD-insured and Assisted Multifamily Housing” supersedes the previous bed bug guidance in Notice H 2011-20. The Notice provides information and references to best practices regarding the prevention and control of infestations, and confirms existing program requirements.

HIGHLIGHTS OF MAJOR CHANGES

1. The updated Notice expands its scope from bed bugs to include all manner of infestations.
2. Section III of the Notice clarifies those programs to which the guidance applies.
3. Section IV of the Notice now includes additional guidance on the level of tenant cooperation and involvement in reporting.
4. Section V no longer provides specific instructions and timeframes for addressing infestations and takes a more reasonable approach, allowing the O/As to establish their own process for response and treatment.
5. A new Section VI was added that allows O/As to use operating funds, if available, to pay for activities to prevent and/or treat infestations, in addition to the project resources previously identified. In addition, tenants may now be reimbursed for the cost of additional expenses to the household, such as the purchase of new furniture or clothing, although HUD rental assistance payments may not be used for this purpose. O/As may now request tenants to pay the costs of infestation treatment, similar to other tenant-caused damages. This was expressly prohibited under Notice H 2011-20.
6. Section VII now allows the O/A to deny or terminate tenancy for causes related to infestations. This was expressly prohibited under the previous Notice. Also, O/As may now include lease provisions that require tenant participation in preventative treatment after initial move-in, and may use operating funds for inspections and treatment, if available. This section also warns that any provisions of a pest Addendum, including tenant payment of damages from infestation, must not conflict with the Family Model Lease designed for each subsidy program, if applicable. For

all O/As with their own lease forms that have been approved by MSHDA as Contract Administrator, or lease forms that are not required to be approved, those forms would instead be applicable.

7. The entire Section VII on Tenant Rights and Responsibilities contained in the previous Notice was eliminated, providing O/As with more flexibility to design their own screening and response process.
8. Section VIII was modified to clarify the process for responding to REAC inspection findings relating to infestations.

RECOMMENDATIONS

We urge all O/As to develop clear guidelines for the property manager in conducting inspections and treating infestations, to implement revisions to their Tenant Selection criteria that will permit the denial of tenancy for a history of infestation, and to add a pest addendum to their leases that will allow the O/A to establish the tenant's responsibilities relating to inspections and treatment. As pointed out by HUD in the updated Notice, however, all O/As must comply with the requirements of the HUD Model Lease (if applicable), HUD Handbook 4350.3 and state and local landlord-tenant laws relating to lease terminations, damages, etc. Both HUD and the IRS (with respect to projects financed with the low income housing tax credit) do not permit tenancy to be terminated except for good cause.

Although HUD will now permit O/As to require tenants to pay the costs of treatment, we do not recommend that this be done without careful review of the specific circumstances. Not only are the populations of federally subsidized developments unlikely to have the means to pay these costs, which can be significant, due to the pandemic nature of bed bug infestations, fault is often difficult if not impossible to ascertain. As pointed out in the letter submitted to Carol Galante at HUD by the Housing Justice Network (available at http://nlihc.org/sites/default/files/HJN_Bed_Bug_Ltr_5-31-12.pdf), penalizing tenants will only have the undesired effect of suppressing voluntary reporting activity.