



c/o National Housing Law Project
703 Market Street, Suite 2000
San Francisco, CA 94103
(415) 546-7000; Fax: (415) 546-7007

May 31, 2012

The Honorable Carol J. Galante
Acting Assistant Secretary for Housing
Federal Housing Administration Commissioner
United States Department of Housing and Urban Development
451 7th St., S.W.
Room 9100
Washington, D.C. 20410-2000

Sent by electronic mail to:
Carol.J.Galante@hud.gov
Secretary.Donovan@hud.gov
Marie.D.Head@hud.gov
Sandra.Henriquez@hud.gov

Re: Notice H 2012-5, Guidelines on Addressing Infestations in Multifamily Housing

Dear Ms. Galante:

The Housing Justice Network (HJN) writes to highlight major concerns we have regarding HUD's recently modified guidelines on addressing infestations in HUD-insured and assisted multifamily housing, outlined in Notice H 2012-5. On April 23, 2012, HUD issued Notice H 2012-5, Guidelines on Addressing Infestations in HUD-insured and Assisted Multifamily Housing ("New Notice"),¹ which superseded Notice 2011-20, Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing ("Prior Notice").²

HJN members are advocates with civil legal services organizations and organizations advocating for the housing rights of low-income households. We are very concerned that the New Notice omitted several guidelines, present in the Prior Notice, that provided important protections for tenants in HUD multifamily housing.³ For the reasons cited below, we recommend that HUD rescind the New Notice and reinstate the Prior Notice.

The New Notice does not carry over the Prior Notice's guidance on:

- prohibiting owners and management agents (O/As) from denying tenancy to a potential resident based on prior experience with bedbugs infestation;⁴
- prohibiting O/As from giving a residential preference to a tenant based on a response to a question regarding prior exposure to bedbugs;⁵

¹ Guidelines on Addressing Infestations in HUD-insured and Assisted Multifamily Housing, Notice H 2012-5 (April 23, 2012).

² Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing, H 2011-20 (Aug. 16, 2011).

³ These omissions further created large discrepancies between the guidelines on how to address bedbugs in public housing versus multifamily housing. Compare Guidelines on Addressing Infestations, *supra* note 1, with Guidelines on Bedbug Control and Prevention in Public Housing, PIH-2012-17 (Feb. 28, 2012).

⁴ Guidelines on Bed Bug Control and Prevention, *supra* note 2, at 4-5.

⁵ *Id.* at 5.

- providing timeframes in which O/As must contact a tenant regarding a report of bedbugs (24 hours of the report), and when inspections and treatments should occur (3 calendar days of tenant’s report and 5 days of inspection, respectively);⁶ and
- prohibiting O/As from charging tenants for the cost of the treatment effort.⁷

Furthermore, the New Notice eliminates Section “VII. Tenant Rights and Responsibilities,” which had highlighted the importance of tenant’s rights and clearly outlined what tenants should expect from O/As.

Instead, the New Notice indicates that

- O/As may “pursue remedies provided in the lease agreement and in accordance with state and local law” and “tak[e] action to deny tenancy or remove residents for causes related to infestations.” In seeking remedies for damages or noncompliance, O/As may also have proposed lease addenda so long as they do not conflict with the Family Model Lease.⁸
- upon a tenant’s report of infestations, O/As should “endeavor to take appropriate action within a reasonable time”⁹

In addition, Notice H 2012-5 does NOT provide guidance on who pays for the cost of treating infestations.

As such, the new guidelines allow O/As to penalize applicants and tenants of multifamily housing due to prior and current experiences with infestations for which they may not be responsible. Specifically, the New Notice allows O/As to deny applicants for past experiences with pests or evict tenants for current infestations.¹⁰ They further permit O/As to charge tenants for the cost of treating infestations so long as it does not conflict with provisions in HUD’s Family Model Lease.¹¹ In addition, the vagueness of the guidelines on the timing issue creates uncertainty as to what responsibilities, if any, O/As have to residents once tenants report infestations.¹²

The New Notice is baffling and troublesome for a few reasons. First, given the drastic eliminations of tenant protections, it is inexplicable as to why HUD did not, at minimum, provide a chance for tenants and advocates to weigh in on the new guidelines via a notice-and-comment process, before issuing the New Notice. This fact is particularly disturbing since the new guidelines can have financially debilitating consequences for families. Low-income tenants experiencing bedbug infestations through no fault of their own already incur substantial expenses bagging and laundering bedding and clothing as well as buying mattress bags. By opening the door for O/As to charge tenants for expensive infestations treatments, HUD will force many tenants to decide between paying for treatment bills or paying for rent. In most cases, tenants will not be able to pay for the treatments at all. For example, recently, a HJN advocate reported that his client, a tenant in HUD-assisted multifamily housing, was sent a \$613 bill by the management company for treating bedbugs. At the time, the tenant paid \$25 in rent and did not have any income.

⁶ *Id.* at 3, 4.

⁷ *Id.* at 4-5 (“An Owner may not charge a tenant to cover the cost of bed bug treatment...The tenant will not be expected to contribute to the cost of the treatment effort.”)

⁸ Guidelines on Addressing Infestations, *supra* note 1, at 5-6.

⁹ *Id.* at 4.

¹⁰ *Id.* at 4-5.

¹¹ *Id.*

¹² *See id.* at 4.

It is further unclear why, in light of potential resources available to O/As, HUD is allowing O/As to shift the financial burden of paying for treatments onto tenants. According to Notice H 2012-5, O/As may get reimbursed by HUD for controlling infestations, and the HUD offices can release funds from reserves or residual receipts accounts for replacement.¹³ For assisted housing projects, O/As also may be able to increase the pest control line item in their operating budget.¹⁴

Second, the New Notice contradicts the science and recommendations presented by federal agencies regarding bedbugs. The Environmental Protection Agency (EPA) and the Center for Disease Control (CDC) have indicated in a joint statement that controlling bedbugs in multifamily homes can be more difficult than in single-family homes because bedbugs easily and frequently travel between units through no fault of the occupants.¹⁵ Therefore, attempts to assign blame and disputes over responsibility for the cost of treatment can impede control efforts.¹⁶ By allowing O/As to evict and potentially to charge tenants, HUD is permitting O/As to blame and stigmatize residents for infestations and generating disputes about who should pay for treatment efforts.

Third, despite emphasis on the important role of tenants in eradicating pests, the new guidelines do not engender cooperation between residents and management. The EPA and CDC stated that controlling bedbugs in multifamily housing requires heightened cooperation and diligence from both property managers and residents.¹⁷ HUD itself mentions in the current notice that tenants are “the first line of defense” against infestations and should “immediately report the suspicion of infestations in housing units or other areas of the property.”¹⁸ However, experience on the ground has shown that even with adequate tenant protections in place, residents are ashamed and reluctant to report bedbugs to management. As a result, managers convene meetings to educate tenants about bedbugs and encourage them to report infestations by assuring residents that they will not be charged for treatments. This experience tells us that policies forcing residents to pay for infestation treatment or, even worse, evicting them because of the problem will not encourage tenants to report infestations to management.¹⁹ In fact, these policies work against O/As as tenants wait longer to make reports, leading to faster degradation of housing quality and higher treatment costs.²⁰

Fourth, guidelines that punish tenants for reporting pests can promote the spread of certain infestations, such as bedbugs. Our experience has shown that penalizing policies can encourage tenants to self-treat by using ineffective methods like pest bombs, which do not kill bedbugs and cause the pests to disperse into other units. In addition, tenants who may be evicted for not paying for treatment costs will carry the bugs into other building units, creating a new home base in which to spread. Unless O/As treat the affected units, new tenants of existing apartments will also become infected. Despite these real concerns, the New Notice does not seem to require O/As to treat the infestations once tenants move out or to warn incoming tenants of the problem.

Fifth, the authority that the New Notice gives O/As to “pursue remedies” against tenants is vague and misleading. Long-established principles about O/A responsibility for property maintenance indicate that before residents can be financially liable for infestation control costs, O/As

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CDC & EPA, JOINT STATEMENT ON BED BUG CONTROL IN THE UNITED STATES (2010), at 3.

¹⁶ *See id.* at 2-3.

¹⁷ *Id.* at 4.

¹⁸ Guidelines on Addressing Infestations, *supra* note 1, at 3.

¹⁹ *See* NATIONAL CENTER FOR HEALTHY HOUSING, WHAT’S WORKING FOR BED BUG RESEARCH AND THE REALITIES OF IMPLEMENTATION 37 (2010), at 23-25. This report is a well-respected comprehensive overview of best practices for responding to bedbugs in multifamily housing.

²⁰ *See id.* (one case study indicated that a policy requiring tenants in Section 8 property to pay for bedbug treatment did not work because residents did not report infestations knowing they would be financially responsible for treatment).

must conclusively prove that tenants were responsible for the infestations in the first place. In the context of bedbugs, proving causation is extremely difficult and, in many cases, impossible. However, the New Notice references Model Lease language about tenant responsibility for damages ("carelessness, misuse, and neglect")²¹ that does not accurately reflect the realities and science of these kinds of infestations. As such, there is a legitimate fear that O/As will manipulate this language to compel wrongly residents to pay the costs of bedbug control and pursue other adverse action against them.

Sixth, we are concerned about the impact that the New Notice will have on state and local laws currently providing tenant protections for dealing with infestations in multifamily housing. As written, the New Notice may preempt local infestation laws that protect tenants because such laws contradict the federal guidelines. In addition, we are deeply troubled by the possibility that the New Notice may create a new basis for eviction of tenants that is not presently permitted by lease provisions, state and local law or the Family Model Lease. We are further uncertain about how such a basis might interfere with tenants' local just-cause eviction protections.

Finally, the New Notice disregards the hard work done by local Multifamily Hubs to address how best to handle the bedbug crisis. In 2011, as a result of a surge of complaints about bad practices, lack of information, and poor protection for tenants impacted by bedbugs, the HUD Chicago Multifamily Hub and Ohio Multifamily Hub each issued memorandum for regional HUD owners and agents.²² Working with tenant groups and community organizations, the directors of the Hubs released guidelines stating that tenants were not solely responsible for introducing bedbugs and, therefore, affected tenants should not be stigmatized.²³ Moreover, the heart of the memoranda stressed that tenants should be encouraged – never penalized – to report bedbugs in their units.²⁴

Given the aforementioned concerns, we urge HUD to withdraw Notice H 2012-5 and reinstate the Prior Notice. If appropriate, tenants and advocates would welcome the opportunity to meet with HUD to discuss what strategies have and have not worked in the context of addressing infestations. If you have any questions, please feel free to contact Karlo Ng, National Housing Law Project, 703 Market Street, Suite 2000, San Francisco, California, 94103, kng@nhlp.org.

On behalf of the Housing Justice Network:

Marcia Rosen
Executive Director
National Housing Law Project
San Francisco, CA

Charlotte Delgado
President
National Alliance of HUD Tenants
Boston, MA

²¹See Guidelines on Addressing Infestations, *supra* note 1, at 5, 6; HUD Model Lease for Subsidized Programs, Form HUD-90105a ¶ 11 (Dec. 2007).

²²Memorandum from William J. Graves, Director, Ohio Multifamily Hub to Ohio Multifamily Owners and Management Agents (July 21, 2011); Memorandum from Edward J. Hinsberger, Director, Chicago Multifamily HUB to Owners and Agents (Mar. 15, 2011).

²³ See *id.*

²⁴ See *id.*

Sheila Crowley
President and CEO
National Low Income Housing Coalition
Washington, DC

Kate Walz
Director of Housing Justice
Sargent Shriver National Center on Poverty Law
Chicago, IL

Advocates for Basic Legal Equality, Inc.
Dayton, OH

Doran J. Porter
President/CEO
Affordable Housing and Homeless Alliance
Kaneohe, Hawaii

Omar P. Calimbas
Senior Staff Attorney
Asian Law Caucus
Member of Asian American Center for Advancing Justice
San Francisco, CA

Dathan J. Young
Staff Attorney
Blue Ridge Legal Services, Inc.
Harrisonburg, VA

John J. Bauters
Director of Housing Law
Cabrini Green Legal Aid
Chicago, IL

Zorayda Moreira-Smith
Staff Attorney
CASA de Maryland, Inc.

Larry Gross
Executive Director
Coalition for Economic Survival
Los Angeles, CA

Bill Faith
Executive Director
Coalition on Homelessness and Housing in Ohio
Columbus, OH

Anne-Marie Mokritsky-Martin
Colorado Cross-Disability Coalition

Richard Tenenbaum
Connecticut Legal Services
Bridgeport, CT

Paula Pearlman
Executive Director
Disability Rights Legal Center
Los Angeles, CA

Michael L. Hanley
Senior Attorney
Empire Justice Center
Rochester, NY

Laura Ramos
President
Everyone for Accessible Community Housing of New Jersey
Clinton, NJ

Christine L. Allamanno
Staff Attorney
Gulfcoast Legal Services, Inc.
St. Petersburg, FL

Beth Kodluboy
Executive Director
HOME Line
Minneapolis, Minnesota

Jeffrey G. Haynie
Senior Staff Attorney
Jacksonville Area Legal Aid, Inc.
Jacksonville, FL

Kasey R. Daniel
Managing Attorney
Lawyer Referral for the Elderly Program
Albuquerque, NM

Gregory L. Countess
Assistant Director of Advocacy for Housing & Economic Development
Legal Aid Bureau, Inc.
Baltimore, MD

Marcheta Lee Gillam
Senior Attorney
Legal Aid Society of Southwest Ohio, LLC
Cincinnati, OH

Raphael Podolsky
Legal Assistance Resource Center of Connecticut, Inc.
Hartford, CT

Ronald V. Minionis
Managing Attorney – Housing/Consumer Practice Group
Legal Services of Northern Virginia
Fairfax, VA

Robert F. Gillett
Executive Director
Legal Services of South Central Michigan
Ann Arbor, MI

Marla Y. Newman
Executive Director
Louisiana Housing Alliance

William Pryor
Chairperson
Massachusetts Alliance of HUD Tenants

John Bartlett
Executive Director
Metropolitan Tenants Organization
Chicago, IL

James Schaafsma
Housing Attorney
Michigan Poverty Law Program
Ann Arbor, MI

Dorinda L. Wider
Staff Attorney
Mid-Minnesota Legal Assistance
Minneapolis, MN

Joseph V. Maskovyak
Staff Attorney
Ohio Poverty Law Center
Columbus, OH

Susie Shannon
Executive Director
Poverty Matters
Los Angeles, CA

Debra Gardner
Legal Director
Public Justice Center
Baltimore, MD

New York State Tenants & Neighbors

Jonathan Grant
Executive Director
Tenants Union of Washington State
Seattle, WA

Alice Basey
President
Texas Tenants' Union
Dallas, TX

Christie Marra
Housing Law Attorney
Virginia Poverty Law Center, Inc.
Richmond, VA

Patricia Mullahy Fugere, Esq.
Executive Director
Washington Legal Clinic for the Homeless
Washington, DC

Navneet Grewal
Staff Attorney
Western Center on Law and Poverty
Los Angeles, CA

Cora Hayes
Residents of Public Housing in Richmond Against Mass Evictions
Richmond, VA

Valerie Burchand
President
Sarasota Housing Authority Agency-wide Resident Council
Sarasota, FL

cc: Shaun Donovan, Secretary of Housing & Urban Development
Marie Head, Deputy Assistant Secretary for Multifamily Housing
Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing