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HUD Notice: What to Do When the Bed Bugs Bite

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On August 16, the U.S. Department of Housing and Urban Development (HUD) issued Notice 2011-20 containing guidance for handling bed bug infestations. While technically limited to HUD-insured, HUD-held direct loan, Section 202, Project-Based Rental Assistance Contracts and properties with HUD use agreements, it is likely that the same standards will be applied to properties financed through other affordable housing programs, including the low-income housing tax credit (LIHTC).

In the notice, HUD states that bed bugs have become a “serious problem” throughout the country, noting that the Environmental Protection Agency now considers bed bugs a pest of “significant health importance.” The bugs have not yet been shown to spread disease; however, they do bite. The reason bed bugs have spread in the last few years is not fully known. Experts suspect that it is the result of a combination of factors including greater international travel, changes in permitted pesticides, and increased resistance of bed bugs to available chemical treatments.

HUD’s primary focus, it seems, is one of education. Clearly, the better that management is trained in detection and treatment techniques, the greater the likelihood that a single infestation can be kept localized. HUD further provides that the additional costs of remediation can be placed in annual operating budgets and/or be taken from replacement reserves. There are also provisions for obtaining advances when no reserves are available.

When it comes to dealing with an actual infestation, Notice 2011-20 seems to be rather favorable for residents. On the positive side:

- ♦ Owners may inquire as to prior exposure to bed bugs and may (at owner’s expense) offer to inspect the resident’s furniture before the resident moves into the unit.
- ♦ Owners may require the non-chemical treatment of furniture prior to move-in.
- ♦ Owners may advise existing residents with an infestation that treatment may take time to schedule and, once commenced, may take time to resolve. This statement appears to imply that residents may not deem the presence of bed bugs to be an event sufficient to constitute a landlord breach (thereby permitting the termination of the lease agreement).



On the flip side:

- ♦ Owners may not refuse or deny tenancy to a potential resident on the basis of the resident having experienced a prior bed bug infestation.
- ♦ Owners may not refuse or deny tenancy to a potential resident who has an acknowledged prior bed bug infestation if the tenant refuses the voluntary offer to have their furniture and chattel inspected.
- ♦ Owners may not charge residents for any costs relating to bed bug treatment, regardless of how the infestation occurred, or when (and how) it was reported/discovered.

Presumably, owners may not refuse or deny tenancy to a potential resident who has experienced a prior bed bug infestation.

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tion even if the prior landlord reports a failure to cooperate with the treatment process. Owners may not give or deny residential preference to any resident based upon prior exposure to bed bugs.

HUD also graciously permits an owner to provide additional services to the residents at their own expense, including offering (but not requiring the use of) protective tools (such as bed covers, climb-up interceptors and double-sided tape) to safeguard against recurrences.

The notice also provides for an expedited timeframe for dealing with reports of infestation as follows:

Within 24 hours after learning of a possible infestation.	Provide resident with information about bed bugs. Provide resident with available measures the resident may take prior to an inspection.
Within 24 hours after learning of a possible infestation.	Issue a 48-hour notice of intent to enter for the purpose of bed bug inspection the impacted unit as well as each unit immediately above, below and adjacent (on both sides).
Within 3 calendar days after learning of a possible infestation.	Complete inspection of impacted unit as well as each unit immediately above, below and adjacent, preferably by a licensed pest control service.
Within 5 calendar days after inspection if bed bugs are detected.	Commence treatment on all affected units.

It has been suggested that Notice 2011-20 lacks sufficient pith as it relates to handling residents who do not cooperate with the remediation process. Although the notice indicates that residents are "strongly encouraged to report suspicion of bed bugs," and also to "cooperate with treatment efforts," the notice does not provide much recourse to an owner when dealing with a non-cooperative resident.

The issue of cooperation is not related solely to residents who refuse to permit management access to the unit. The more common problem relates to treatment efforts on the resident's chattel. The owner is required to treat the unit, including carpeting, drapes, wallpaper and the like. However, ownership is not required to reimburse a resident for the cost of new furniture (particularly mattresses), cleaning clothes, or other cleaning.

Every published treatment regimen for bed bugs requires that soft goods also be treated in some fashion. There are a variety of methods currently being touted on the market; what they all have in common is that the treatment plan be applied not just to the unit, but to all household belongings. If a resident fails to treat his personal property, an owner's efforts will in all likelihood be unsuccessful. Without the ability to enforce resident cooperation, one can expect a never-ending and terribly expensive vicious circle.

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In Notice 2011-20, HUD made it a point to assert that bed bug infestation was not a socio-economic issue, an indicator of poor sanitation, or other reason for stigma. While the goal to de-stigmatize the problem is valuable as is placing with the owner the primary onus for treatment, bed bugs are very difficult to eradicate. Currently there is only one approved product on the market with residual effect. This chemical – known as Phantom – cannot be used on mattresses, clothing and other personal belongings. As such, cooperation by the resident is imperative. Notice 2011-20 clearly needs follow-up provisions to address recalcitrant residents. Until then, the policy may have, well, a bug or two in it. ❖

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