

## **Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing**

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### **HUD Notice H 2011-20 “Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing”**

#### **Background**

Reports of bed bug infestations have increased dramatically over the last few years. The explosion in the bed bug population has caused problems nationwide.

Bed bugs are considered a pest of significant public health importance by the Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC). Although current scientific research has not produced evidence that bed bugs have the ability to transmit diseases, these insects are a nuisance that bite, causing itching and possible allergic reactions in some people. The EPA believes that the resurgence of bed bugs is associated with greater international and domestic travel, lack of knowledge regarding the complex measures needed to prevent and control bed bugs, changes in pesticide availability and technology, and increased resistance of bed bugs to available pesticides.

Bed bugs can be found anywhere: airports, retail stores, movie theaters, restaurants, and homes. Most famously, several well known retail stores and movie theaters in New York City were shutdown to eliminate bed bug infestations. It is important to note that bed bugs are not an indicator of poor sanitation; however, excess clutter can provide them more places to hide, making early detection and targeted control difficult.

Infestations have also proven to be a difficult and costly issue for multifamily rental properties. According to many NAHMA members, not only the infested unit but the surrounding units need to be treated when bed bugs are discovered in multifamily housing. Usually, units must undergo multiple, costly treatments in order to fully eradicate a bed bug infestation.

In response to this growing and expensive problem, HUD sought to develop guidance on best practices and owner/tenant responsibilities for curbing bed bug infestations. HUD is a participating agency in the Federal Bed Bug Workgroup, which includes officials from the U.S.

Environmental Protection Agency, U.S. Department of Agriculture, Department of Housing and Urban Development, Department of Defense, National Institutes of Health, and Centers for Disease Control and Prevention.

Prior to release of HUD's Notice H 2011-20 in August, several HUB offices released guidance which applied to their regions. These included:

- A memorandum issued March 15, 2011 by the Chicago HUB:  
<https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbmxiZW RidWdyZXNvdXJjZXN8Z3g6YTNmMDFjOGJjMTI3MTg0;>
- Informal guidance released by the Detroit HUB on May 23:  
<http://www.mmam.net/mmam/BedBugGuidance5-23-11.pdf>; and
- A July 21 Memorandum released by the Columbus Multifamily HUB:  
<http://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbmxiZW RidWdyZXNvdXJjZXN8Z3g6M2JiNjc4YTg1MGRjMzA0Mw.>

These memoranda were superseded by HUD's Notice H 2011-20.

## Summary

HUD issued Notice H 2011-20 "Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing" on August 19, 2011. The notice provides information and references to best practices regarding the prevention and control of bed bug infestations. It also provides guidance on the rights and responsibilities of HUD, O/As, and tenants with regard to bed bug infestations. The notice is applicable to all multifamily properties with active HUD-insured, HUD-held or Direct Loans, Section 202 or 811 Capital Advances, Project-based Rental Assistance contracts and/or HUD Use Agreements. A copy may be found here:  
<http://portal.hud.gov/hudportal/documents/huddoc?id=11-20hsgn.pdf>.

In the notice, HUD "strongly encourages" O/As to develop an Integrated Pest Management (IPM) plan for dealing with bed bug infestations. There is a guide for preparing an IPM at [www.stoppests.org](http://www.stoppests.org).

Owners are financially responsible for bedbug inspections and treatments on the property. HUD has approved the following financial resources for bed bug inspections and treatments:

- Approved releases from the Reserve for Replacement or Residual Receipts;
- Advances (loan without interest) when no reserves are available; and
- Increased pest control line item for properties that receive budget-based rents.

According to this guidance, owners may not charge tenants to cover the cost of bed bug treatments.

The notice also lays out specific timeframes for O/As to respond to bedbug reports from tenants, inspect units, schedule treatment, and respond to reports of bedbug infestations noted on REAC inspection reports. O/As must:

- Contact the tenant after the report of a possible infestation (within 24 hours);
- Arrange for inspection of the unit and its adjacent units by trained staff or a qualified third party (within 3 calendar days of the initial report);
- Schedule treatment of infested units (within 5 days of the inspection, but the Notice acknowledges it may take longer depending on the form of treatment);
- Respond to Multifamily's letter in response to the REAC physical inspection report and;
- Describe what actions were taken or will be taken to eradicate the infestation (within 5 days of the date of the follow-up letter from the HUD field office); and
- Inform HUD when the problem has been completely eradicated.

In addition, there are certain policies that O/As may and may not implement to prevent bedbug infestations. Specifically, O/As:

- May offer protective tools to residents to help safeguard properties from recurrences such as bed covers, climb-up interceptors, etc.;
- May voluntarily offer (at the property's expense) to inspect tenants' furniture before move-in;
- May require the non-chemical treatment of furniture upon tenant move-in;
- May offer, *but may not require*, non-chemical treatment or inspection of used furniture and/or non-chemical treatment of luggage before it is unpacked when a tenant returns from a trip;
- May not deny tenancy to a potential resident on the basis of the tenant having experienced a prior bed bug infestation; and
- May not give residential preference to any tenant based on a response to a question regarding prior exposure to bed bugs.

Finally, HUD's bed bug guidance clarifies that "the tenant will not be reimbursed the cost of any additional expense to the household, such as purchase of new furniture, clothing or cleaning services."

### **Positive Aspects**

NAHMA agrees that HUD, owners, management agents and residents must work together to prevent and eradicate bedbug infestations. The experience of our members supports research findings that Integrated Pest Management (IPM) is an effective approach to addressing bedbug infestations. IPM includes, but is not limited to, educating residents and staff, developing a protocol to prevent infestations, using treatment methods which anticipate the life cycle of bed bugs, and following up appropriately. HUD correctly notes that inspections of adjacent units should follow reports of possible infestation, and that multiple treatments are usually necessary to eradicate bedbugs. Likewise, we concur with HUD's statement, "The length, method and

extent of the treatment will depend on the severity and complexity of the infestation, and the level of cooperation of the residents.”

## **NAHMA Concerns**

NAHMA takes issue with aspects of the guidance which will impose substantial costs on the properties, limit options to prevent infestations and fail to provide property staff with sufficient leverage to ensure resident cooperation with inspection and treatment efforts. NAHMA has expressed these concerns to HUD.

We understand that one of the driving factors behind this guidance was to clarify that bed bug treatment is an eligible project expense, and to make additional property funds available for eradication. However, NAHMA has heard serious concerns from O/As that despite good intentions, using reserves, residual receipts, etc., does not present a viable solution for properties either because funding in these accounts is insufficient to deal with this problem, or because the funds could not be easily replenished. NAHMA has reminded HUD, “reserves for properties restructured under Mark-to-Market were not underwritten to account for the enormous increases in pest control expenses which result from bed bug infestations.” However, HUD has yet to propose additional revenue increases to cover the cost of treatments or to reimburse the reserves for replacement account.

It is important to note that treatment costs are significant. For example, a leading academic expert in bedbug research found that pest management expenses on an infested property can exceed \$100,000 in a single year. Other researchers have noted bedbug treatment expenses have cost properties anywhere from \$20,000 to \$50,000. NAHMA members have informed us that the cost of treatments vary widely to completely eradicate a single infestation at a property, based on geographic location, the type of treatment, and severity of the infestation. This becomes even more expensive when tenants refuse to comply with treatments and/or reinfestations occur. These costs place a serious financial hardship on an affordable property, particularly when it is already operating on thin budgetary margins.

The notice also eliminates reasonable options for the housing provider to protect the property from infestations caused by used furniture. NAHMA believes this prohibition undermines the goals of the guidance. Second-hand furniture—especially used mattresses and sofas—is one of the leading causes of bedbug infestation. While the notice permits O/As to require non-chemical treatment of furniture at move-in, it expressly states O/As “may offer, **but may not require** [emphasis added], non-chemical treatment or inspection of used furniture and/or non-chemical treatment of luggage before it is unpacked when a tenant returns from a trip. Tenants may voluntarily use such services.” A number of O/As have found treatment of used furniture to be a cost-effective preventative measure. The guidance itself states, “The best approach to bed bug management is to prevent an infestation from occurring in the first place.” Bed bugs hiding in the folds of material can escape visual detection, especially if the infestation is in the early stages. We are disappointed that HUD would prohibit O/As from taking preventative measures which protect the tenant, his/her neighbors and the property from infestations. Likewise, our concern must be viewed in the context of current financial realities. The notice places financial

responsibility for bedbug treatment on the properties at a time when there is pressure on rents (due to low OCAFs, tight federal budgets, etc) and few ways to increase revenue.

Finally, it is important to recognize that most tenants do cooperate with bedbug inspection and treatment efforts. Nevertheless, when a resident does not fully cooperate with inspection and treatment protocols, they place their neighbors at risk of infestation. For example, one NAHMA member reported:

“[A] resident was given explicit instructions on how to prepare [the] unit [for heat treatment]. The pest control company as well as management went over the required preparations with this resident. Unfortunately the resident then took clothing to another residents unit prior to treatment and brought the clothing back after treatment, without properly drying at 140 degrees to kill the bed bugs. This act resulted in the reinfection of the resident's unit as well as the other tenant's apartment. At the time of the second treatment the pest control company indicated that due to clutter that it would be impossible to effectively treat the unit. The tenant had called the health department, which sent an inspector at the same time as the pest control company was inspecting the unit. The health department then proceeded to give a citation to the tenant to remove the clutter and to bring the unit up to acceptable cleanliness standards. This resident's failure to comply with instructions resulted in another unit becoming infested and more than doubled the cost to treat.”

Several O/As expressed concern to NAHMA that the guidance does not provide sufficient leverage to ensure the necessary level of compliance from tenants who are not willing to cooperate with management's efforts to inspect and /or treat the units. Although the notice states residents are “strongly encouraged to immediately report the suspicion of possible bed bugs in a housing unit or other areas of the property,” and tenants “are expected to cooperate with treatment efforts,” the notice does not provide much recourse for the O/A when a tenant will not cooperate with treatment efforts. Although the notice states O/As may enter units to inspect or treat bedbug infestations “in accordance with the lease,” feedback from NAHMA members suggests the current HUD leases are insufficient to compel cooperation with bedbug prevention and treatment efforts. Likewise, all members who opined on the Notice stated it did not give O/As the tools, authority, or leverage necessary to deal with uncooperative tenants.

Therefore, NAHMA has called on HUD to constructively work with the industry to develop lease addendums that require tenants to:

- Report suspected bedbug infestations in their units;
- Cooperate with inspection and remediation efforts;
- Maintain clean living environments which deter bedbug infestations;
- Comply with protocol for treating and/or disposing of infested items; and
- Face sanctions levied by O/As for failure to comply with provisions of the lease addendum.

## **NAHMA Position**

NAHMA opposes HUD Notice H 2011-20 “Guidelines on Bed Bug Control and Prevention in HUD Insured and Assisted Multifamily Housing” as issued. We urge HUD to suspend the enforcement of this notice, and we ask the Department to work constructively with stakeholders to fix the concerns about costs, prevention and compliance discussed above.

NAHMA will also be working with members and industry colleagues to develop an appropriate lease addendum which addresses bed bug infestations in HUD-assisted properties.