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AUGUST 14, 2020



UPDATE 7.0 — HUD July 31st FAQs provide longer-term encouragement, some permissions

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The Department of Housing and Urban Development (HUD) recently updated its [Frequently Asked Questions \(FAQs\) for subsidized multifamily housing programs](#) to encourage owners to take certain longer-term actions and to address specific issues such as mask-wearing and accounting for enhanced unemployment benefits provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. While there is a lot of encouragement, and there are a few permissions, it is wise for owners and managers to confer with counsel and proceed at their own risk.

Working with residents: Enforcing anti-COVID-19 restrictions

This version of the FAQs focus in part on steps to take to avoid COVID-19 and to respond if a resident contracts COVID-19. There is more emphasis on recommending contacting local authorities in the event a resident is known or suspected to have COVID-19. HUD is neither sanctioning nor prohibiting testing or face coverings, mandatory or otherwise, but noting nothing in the covered federal programs speaks to this or would change requirements or prohibitions under state or local law. HUD advises that if owners want to take mandatory measures that could be enforced as lease violations, they should do so through changes to house rules. Notice 20-12 reminds that house rules should be “within the bounds of common sense” and reminds owners of the 30-day notice (60 days for tenants in their initial lease terms) and other requirements under HUD guidance in the event the owner seeks to change the house rules.

Impact of COVID-19 relief payments on tenant income

HUD updates its FAQs as to how federal CARES Act and other assistance in HUD-subsidized programs—in particular, unemployment assistance—may affect tenant incomes. There are several different types of unemployment benefits provided by the CARES Act, and different rules apply to different benefits. Basically, Federal Pandemic Unemployment Compensation (FPUC) is regarded as temporary income and not included in annual income calculations for purposes of calculating rent subsidies. The FPUC has been the program allowing recipients collecting state unemployment insurance to receive an additional \$600 per week through July 31st. On the other hand, owners must include in income the Pandemic Unemployment Assistance (PUA), the unemployment benefit for self-employed or part-time workers, as well as the Pandemic Emergency

Unemployment Compensation (PEUC), providing a 13-week extension of regular unemployment insurance benefits.

Mortgage forbearance and eviction moratorium

In addition to the well-known 120-day eviction moratorium that expired at the end of July, the CARES Act also included an eviction moratorium on properties that took advantage of its mortgage forbearance provisions. The FAQs point out that where an owner is receiving mortgage forbearance under the CARES Act, an eviction moratorium must be extended to the tenants. The FAQs point out that HUD Notice 20-7 also, by Notice, asserts that it extends any eviction moratorium “so long as the borrower is under forbearance.” As worded by HUD, the forbearance eviction moratorium would also apply where the owner is able to obtain mortgage forbearance outside of the CARES Act.

Oversight

Management Occupancy Reviews (MORs) are resuming, but they do not need to include entering units. The requirement to enter units is suspended until September 30th.

The FAQs note that HUD has generally extended the deadline for filing audits also until September 30. However, this does not apply to audits delinquent as of March 20th. And entities with June 30th year-end file their audits within 90 days.

As for loan production and related inspections, HUD will permit lenders to submit a sampling of units that is less than that prescribed by the MAP Guide until September 30th or sooner if the COVID-19 National Emergency is lifted.

The Notice 20-4 guidance regarding electronic signatures continues, allowing certain electronic signatures, consistent with local laws. Documents converting personal information must be encrypted. Multifamily loan closings must have original signatures, but copies can be scanned and sent electronically.

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