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UPDATE 8.0 — HUD’s October 14 FAQs updates extend certain interim practices, ties in CDC Order, and resumes inspections

By Richard M. Price and Harry J. Kelly

The U.S. Department of Housing and Urban Development (HUD) issued a further update to its [Frequently Asked Questions](#) (FAQs) for subsidized multifamily housing programs to clarify and extend certain interim procedures and tie in the CDC’s Order creating a national eviction moratorium for nonpayment of rent.

HUD and the CDC Order

Effective September 4, the Centers for Disease Control and Prevention (“CDC”) issued a national moratorium prohibiting tenant eviction for nonpayment of rent. We reviewed the basics of this Order in our [blog post](#). The Order applies to all tenants, lessees, or residents, and protections are triggered by the tenant providing the required declaration. The HUD FAQs incorporate certain [additional guidance](#) from the joint CDC, HUD, and other agency joint FAQs about the Order. The FAQs seem to expand the plain meaning of the Order in a few places.

The Order is clear that each adult listed on the lease, rental agreement, or housing contract should complete the declaration. But the FAQs seem to confuse that a bit by adding that in certain circumstances maybe only one person needs to sign the declaration such as for individuals filing a joint tax return.

The Order does not require owners to notify residents about the Order, but in its FAQs, HUD multifamily “strongly encourages” owners and agents to notify their residents and has procedures for documenting notice. The HUD Multifamily FAQs go on to provide that owners should not evict tenants with COVID who “take reasonable precautions not to the disease” on the ground that they may pose a health and safety threat to other residents. Perhaps contradictorily, residents are not required to notify if they have or may have a positive case of COVID-19. And, the HUD FAQs continue to state that if a housing provider finds out about a resident with COVID-19, the provider must communicate the possible COVID-19 exposure to all residents and workers, volunteers, and visitors through placing signs in common areas or by letters to all residents. The FAQs also continue to provide that such notices should attempt to counter potential stigma and discrimination. The housing provider is supposed to maintain the confidentiality of the sick person

as required by the Americans with Disabilities Act, Fair Housing Act, and Health Insurance Portability and Accountability Act, as applicable. However, it is far from clear that any of those laws are applicable on the basis of disability.

Also, a bit less than helpful, HUD does not want any monetary project resources to be spent addressing COVID testing or treatment without prior HUD approval, but temporary use is permitted in common areas, parking lots, and vacant offices by health care service providers for flu shots or COVID-19 testing to residents. But if owners and agents do allow this, they should ensure that their testing site has a clinical laboratory.

CARES Act Forbearance

HUD clarifies that a property under the CARES Act forbearance period is not delinquent or in default. But lenders should report the loan as delinquent or in default after the CARES Act forbearance period ends if the multifamily borrower does not immediately make the loan current, including when the loan is subject to a forbearance and/or repayment agreement extending beyond the expiration of the CARES Act forbearance period. Previously, HUD encouraged such extensions.

Inspections

HUD is resuming physical inspections at this time and owners may start seeing the required 14-day notifications. HUD will prioritize states and localities where inspections are likely to begin, based on the latest COVID-19 public health data from Johns Hopkins University and health risk scoring methodology from the Harvard Global Health Institute. HUD will not approve any extensions where an owner/agent is having difficulty entering units. HUD will again be expecting owners responding to notices of violation to conduct a 100% survey of the property and submit their survey report to HUD.

HUD will extend until December 31, 2020 (or such later date as HUD may determine), to allow HUD staff and HUD contract administrators to conduct on-site MORs, without entering resident units.

Operations

HUD noted that when reviewing tenant income, hazard pay is generally included in income. This may trigger income reexamination.

Production

HUD requires that the Multifamily Accelerated Processing (MAP) valuation and underwriting to be credible. HUD is extending to the end of the year to permit lenders to submit a sampling of units that is less than what is prescribed by the MAP Guide. And the company performing the CNA is provided a rent roll dated the day of the inspection. The underwriter must conduct a site visit, and failing that, it can be performed by an analyst, underwriter trainee, or different MAP-approved underwriter or certain other staff.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Richard M. Price at rprice@nixonpeabody.com or 202-585-8716
- Harry J. Kelly at hkelly@nixonpeabody.com or 202-585-8712