



**U.S. Department of Housing and Urban Development
Office of Multifamily Housing
Region X Multifamily HUB**

May 13, 2008

MEMORANDUM TO: Region X Owners, Managers, Contract Administrators, and HUD Staff

MEMORANDUM FOR:

Owners and Agents of Region X Multifamily Projects Assisted under: Section 8 Project Based Assistance, Rent Supplement, PRAC, PAC, Section 236, Section 221d(3) BMIR, Section 202 (with or without assistance) or Section 811

A handwritten signature in cursive script that reads "Renee D. Greenman".

FROM: Renee' D. Greenman, Director, Region X Multifamily Hub OAHM

SUBJECT: Local Application of Handbook Policy on Fees, Charges other than Rent

This memorandum is for owners of HUD Multifamily project-based assisted properties, as listed above. HUD Handbook 4350.3, REV-1 Chapter 6, section 3 discusses charges which may be eligible, in addition to rent. Local HUD Office approval is required for all fees in addition to rent as evidenced in paragraph 6-21 and section 6-25 F, unless otherwise noted in section 3.

This memo clarifies the Handbook requirements for approvable fees and changes to the HUD model leases and supersedes any other local policy decisions. **These policies will be implemented, effective June 1, 2008.**

Following is a discussion of Region X's policy on typical requested fee charges:

A. No Approval Required:

- **Pet Waste Removal:** Per HUD Handbook 4350.1 REV-1, paragraph 32-14d, the maximum allowed amount is \$5 per occurrence.
- **Late Rent:** The only amount which may be approved is the amount stated in most recent version of the HUD Model Lease for Subsidized Programs, located in Appendix 4 of HUD Handbook 4350.3 REV-1. Please note Late Fees do not apply to all property types. If the owner wants to reiterate the lease provisions in the house rules, no changes may be made to the HUD requirements.

B. Approval Required:

- **Key Replacement:** This fee may not exceed the actual cost to produce the key

replacement. Stating "actual cost" is acceptable in lieu of stating a dollar amount. The inclusion of project labor costs is not considered part of the actual cost. Region X will not require the submission of supporting documents for fees identified in the amount of \$5 or less.

- **Lock-out Fee:**

- During regular business hours, a lock-out fee is generally not approvable. The on-site manager and/or key-holder should be providing lock-out services as a regular cost of doing business for no extra fee. (A locksmith charge is generally not approvable, as the owner is expected to have a spare set of keys on-site.)
- For after-hours or weekend lock-outs, a keyholder or other site staff should typically provide the service at no cost to the tenant. A keyholder expense can be included in the project budget as a regular line item. A Section 8 keyholder can receive a stipend (but not a rent concession) up to \$200 a month. If there is a paid keyholder or manager on site, lockouts would be part of the job requirement, not to be paid extra on a per lock-out basis.
- Region X will only approve lock-out fees if a property can provide justification for not having an on-site manager (for regular office hours) and/or keyholder or other staff (for after regular office hours). If the property does not have an on-site manager or a key-holder, a lockout fee may be approved by the HUD Project Manager, not to exceed the actual cost of providing the service. In this case only fees in excess of \$25 will require submission of documentation with a breakdown of the cost.
- "Nuisance" Fees for excessive lock-outs may not be charged in excess of the actual expense, as outlined above.

- **Insufficient Funds (NSF) Fee:** The tenant may not be charged more than the actual documented bank charge. Region X will not require the submission of documentation for fees in the amount of \$25 or less. Stating "actual cost" is acceptable in lieu of stating a dollar amount, provided the actual cost is limited to the bank charge. Although HUD Handbook 4350.3 REV-1, paragraph 6-25B.2 has a provision for an additional fee for the owner in addition to the bank charge for the second NSF check, as approved by HUD, this Region will not approve an additional fee for the second NSF check. Instead, the owner should require any tenant with an NSF to make future payments via secured funds (i.e. money order, etc.)

- Note: NSF fees cannot be applied to the following programs: 202/8, 202 PAC, 202 PRAC, and Section 811 PRAC projects.

- **Cable fees:** Regulation of cable contracts is detailed in the HUD Management Agent Handbook 4381.5, REV 2, and HUD Notice 96-19. All cable contracts require prior HUD approval. Any fees charged to residents for the provision of cable services may

not be required as a condition of tenancy and may not be included in the rent calculation. However, Region X has given a blanket waiver approval of the Notice requirement for tenants to pay the cable charge to the cable provider directly. Region X will not require an annual review of the cable charge to tenants. However, the owner must ensure that project funds are not used to pay for cable expenses and that tenants are not paying more than they would in the market area. This expense will not be required to be entered onto the Rent Schedule, Form HUD 92458.

- **Optional Unit Transfers (Tenant Requested):** Owners may charge up to \$100 for voluntary, tenant-requested transfers to cover costs related to unit turnover, moving-related wear and tear on the hallways, and inconvenience in updating tenant records. Please note, this expense is not intended to cover normal wear and tear to the initial unit or delayed unit turnover due to aged unit interiors (as they should be addressed by a replacement schedule, regardless of the occupancy turnover.) It is recommended that the owner close out the security deposit on the first unit, deducting any eligible amounts for damage, and start a new one for the new unit. The owner may not charge for required transfers and will generally be required to pay for moving costs for the tenants for reasonable accommodations. (See HUD Handbook 4350.3 REV 1, paragraph 4-4C5 and paragraph 7-16B.)
- **Parking:** Parking fees may be approved only if the project rents were not developed with the parking included in the rent. For insured or formerly insured HUD projects, the original form HUD 2264 will indicate if parking was to be included in rents. Projects subject to a comparable rent cap must have any parking fee reflect consistently in the rent comparability study. LIHTC projects must include the parking within the LIHTC rent.

C. Not Approvable:

- **Lease Violation or "Bad Behavior" Fines:** A fee will not be approved for any action which should more appropriately be dealt with as a lease violation. A ten-day notice to comply or vacate, not a fine, should deal with all lease or house rule violations. This also includes:
 - **Foul Language, Noise, and Failure to Supervise Children:** See HUD Handbook 4350.3 REV-1, paragraph 6-25D.3.
 - **Litter/trash fee:** The house rules should note littering or improperly disposing of trash as a lease violation, with a ten day notice, as opposed to implementing a fine. However, tenants may be charged the actual cost of disposal of items discarded improperly in accordance with applicable fees for damage caused by carelessness, misuse, or neglect in the 4350.3 REV-1, paragraph 6-25C.1 (this may be applicable mostly for large items which do not fit in the trash bins or items requiring hazardous waste disposal).
 - **Fee for Rescheduled Pest Control Services:** The tenant should instead be issued a ten-day comply or vacate notice for not allowing entry with proper notification. If

there are extenuating circumstances, a fee would still not be appropriate.

- **Pet Fee:** No fees may be charged for pets on projects subject to 24 CFR Part 243 (elderly or disabled projects). However, a pet deposit for these projects may be paid, not to exceed \$300 per dwelling (with the initial deposit at the time the pet is brought onto the premises not exceeding \$50 and \$10 a month until paid in full, per HUD Handbook 4350.3 REV-1, paragraph 6-24 and Figure 6-7.) The pet deposit may only be applied to cats and dogs and may not be applied to service animals.
- **Charge for lawn mowing, lawn trimming and weeding, garden tool and equipment replacement, etc.:** Lawn care is typically not a resident responsibility. HUD approval is required for any exceptions.
- **Refundable Key Deposit for additional keys:** Tenants should only be charged the actual cost of replacing a key if lost or stolen. HUD Handbook 4350.3 REV-1 paragraph 6-21 does not allow for deposits other than pet and security deposits, as these can be a hardship to the tenants. The number of keys provided at move-in should accommodate all household members, within reason.
- **Required Unit Transfer Fees:** Unit Transfer fees or moving costs may not be approved for required transfers or reasonable accommodations (See HUD Handbook 4350.3 REV-1 paragraph 4-4 C.5.)
- **Smoke Detector Upkeep Charges or Fines:** Tenants may not be charged for routine smoke detector upkeep and batteries. If tenants are found removing smoke detector batteries, this is more appropriately addressed under a lease or house rule violation.
- **Move-Out Related Cleaning Fees for Normal Wear and Tear:** Owners may not charge tenants for normal wear and tear. The HUD Model Lease HUD Model Lease for Subsidized Programs, as located in Appendix 4 of HUD Handbook 4350.3 REV-1 states that the security deposit may only be used for damage above normal wear and tear. Per HUD Handbook 4350.3 6-29 D.3, "HUD does not provide move-out inspection criteria. It is at the owner's discretion to develop criteria to distinguish between wear-and-tear and damage. If an owner determines that the unit is damaged as a result of tenant abuse or neglect, he/she may use the security deposit to recover repair costs." Additionally, State Landlord Tenant Acts generally require only that the unit be left in the same condition it was rented in and in some cases, prohibit cleaning charges as well (Alaska). Fees for all tenants, regardless of the move-out condition of the unit, such as carpet cleaning fees, non-refundable cleaning fees charged at move-in or requirements for the tenants to procure their own professional cleaning for drapes, carpets etc. will not be approved.
- **Painting:** Extra Painting Charge for "touch-up" within two years of initial occupancy or pro-ration of painting costs to the tenant based on the number of months occupied: Normal wear and tear of units, including minor painting touch-up cannot be charged back to the tenants. Non-routine tenant damage due should be via the damage provisions of the lease.

- **Community Rooms:** Per the HUD Management Agent Handbook, 4381.5, Rev. 2, “in projects subject to budget-based rent reviews, owners/agents may not charge residents for the use of such rooms.” For all other projects, owners may not charge residents or resident organizations a fee if a fee is not typically charged for these facilities. As the Handbook has not been revised since MAHRA, this restriction is interpreted to apply to all projects where the original HUD Loan Regulatory Agreement stipulated budget-based rents (i.e. Sections 236, 202, 811, 221d3, including Preservation projects and projects formerly insured under these Sections and/or Loan Management Set-Aside (LMSA) Section 8.) However, a refundable cleaning deposit may be approved.

D. Other:

- Many owners like to provide tenants with a list of how much different items cost to replace, if damaged. Tenants may only be charged damage on the pro-rated amount of an item, per the remaining useful life. These are not considered fees requiring approval: Owners may only charge actual costs. Management Agents are reminded to ensure that the actual costs are in compliance with the comparative pricing requirements detailed in Section 4 of the Management Certification, form HUD-9839.