



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

MAY 01 2019

MEMORANDUM FOR: Multifamily Regional Directors
Multifamily Satellite Office Directors
Multifamily Owners and Management Agents

FROM: C. Lamar Seats, Deputy Assistant Secretary, Office of Multifamily
Housing Programs, HT

SUBJECT: What to Do When a Project Receives a Zero as a Result of an Owner Refusing to Allow HUD to Inspect

This memorandum provides guidance on what steps a field office must take when a project receives a score of zero because an Owner and/or Management Agent defaulted on its contractual obligation to allow HUD to perform a physical inspection based on the new 14-day notification period. Notice PIH-2019-02(HA) H-2019-04, captioned, "Standardization of REAC Inspection Notification Timelines," was published on February 22, 2019, and it took effect on March 25, 2019. Notice PIH-2019-02(HA) H-2019-04, applies to all projects listed at 24 CFR, part 200, subpart P, §200.853, except for those with FHA insurance listed under §200.853(b). One important exception is that projects insured under 542(b) are subject to the Notice if they have a Section 8 Housing Assistance Payments (HAP) contract.

The Notice states that the following conditions will apply:

- If a POA declines to accept an inspection at the time of initial notification, a presumptive score of "0" (zero) will be recorded but held in abeyance pending the outcome of a second attempt to schedule the inspection.
- If a POA cancels or refuses entry for an inspection scheduled during the initial notification, a presumptive score of "0" (zero) will be recorded but held in abeyance pending the outcome of a second attempt to schedule the inspection.
- If the second attempt results in a successfully completed inspection within seven calendar days of the initial scheduled date, the resulting inspection score shall be recorded.
- If the second attempt does not result in a successfully completed inspection within seven calendar days of the initial scheduled date due to the fault of the POA, the resulting score shall be recorded as "0" (zero) and the POA may be subject to any and all penalties and remedies established through statute, regulation, sub-regulatory policy, grant agreement, or contract.

Among several clarifications and limitations to the above, the Notice also provides that:

- Requests to extend or reschedule an inspection outside of the notification window, such as for any circumstances which may significantly impact the execution of an inspection

or inspection results (e.g., major renovations, significant rehabilitation, fire, etc.), must be submitted by the POA and approved by HUD prior to the proposed date of inspection.

The Office of Multifamily Housing Programs published guidance on when and under what circumstances the Asset Management Director may approve a delay in an inspection in a memorandum dated March 21, 2019 (see attachment). HUD is working to make updates to iREMS so that it can be populated with this special type of "0" on the Physical Inspection List. Until then, Headquarters will notify the Account Executive and the Regional Physical Inspection Coordinator by email of cases when a project receives a zero for not allowing an inspection. When the Account Executive (AE) or Resolution Specialist (RS) receives such an email he or she should:

- Place a Tier 2 Flag on all controlling participants in HUD's Active Partners Participation System (APPS) under Miscellaneous Violation of Business Agreements.
- Issue the attached Notice of Default (NOD) of Contractual Obligation within 15 days of receiving the email notification.
- Ask the Regional Inspection Coordinator to request a new inspection on a date soon after the expiration of the 60-day cure period referenced in the NOD. The Physical Inspection Coordinator will make the request by placing the project on the Re-inspection Request List on SharePoint. The Physical Inspection Coordinator should make a note in the comment section that the project received a score of zero because the owner did not meet its contractual obligation to allow HUD to inspect within the 14-day notification period.
- The AE or RS must also update the Physical Inspection/EH&S Event Tracking Screen to note the date the NOD was issued to the owner and the date the new inspection was ordered. The date the new inspection is ordered should be the date the AE/RS asks the Physical Inspection Coordinator to make the request on SharePoint.
- Notice H-2018-08, captioned, "Servicing projects that Do Not Meet HUD's Physical Condition Standards and Inspection Requirements (PCS&IR) or Fail to Certify That Exigent Health and Safety (EH&S) Deficiencies Have Been Resolved as Required," provides guidance on what the AE or RS must do after a new inspection is conducted and released.

If you have any questions, please contact Brandt Witte at (202) 402-2614 or at Brandt.T.Witte@hud.gov.

**ATTACHMENT A
SAMPLE NOTICE OF DEFAULT OF PROJECT-BASED
SECTION 8 HOUSING ASSISTANCE
PAYMENTS CONTRACT**

[HUD office letterhead with address]

[Date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[Owner's representative name/title]

[Owner's name]

[Owner's address]

SUBJECT: Notice of Default of Project-Based Section 8 Housing Assistance Payments Contract
Project Name: [Project Name]
Project Location: [Project City/Town]
HAP Contract Number: [HAP #]
iREMS Number: [iREMS #]

Dear [Owner's representative name]:

This letter constitutes formal notice ("Notice") by the Secretary of the United States Department of Housing & Urban Development ("HUD") that [Owner name], ("Owner"), owner of [Project Name] ("Project"), is in default of the above-referenced project-based housing assistance payments ("HAP") Contract, as authorized under section 8 of the United States Housing Act of 1937 ("Act"). 42 U.S.C. § 1437f. The owner has defaulted on its obligation to make the property [provide name] available for inspection to determine if the property is decent, safe and sanitary. [We are providing two examples of HAP contract inspection requirements. However, you must check the specific contract, including the original contract, if you are dealing with renewals.] Paragraph 1.7b(2) of the HAP contract provides, the Government shall inspect or cause to be inspected each Contract Unit and related facilities at least annually and at such other times as may be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. The Government shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner of its determination. [Second example], section 2.6(b)(2) of the HAP contract which provides that, the CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually, or as otherwise directed by HUD, and at such other times (including prior to initial occupancy and re-renting of any unit) as may be necessary to ensure that the Owner is meeting its obligation to maintain the units in decent, safe, and sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

On [provide date] the owner was notified that the Real Estate Assessment Center ("REAC"), intended to schedule the property for inspection on [cite date]. On [cite date] ownership refused the inspection. Accordingly, HUD is concerned that ownership has defaulted on its obligation to maintain the property in decent, safe and sanitary condition. The Act requires

that housing assistance payments be made only for contract units occupied by eligible families leasing decent, safe, and sanitary units. 42 U.S.C. § 1437f(c)(4). Pursuant to section [2.5(a)- verify paragraph #] of the HAP Contract, the Owner agrees to maintain and operate the contract units, any unassisted units, and any related facilities (including the provision of any services, maintenance and utilities set forth in the HAP Contract) to provide decent, safe, and sanitary housing. HUD's Physical Condition Standards and Inspection Requirements, which apply to projects subject to a project-based Section 8 HAP Contract, are codified at 24 C.F.R. part 5 subpart G. 24 C.F.R. §§ 5.701(a) and 200.853(a)(1). As a result of the refused inspection, HUD is putting ownership on notice that it may be in default of its obligation to maintain the property in decent, safe and sanitary condition. On this assumption, HUD is providing a notice of default and providing a corrective opportunity.

The Owner shall take the following corrective actions within sixty (60) days of the Owner's receipt of this Notice, unless another timeframe is specified:

1. Provide a copy of this Notice to each of the Project's residents and certify to HUD that it has done so.
2. Conduct a survey of the entire Project, identifying all physical deficiencies.
3. Conduct an inspection to determine any exigent health and safety violations. Within 24 hours provide HUD with this inspection and within three business days provide HUD with a certification that these repairs have been completed. Provide HUD with photographic and payment documentation.
4. Correct all physical deficiencies identified at the Project from the Owner's survey.
5. Execute the enclosed certification that all deficiencies identified at the Project have been corrected and the Project meets HUD's Physical Condition Standards and Inspection Requirements and applicable state and local codes.
6. Submit the completed survey and certification to HUD's Account Executive at the following address:

U.S. Department of Housing and Urban Development
Attention: [Account Executive name], Account Executive
[HUD office address]

7. During the corrective period, please provide HUD with monthly operating statements.
8. Immediately cease and desist all distributions until and unless HUD has determined that the property is in decent, safe and sanitary condition.

HUD will re-inspect the Project to ascertain compliance with the terms of the HAP Contract and with HUD's Physical Condition Standards and Inspection Requirements. If the Owner fails to take the corrective action required herein, the assistance provided under the HAP Contract may be reduced, suspended, or abated, or the HAP Contract may be terminated. Further, HUD may pursue any other remedies provided under the HAP Contract or as otherwise provided by law, including debarment, limited denial of participation and challenges to fraudulent certifications.

Project records reveal that one or more of the Project's buildings was constructed prior to 1978. So that HUD may ensure that the Project is complying with Federal requirements, please follow the directions provided in the enclosed Lead-Based Paint (LBP) Compliance Documentation Instructions. Please submit the requested information and documentation directly

to HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) at the following mailing address or email address within thirty (30) days of your receipt of this letter:

U.S. Department of Housing and Urban Development
Office of Lead Hazard Control and Healthy Homes
ATTN: Director, Programs and Regulatory Support Division
451 7th Street, S.W., Room 8236
Washington, DC 20410-3000
LeadRegulations@hud.gov

After HUD's review of the provided information, you may be contacted by OLHCHH for further documents or information regarding the Project's LBP compliance. Information regarding HUD's LBP rules may be found on HUD's web site at www.hud.gov/healthyhomes. If you have any questions regarding this LBP compliance request, please contact the Programs and Regulatory Support Division at 202-402-7698. Persons with speech or hearing impairments may access this phone number via TTY by calling the Federal Relay Service at (800) 877-8339.]

Based on the failure to permit the inspection, HUD will "flag" the Owner and any other individuals or business entities responsible for the operation of the Project in HUD's Active Partners Performance System (APPS). This flag may adversely affect eligibility for participation in HUD programs under HUD's Previous Participation Certification procedure by constituting a standard for disapproval.

As noted above, your certification that units are decent, safe, and sanitary is a material certification on which HUD relies in making such payments under the HAP Contract. During the corrective action period prescribed in this Notice, you are authorized to make monthly certifications that covered units are decent, safe, and sanitary (which HUD requires for purposes of processing housing assistance payments), provided that you correct the failure to provide decent, safe, and sanitary housing to HUD's satisfaction within the 60-day period. However, thereafter you must ensure that your certification is true and completely accurate. If you wish to request an extension of time, the request must be reviewed by HUD and must contain the following:

- The Owner's completed survey;
- The status of each deficiency from the Owner's survey and the REAC inspection report and, if corrected, the date of correction;
- A plan to repair/correct each of the deficiencies yet to be corrected, including a timeline for each to be corrected; and
- The cost of correcting the deficiencies and source(s) of funding.

However, HUD reserves the right to reject any such request and advises that requests should be for short duration. If the Owner fails to take the necessary corrective action required herein, and the project fails a follow-up inspection at the expiration of the extension period, the assistance provided under the HAP Contract may be reduced, suspended, or abated, or the HAP Contract may be terminated. HUD will also consider the imposition of any civil money penalties that may be required for the correction of the property's physical conditions and may pursue any other remedies provided under the HAP Contract or as otherwise provided by law.

If there are any questions concerning this Notice, please contact [Account Executive name],
Account Executive, at [Account Executive telephone number].

Sincerely,

[Name of signatory]
[Title of signatory]

Enclosures:

PROJECT OWNER'S CERTIFICATION THAT THE PHYSICAL CONDITION OF THE PROJECT IS IN COMPLIANCE WITH HUD CONTRACTS AND THE PHYSICAL CONDITION STANDARDS OF 24 C.F.R. § 5.703

[Name of project owner:] _____ (the "project owner"), the owner of [project name:] _____, [City:] _____, [State:] _____, Project No. _____ (the "project"), by and through its duly authorized representative identified below, hereby certifies that:

1. All physical deficiencies of the project identified in the HUD inspection(s) of the project performed on _____ and the attached project owner's survey of the project performed on _____ have been corrected, and the project is in compliance with the physical condition requirements of all HUD contracts pertaining to the project and the physical condition standards of 24 C.F.R. § 5.703. The term "project" includes all units, common areas, building(s), grounds, and systems.
2. To the best of the project owner's knowledge, the project is in compliance with all state and local codes.
3. All project based-section 8 tenants residing at Project have received HUD's "Notice of Default of HAP Contract" and/or HUD's "Notice of Violation of Regulatory Agreement" dated _____.
4. This certification is made by the project owner and is signed by a duly authorized representative of the project owner, who is so authorized by reason of his/her position as the [State fully relationship between signer of certification and project owner:] _____.

All of the foregoing statements, as well as the date, signature and identifying information of the project owner and the signer that follows, are HEREBY CERTIFIED as true and accurate this _____ day of _____, 20____.

Project Owner:
BY: Signature:
Print Name:

Title:

WARNING: Federal statutes and regulations, including but not limited to 18 U.S.C. §§ 287, 1001, 1010 and 1012; 31 U.S.C. §§ 3729 and 3802; and 24 C.F.R. Parts 24, 28 and 30, provide for criminal, civil or administrative penalties, sanctions or other regulatory actions with respect to

false, fictitious, or fraudulent statements or claims presented in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development.