

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



OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

January 16, 2003

MEMORANDUM FOR: All Owners, Agents and Contract Administrators, Performance
Based Contract Administrators, Rural Housing Service

Beverly J. Miller

FROM: Beverly J. Miller, Director, Office of Multifamily Asset Management

SUBJECT: Properties With Inspection Scores Under 60 Points

The Office of Housing has revised its operating procedures as they relate to properties which receive a physical condition assessment score less than 60 points. The revised procedures concentrate on a specific class of properties and clearly focus attention on the owner and what the owner must do. If the owner cannot or will not improve conditions, then HUD will pursue action(s) to ensure the properties are decent, safe, sanitary, and in good repair.

Field Offices and the Departmental Enforcement Center received instructions to proceed according to these procedures on November 1, 2002.

The administrative handling of properties following the inspection is altered as described below.

Revised Administrative Procedures For Inspections That Score Less Than 60 Total Points

All multifamily property inspections that score below 60 points and are released on or after November 1, 2002, will be referred to the DEC¹. The revised protocol also applies to all PASS property inspection referrals presently in the DEC that are not under a corrective action plan as of November 1, 2002. The revised protocol replaces the following sections in the latest field guidance issued May 24, 2001:

1. Page 3 -- Property Scoring 46 to 59 Points;
2. Page 5 -- Property Scoring 31 to 45 points; and
3. Page 6 -- Property Scoring 30 or Below

¹ Some property owners supplied improvement plans to the field offices between June 1 and November 1. In cases where inspection scores were less than 60 points the field offices will be contacting owners to discuss the property condition, a new inspection and the possible actions by HUD should the new inspection not score above 60 points.

Properties scoring 30 and under will continue to be automatically referred to the appropriate DEC Satellite Office (DEC SO). Properties scoring between 31 and 59 will be electively referred to the DEC by the local field office/Hub.

The Multifamily Hub Director may delay or recall a property referral to the DEC for good cause. In all such cases however, the Hub Director will provide the Director, Headquarters Office of Asset Management a justification for withholding the referral. The Director will approve or disapprove the justification. If disapproved, the Hub Director will refer the case to the DEC. In the intervening period, HUD strongly recommends that the owner move forward with the project survey and correction of all defects noted in the inspection and found by the owner. If a delay or recall is rejected, HUD will not grant additional time for repairs before the new inspection. Additionally, should an owner appeal the inspection results or request a Data Base Adjustment, (DBA), these will be processed immediately. However, no additional time will be allowed. In all cases, the owner must immediately repair or mitigate all Health and Safety conditions and certify to their correction as required by existing procedures. HUD will confirm that the repairs have been made.

Reasonable justification for a delay in referral might include:

- The Hub has decided to terminate Section 8 and relocate tenants with vouchers. The Hub needs additional time to develop a plan based upon local considerations, such as no alternative housing is available for voucher holders.
- The Hub will issue a 21-day foreclosure hearing letter to commence foreclosure proceedings within the next 30 days.
- The owner notified the Hub and provided evidence of its intention to prepay the mortgage within 90 days, and that prepayment has been approved.
- The Hub received an approvable application for transfer of physical assets with sufficient funds to immediately repair the property. The closing will occur and repairs will begin within 90 days.
- The project note is scheduled for the next Note Sale.
- The owner will not renew Section 8 subsidies, has provided all required notices, the contract will expire within 90 days and there is no mortgage insurance.
- The owner notified the Hub and provided evidence of refinancing the mortgage with HUD insurance within the next 90 days. There must be evidence that adequate funds will be escrowed and all repairs completed as part of the transaction.
- The owner provided evidence of a TPA that will close in the very near future.
- The property is in OMHAR for mortgage restructuring which will be completed within the near future.

We must emphasize that in all cases, whether there is an appeal or DBA requested, or other activities that might justify a delay in referral to the DEC, including being in OMHAR, **the owner must immediately repair or mitigate all Health and Safety conditions and certify to their correction as required by existing policy.** HUD will confirm that the repairs have been made.

DEC Procedures Upon Referral

The DEC will pursue action on all referrals made under the revised protocol as one of its top priorities. The DEC Satellite Office (DEC SO) staff have primary responsibility for dealing with the owner on all matters relating to referrals under this revised protocol. Contacts regarding actions taken or contemplated are to be made only to the DEC SO.

DEC SO Analyst Review of REMS and Documents

The analyst will review and become familiar with property data in REMS and with the business agreements executed by the owner. This review will include an analysis of the property's financial condition to enable the DEC SO to assess availability of project funds to complete required repairs. In preparation for discussions with the owner, the DEC SO will prepare a Notice of Violation (NOV) of the Regulatory Agreement and/or Notice of Default of the HAP for failure to repair the property. If the property has been flagged for enforcement of financial violations, or if the review of the file and REMS data reveals other significant non-compliance issues, e.g., diversions of assets, the DEC SO may include such other violations as determined by the DEC SO. If the owner failed to file required financial statements, the DEC SO will include that failure as an additional violation in the NOV. **The NOV letter is to be hand delivered to the owner at the meeting.**²

The DEC SO Meets with the Owner

The DEC SO will contact the owner and arrange a meeting (or conference call), as further described below.

In cases where the owner refuses to meet, either in person or by phone or otherwise shows an unwillingness to cooperate, the DEC SO will issue the Notice of Violation (NOV) letter described above and order a new inspection. If the owner still fails to respond, the DEC SO will send the Hub Director a memorandum, summarizing the actions taken and the status of the NOV. The memorandum will suggest appropriate action(s) to take based on the facts of the case. The Hub Director will pursue all appropriate actions immediately.

If the owner responds to the NOV, then the referral will be handled under the applicable process noted below. However, the next inspection will not be delayed. See actions in cases where the new inspection score is below 60.

The meeting must be arranged and held as soon as possible. The target is **no later than 10 -15 days after inspection release**³. During the discussion with the owner, the DEC SO will inform the owner of the following:

Pertaining to the next inspection:

²If the meeting is by phone, the NOV will be issued in accordance with the terms of the documents.

³ If the meeting or conference call is not held within this time period, HUD will declare the owner unresponsive and proceed accordingly.

- The owner has 60 days from the meeting date before another inspection;
- The owner must certify completion of the repairs no later than 60 days from the meeting date;
- A new inspection will be performed immediately following the 60-day period or upon receipt of the owner's certification, whichever comes first; and
- The owner should take whatever steps he/she deems necessary to assure that all defects cited in the current inspection report are repaired. In addition, the owner should locate and repair all other defects at the property in preparation for the next inspection. The inspection will be a new inspection with a different sample of units.
- If the owner is not confident of its ability to achieve a score of 60 or above, the owner should immediately explore alternatives such as a transfer of the physical asset, immediate application for OMHAR restructuring, prepayment, refinancing, etc.

Pertaining to results of the next inspection:

- If the property scores 60 or above after the inspection, then HUD will resume normal monitoring. In all cases, the new inspection date will become the inspection date of record. HUD expects that any remaining defects cited will be repaired. The next inspection will follow the 3-2-1 standards and occur from 1 to 3 years from the date of the last inspection. HUD may perform an inspection earlier to assure that repairs are completed and that the conditions have not deteriorated.
- Should the property score under 60 however, then HUD will consider the owner in default and will pursue all available remedies. The DEC SO will inform the owner that the Hub Director will be provided recommendations for further actions and/or enforcement. The recommendations will include regulatory and civil actions. The recommendations will go through the Hub Director, for approval by the Director, Headquarters Office of Asset Management.

During the discussions with the DEC SO, the owner may ask for action by HUD to assist in improving the physical plant.

1. The owner may request releases of reserves or residual receipts. If requested, the DEC SO will contact the appropriate MF project manager (PM) regarding approval. The PM will make a recommendation to approve or deny to his/her supervisor. The owner's request must be in writing to the DEC SO and must specify the amount of reserves requested, as well as detail the sources and uses of all funds.
2. The owner may request additional time to complete the required repairs. The DEC SO Director will consider the request and may reject the request or may, in turn, recommend that the Office of Housing agree to the extension. Any extended plan (longer than 60 days) must be recommended by the DEC SO and the Hub Director to the Director, Headquarters Office of Asset Management. Again we emphasize that in all cases, the owner must immediately repair or mitigate all Health and Safety conditions and certify to their correction as required by existing policy. HUD will confirm that the repairs have been made.

In cases 1 and 2 immediately above, the owner should be aware that the “clock” for the new inspection will not stop until/unless an approval is granted on the extension request. **If the request is rejected, HUD will NOT provide additional time** to complete repairs prior to the new inspection. Therefore, while the request is pending the owner should proceed to repair the property.

In any case where the owner decides not to use the time allotted to repair the property, the DEC SO will advise the owner of possible alternatives to foreclosure, such as a transfer of the physical asset, request for OMHAR restructuring, prepayment, refinance, etc. The DEC SO will also inform the owner that the NOV will be issued. If the owner does not respond to the NOV, then the DEC SO will close the referral with its recommendations to MF concerning the appropriate action to be taken to enforce HUD’s rights under the various business agreements, statutes and regulations.

If you have any questions please contact Rodney Rose at 202-708-3944, extension 2503 or, Monique Love at 202-708-3944, extension 2382.