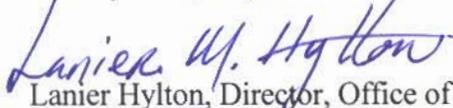




OCT 8 2004

MEMORANDUM FOR: Traditional Contract Administrators and Performance Based Contract Administrators

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

 Lanier W. Hylton, Director, Office of Housing Assistance Contract Administration Oversight, HTC

Subject: Contract Administrator (CA)/Performance Based Contract Administrator (PBCA)
Responsibilities on Projects Referred to the Departmental Enforcement Center (DEC)

The purpose of this memorandum is to emphasize the responsibility and obligation that Contract Administrators (CAs) and Performance Based Contract Administrators (PBCAs) have with respect to subsidized projects referred to the DEC because of unacceptable physical or financial conditions.

Enforcing Owner Compliance by Issuing a Notice of Default of a Housing Assistance Payment (HAP) Contract

On November 1, 2002, Multifamily Housing and the DEC executed a revised protocol to address HUD insured and/or subsidized properties in unacceptable physical condition. Under that protocol (copy attached), Multifamily Housing or the Real Estate Assessment Center (REAC) refers to the DEC properties in unacceptable physical condition, as reflected by the REAC physical inspection report. The protocol requires the DEC to contact the owner and issue a Notice of Regulatory Agreement Violation and, if the property is subsidized, a Notice of HAP Default, to demand corrective action. In most cases, the DEC will issue such notices without obtaining concurrence from the CA or PBCA. However, in some instances, where HUD does not have the authority to issue the Notice of Default, the Department will request your assistance in acting under your Annual Contributions Contract (ACC) to obtain the owner's compliance with its contractual obligation to meet the physical condition standards set forth in HUD regulation 24 C.F.R. §5.703.

CAs and PBCAs will process the DEC's requests for enforcement assistance by signing the Notice of HAP Default upon request. However, if the CA and PBCA have additional information about the property that may impact upon the issuance of a Notice of Default, the PBCA should immediately notify the DEC of that information through the Contract Administrator Oversight Monitor (CAOM) and the CA would deal directly with the Project Manager assigned to the property.

Thus, in those cases where the ACC gives the CA or PBCA exclusive authority to issue a Notice of HAP Default, the DEC will prepare a Notice of HAP Default and forward it to the CA/PBCA for a signature, copying the CAOM, or Project Manager if CA, with the transmittal letter and the notice. The notices require an owner to take the following corrective action within 60 days of the date of receipt of the notice:

1. Conduct a survey identifying the physical deficiencies at the project;
2. Correct the physical deficiencies at the project including, but not limited to, those deficiencies identified in the REAC inspection; and
3. Provide an enclosed certification along with the completed survey to the appropriate HUD office.

The notices also advise the owner that the property will be re-inspected by REAC following the 60-day cure period. Upon re-inspection, if the property inspection report reveals non-compliance with HUD's physical condition standards, the DEC will forward recommendations to Multifamily Hubs and Program Center Directors which may include a recommendation that the PBCA/CA suspend, abate or terminate the subsidy as allowed under the contract

CA and PBCA Procedures on Open DEC referrals

You are also reminded that coordinate with your CAOM or Project Manager before taking any of the following actions when a project has an open referral to the DEC. (The DEC status can be found in REMS.)

1. Conduct Management and Occupancy Reviews
2. Adjustment of Contract Rents
3. Renewal of HAP Contract
4. Follow-up on Results of Physical Inspections

Should you have any questions concerning issues discussed in this memorandum, please contact Deborah Lear, Deputy Director, Office of Housing Assistance Contract Administration Oversight, at (202) 708-0614, ext. 2768.

Attachment

cc: Multifamily Hub Directors
Multifamily Program Center Directors
Contract Administration Oversight Monitors
Multifamily Project Manager
DEC Operations Division Director
DEC Satellite Office Directors
DEC Analysts

**U.S. Department of Housing and Urban Development
Enforcement Protocol concerning Physical Referrals
Office of Housing, Multifamily Housing
Office of General Counsel, Departmental Enforcement Center**

This protocol sets out the responsibilities of the Office of General Counsel, Departmental Enforcement Center (DEC) and the Office of Multifamily Housing (MF) for multifamily housing physical inspection referrals to the DEC. It supersedes prior physical inspection protocols. Both DEC and MF recognize the importance of this initiative and will work together cooperatively to resolve questions and issues that may arise under this protocol. Telecommunication (via email and facsimiles) between the parties is encouraged to expedite handling of these referrals. All parties agree to make timely REMS entries concerning the multifamily properties so that HUD will have a complete and accurate administrative record.

Revised referral procedures

Effective November 1, 2002, all multifamily properties receiving a new Real Estate Assessment Center (REAC) physical inspection score below 60, released on or after November 1, 2002, will be referred to the DEC. This revised procedure does not apply to properties that scored between 31-59 prior to November 1, 2002 and that have not already been referred to the DEC for enforcement action. This revised protocol does however apply to all PASS referrals presently in the DEC that are not under a corrective action plan as of November 1, 2002.

Properties scoring 30 and under will continue to be automatically referred to the appropriate DEC Satellite Office (SO) through the REMS system.¹ Properties scoring between 31 and 59 inclusive, will be referred to the DEC as physical elective referrals. *Within 5 business days of the release of the REAC inspection, the Multifamily Hub must make a Headquarters elective referral in the REMS system, or submit a memorandum justifying withholding the referral to the Director, Office of Asset Management.*²

The Multifamily Hub Director may exercise discretion to withhold based upon good cause. Some examples of good cause include:

- The Hub has decided to terminate Section 8 and relocate tenants and vouchers are necessary and the Hub needs additional time to develop a plan based upon local considerations.
- The Hub expects to issue a 21-day letter to commence foreclosure proceedings within the next 30 days.
- The owner has notified the Hub of its intention to prepay the mortgage within 90 days.

¹ Multifamily, DEC and REAC will work expeditiously to change the current letters that are sent to owners based on differing scores (30 and under, between 31-45, and 46-59) to avoid needless owner confusion about this revised process.

² The memorandum should be in writing until other procedures can be implemented.

- The Hub has received an approvable application for transfer of physical assets to a new owner with sufficient funds to immediately repair the property beginning within 90 days.
- The project note is scheduled for a Note Sale. (In this situation, the MF staff should review the financial statements to determine if there is any ability to offset funds at the note sale.)
- The owner has not renewed Section 8 subsidies and the contract will expire within 90 days and there is no mortgage insurance.
- The owner is in the process of refinancing the mortgage with HUD insurance within the next 90 days, and adequate funds will be escrowed, and repairs will be required as part of the transaction.

Within 5 business days of making the referral of the property to the DEC, MF will provide the DEC with the following documents:³

- All business agreements, including: the Regulatory Agreement, the Section 8 HAP contract(s), the Mortgage, the Note, Use Agreements, and Interest Reduction Payment Agreements, etc.
- Form HUD-2530 for the property owner and management agent, and the date and reasons for flagging the owner or agent in the APPS/2530 system.
- All repair plans executed within the past 12 months and any repair plan that has not been completed.
- All related or essential correspondence between HUD and the owner (and the owner's agent) within the past 12 months.
- All owner responses and certifications that repairs have been completed on the property's most recent corrective action plan or MIO.
- Any documentation of inspections, site visits or management reviews within the past 12 months that are not reflected in REMS *with narrative documentation*. (However, everything should be in REMS.)
- The Project Manager responsible for the project in MF must list any pending requests for the property for rent increases, or other actions.
- A statement from the Project Manager responsible for the project in MF that the data in the REMS system is accurate and current as of the date of the referral.
- A statement from the supervisor that REMS has been reviewed and that the information is accurate and complete. As these properties are physically substandard, their referral is a top priority for the Multifamily Program Center.

DEC procedures upon receiving the new physical referral

The DEC will consider all physical referrals from MF as its top priority work. Although the DEC staff is encouraged to consult and confer with MF staff on these referrals, it is understood that while a physical referral is in the DEC, the DEC will have primary responsibility for dealing with the owner regarding the property's physical condition. If the DEC staff recommends that MF take certain actions regarding a

³ If the DEC SO requests additional information from MF after its initial review, MF agrees to provide the DEC SO with additional documentation within 5 business days of the request.

property's reserve funds (such as release of reserves for replacement or residual receipts), MF agrees to expeditiously process such requests within 5 business days of receiving the owner's application.

Upon receiving the referral in its REMS queue, each DEC SO will immediately assign the referral to an analyst and an attorney. Upon receiving the referral, the analyst will notify the Project Manager responsible for the project in MF of his/her assignment so that the Project Manager will send the applicable documents directly to the analyst's attention.

Abbreviated review of REMS and documents

The DEC SO analyst will review the data contained in the property's REMS database and all documents received from Housing. This review will include an abbreviated analysis of the property's financial condition so that the DEC SO can assess whether project funds are available for repairs.

If the property has also been flagged for enforcement of financial violations, or if the review of the file reveals possible diversions of assets, the DEC SO will strive to include the financial violations in any Notice of Violation (NOV) letter it issues. However, if the review of the financial issues involves a significant resource and time allocation, the DEC SO will not delay the handling of the physical referral while it evaluates the financial matters. If the owner has failed to file required financial statements, the DEC SO will include that failure to file as an additional requirement for the owner to cure. The DEC SO will contact the owner to set up a meeting, as outlined below, to discuss the remediation of the project's physical needs. It is the DEC's policy to use its best efforts to complete these steps no later than 10 business days from receiving the documents from Housing.

If the owner refuses to meet

In cases where the owner refuses to meet, or agree to a phone conference with the DEC SO staff, or otherwise shows an unwillingness to cooperate, the DEC SO should issue a Notice of Violation (NOV) letter without first meeting with the owner. If the owner responds to the NOV, then the referral will be handled under the applicable process noted below. However, if the owner fails to respond within the time set out in the Notice of Violation, the DEC SO will then close the physical referral with a memorandum to the Hub Director. The close out memorandum will suggest the appropriate action for Multifamily to take against the owner. The DEC SO will include a proposed Notice of Default with its close out memorandum to the Hub Director. The Hub Director will be responsible for concurring or nonconcurring with the SO's recommendation. The Hub Director will proceed with the most appropriate option available to adequately deal with the circumstances.

DEC SO meeting with the owner.

SO staff will strive to meet with the owner of the property no later than 15 business days after receiving the documents from Housing.⁴ Prior to the meeting, the analyst will work with the attorney to prepare an NOV letter to be hand delivered to the owner at the meeting.⁵ The NOV will be based solely on the property's substandard condition, unless other violations, such as the owner's failure to file required annual financial statements, or misappropriation of assets are noted in the REMS system and are apparent and can be easily incorporated into the NOV.

At the meeting with the owner, the DEC SO will serve the owner with the NOV. The DEC SO will inform the owner of the following:

- The owner will have 60 days *from the date of the meeting* to repair the property.
- The owner must then certify to the completion of the repairs.
- REAC will then re-inspect the property to determine compliance after the 60-day period or upon owner certification of the completion of repairs, which ever comes first.
- If the property scores 60 or above on the REAC re-inspection, then HUD will accept the score as evidence of the owner's corrective action.
- If the property again scores under 60, however, then the DEC SO will prepare a Notice of Default under the Regulatory Agreement, HAP Contract, or other business agreements, and forward the Notice of Default with its close out memorandum to the Hub Director.

In all cases, the owner should be warned that if the property again scores under 60, that the consequences may include foreclosure or termination of subsidy. If the owner is not confident of its ability to achieve a score of 60 or above, they should immediately explore alternatives such as a transfer of the physical asset, out-year OMHAR restructuring, prepayment, refinancing, etc., to forestall foreclosure or termination of subsidy. Otherwise, they will be subject to enforcement action and/or possible loss of the property or termination of subsidy.

Possible owner responses.

In response, the owner may agree to repair the property within 60 days (with or without any HUD approval for project funds), the owner may refuse to repair the property within 60 days, or the owner may ask for more time to repair the property.

⁴ In situations where numerous referrals are received simultaneously, however, DEC Operations may need to reassign work between Satellite Offices or may otherwise need additional time to evaluate the referral before meeting the owner. The Hub and Program Center should be advised of any such assignments.

⁵Or, if the meeting is by phone, the NOV will be faxed and/or express mailed to the owner.

Owner agrees to repair.

If the owner agrees to repair the property within 60 days and does not seek any action on HUD's part, such as releasing reserves for replacement, the DEC SO will immediately ask MF to order a REAC re-inspection to take place as soon as possible 60 days after the meeting with the owner.⁶

Owner agrees to repairs but needs HUD action for funding repairs.

If the owner agrees to repair the property within 60 days but requires disbursements from the reserve for replacement or residual receipts accounts as part of its repairs, the DEC SO will contact the MF Project Manager via email to determine whether the use of the reserves for such repairs is acceptable. The DEC SO will immediately ask MF to order a REAC re-inspection to take place as soon as possible 60 days after the meeting with the owner. Where HUD has to approve any part of the owner's plan, the plan must be presented in writing to the DEC immediately. The 60-day time clock will continue to run based upon the meeting date.

Owner agrees to repairs but is unable to complete repairs in 60 days.

If the owner agrees to repair the property but is unable to do so within 60 days and seeks an extension of time, the SOD may choose to reject the owner's request for more time. In such a case, the owner will still have the opportunity to repair the property within 60 days. The DEC SO will immediately ask MF to order a REAC re-inspection to take place as soon as possible 60 days after the meeting with the owner.

In any case involving a request for a longer repair time than the 60-day period, the owner must demonstrate its capacity to fully fund the required repairs. If the SOD in his/her discretion, recommends allowing the owner to take more than 60 days to repair the property, the SOD must prepare and send a memorandum of recommendation to the Hub Director. That memorandum will explain the basis for the extension. The Hub Director will be responsible for submitting the request to the Director of Multifamily Asset Management. If MF agrees to allow the owner a longer time to repair the property, then the owner will have the HUD approved time frame to complete repairs. The DEC SO will immediately ask MF to order a REAC re-inspection to take place as soon as possible after the extended completion date. If MF denies the request for an extension of time to repair the property, it will notify the owner and the DEC SO of this denial. If denied the extension request, the owner will be expected to complete the repairs within the original 60-day time frame from the meeting. The DEC SO will immediately ask MF to order a REAC re-inspection to take place as soon as possible 60 days after the meeting with the owner.

⁶ If the owner claims that it has completed all repairs, then the DEC SO will obtain the prescribed certification from the owner so stating. DEC SO staff will immediately ask MF to order a REAC re-inspection to take place as soon as possible.

Owner refuses or admits that it cannot repair the property.

If the owner cannot or will not repair the property, the DEC SO should advise the owner of possible alternatives to foreclosure, such as a transfer of the physical asset, out-year OMHAR restructuring, prepayment, refinance, etc. However, 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 against the property.

If the owner shows a willingness to work on alternatives after receiving the NOV, the SOD will consult with the Hub Director to determine whether there are any viable alternative dispositions to the property. If the Hub Director agrees that alternatives are appropriate, the SOD will prepare and send a memorandum to the Hub Director, explaining the recommendation.

DEC SO actions upon receipt of REAC re-inspection score.

Within 10 business days of receiving the REAC re-inspection score, the DEC SO will take the following action:

- If the property scores 60 or above, the DEC SO will close the physical referral with a letter to the owner (copying MF) and return the property to Multifamily for regular servicing.
- If the property scores under 60, the DEC SO will close the physical referral with a memorandum to Hub Director containing a recommendation concerning the appropriate action for Multifamily to take against the property. The DEC SO may include a proposed Notice of Default with this recommendation. Such recommendations may include issuances of the 21-day foreclosure notice if the mortgage is HUD-held, notification to the mortgagee that the mortgagor is in default and instructions to the mortgagee to accelerate the outstanding indebtedness of an insured mortgage, abatement of the Section 8 contract and relocation of tenants, etc. Multifamily Housing will decide whether it wishes to implement the DEC's recommendation. The Hub Director will submit the memorandum to the Director, Multifamily Asset Management with his or her recommendation.

Where appropriate, the Satellite Office may also recommend enforcement actions against the property owner, including referrals for Program Fraud Civil Remedies Act violations, referrals for civil money penalties, debarments or other administrative sanctions. Such actions may be handled by other divisions within the DEC and will not delay any actions taken against the property.

Amendment of September 27, 2002 memo

Under the processes set out in Beverly Miller's memorandum to Multifamily Housing staff on September 27, 2002, MF staff was to contact all owners of properties where the owner had submitted a corrective action plan but HUD had not approved the plan. *In situations where the owner submits a certification that the property is fully repaired and a REAC re-inspection scores the property below 60, Multifamily Housing will not refer the physical referral to the DEC for further review and/or meetings with the owner.* Rather, Multifamily Housing will take immediate action against the property, similar to that described above. However, Multifamily Housing will continue to refer that owner to the DEC for possible debarment, civil money penalties or false claims enforcement action.

Need Signature Blocks for

Frederick Tombar, III and John Gant, DEC