



# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

## Notice: H 2015-02

### Special Attention of:

All Multifamily Hub Directors  
All Multifamily Program Center Directors  
All Multifamily Operations Officers  
All Multifamily Directors of Project Management  
All Multifamily Field Counsel  
All Contract Administrators

Issued: February 24, 2015

Expires: This notice remains in effect until amended, revoked, or superseded

---

Cross References:

---

### Subject: Required Actions for Multifamily Housing Projects Receiving Failing Scores from HUD's Real Estate Assessment Center (REAC)

Section 230 of the Consolidated Appropriations Act of 2014 and Section 226 of HUD's Fiscal Year 2015 Appropriations Act require the Department to take certain steps in cases when a multifamily housing property receives a score of 59 or below on a Real Estate Assessment Center (REAC) physical inspection report. This Notice provides guidance to ensure compliance with these two sections, which are identical.<sup>1</sup> This notice identifies where Section 230 of the Consolidated Appropriations Act, 2014 ("Section 230") changes the current protocol. The guidance in this Notice is effective on the issue date noted above. This Notice supplements Notice H 2012-16 captioned, "Extension of Housing Notice H 2011-24: Reissuance of Revised Protocol for Placing a Flag in the Active Partners Performance System (APPS) when a Property Receives a Physical Inspection Score below 60 but Above 30." Significant changes in process are highlighted in *bold italic type*.

---

<sup>1</sup> Section 226 of Title II of Division K of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235, approved December 16, 2014) reiterates the direction first provided in section 230 of the Consolidated Appropriations Act, 2014 (Public Law 113-76, approved January 17, 2014) for HUD to take certain actions for multifamily projects, as described in general provision 230, and repeated in general provision 226, that have failing REAC scores. For the sake of simplicity, both this notice and the attachments thereto use "Section 230" to refer to the authority in both appropriations acts, as the language other than the dates is identical.

## **I. Background and Applicability**

Section 230 directs HUD to take certain procedural steps when certain multifamily housing projects score 59 or less on the REAC physical inspection. Most of the law codifies the procedures that Housing and the Departmental Enforcement Center (DEC) already follow.

### A. Projects covered

Section 230 applies to insured and noninsured projects with project-based assistance under section 8 of the United States Housing Act of 1937 (“Act”) or a “contract for similar project-based assistance.” The Department considers “similar project-based assistance” to include contracts for all multifamily housing projects that use the manual voucher submission and review process to submit assistance vouchers to the Department’s Tenant Rental Assistance Certification System (TRACS). In addition to properties with project-based Section 8 assistance, Section 230 and this Notice apply to properties that are subject to one of the following rental assistance contracts:

- Rent Supplement Contract
- RAP Contract
- Section 202 Project Rental Assistance Contract
- Section 811 Project Rental Assistance Contract
- Section 202/162 Project Assistance Contract<sup>2</sup>
- Section 811 Project Rental Assistance
- Senior Preservation Rental Assistance Contract

Section 230(a) states that it does not apply to units assisted under the Section 8 Project-Based Voucher Program (section 8(o)(13) of the Act) or to public housing units assisted under section 9 of the Act.

### B. Triggers for action

Section 230(a) requires HUD to take specific actions upon the following triggers:

- When a project “receives a REAC score of 30 or less”;
- When a project “receives a REAC score between 31 and 59” and the owner “fails to certify in writing that all deficiencies have been corrected”; or
- When a project “receives a REAC score between 31 and 59” and “receives consecutive scores of less than 60 on REAC inspections.”

HUD defines the date the project “receives a REAC score” in each of the foregoing bullets to mean the date on which HUD releases the REAC inspection report. The release date is the date the inspection is determined to be “Within Standard” and released to the owner, HUD staff, and

---

<sup>2</sup> Because section 230(a) states that it applies to multifamily housing projects with a section 8 contract, Section 202/8 Housing Assistance Payments Contracts are also covered.

HUD's database<sup>3</sup>. This release date is also noted on the email message that HUD sends to the owner electronically. Further, the Department notes that the word "receives" appears in Section 230(a) in the present tense. ***With respect to the third bullet, HUD will therefore consider any inspection report that was released on or after the date of the law's enactment (i.e., January 17, 2014) to be the first inspection in any series of inspections that will constitute "consecutive" scores.***

## II. Impact on Current Procedures

### A. HUD's initial notice to owner

Section 230(b) sets out certain steps that HUD must take if one of the triggers for action is met. The statute requires the Secretary to notify the owner and provide an opportunity for response within 30 days. Currently, REAC provides the owner a letter that accompanies the inspection report notifying the owner of the results of the inspection. This REAC letter fulfills the initial owner notification requirement in Section 230(b)(1). The letter provides the owner with an opportunity to respond to the inspection report by requesting a technical review within 30 days of the release date (see 24 CFR § 200.857(d) (1)) or a "data-base adjustment" within 45 days of the release date (see 24 CFR § 200.857(e)(3))<sup>4</sup>. If the owner does not submit an appeal or if the final score, after the appeal process, remains 59 or below, then the Department will move to take the actions described in II.B below.

### B. HUD's development of a CDE plan within 60 days of the release date

Section 230(b)(1) further states: "If the violations remain, the Secretary shall develop a Compliance, Disposition and Enforcement Plan within 60 days, with a specified timetable for correcting all deficiencies." This language requires slight changes to current practices. HUD interprets this language to mean that if the owner's appeal to REAC for a technical review or data-base adjustment did not result in a final score above 59, then the violations remain. ***HUD interprets Section 230(b) to require HUD to develop a Compliance, Disposition and Enforcement Plan within 60 days from the inspection release date. However, in cases where an owner has sought a technical review or data-base adjustment, the Department will start the 60-day clock upon REAC's release of the post appeal score, assuming the score is 59 or below and "violations remain." In cases where the owner did not submit an appeal, the 60-day clock will start from the date the inspection was originally released.***

---

<sup>3</sup> An inspection is determined to be "within standard" after it is reviewed for accuracy and completeness of data. HUD Engineers and Government Technical Monitors (GTMs) review each inspection uploaded into the Physical Assessment Subsystem (PASS) using the Checklist Inspection Tool and the Inspection Information Tool.

<sup>4</sup> For instructions on how to submit a technical review or a data-base adjustment visit the REAC website at:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/react/products/pass/pass\\_guideandrule](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/react/products/pass/pass_guideandrule).

C. Clarification that NOV's and NODs already effectively contain the Section 230 Compliance, Disposition and Enforcement (CDE) Plan

The Department's current procedure for projects that receive a physical inspection score less than 60 is to issue the owner a Notice of Violation of Regulatory Agreement (NOV) and/or Notice of Default (NOD) of HAP (or other subsidy) contract. Such notices require the owner to survey 100 percent of the project's units and to take corrective action for all physical deficiencies<sup>5</sup>. Although currently not labeled as CDE plans, the NOV's and NODs set forth instructions to the owner on how to comply with the notice. The notices also state that if the owner does not comply, HUD will pursue appropriate enforcement and disposition of the project. As such, HUD considers existing NOV's/NODs as satisfying the requirements of what is contemplated by the phrase "Compliance, Disposition and Enforcement Plan," as it appears in Section 230(b). ***Compliance, Disposition and Enforcement Plan*** (CDE Plan).

***Going forward the Department will clearly label that portion of the NOV/NOD that sets out the CDE plan and send the owner the CDE plan within 60-days of release of a post appeal score that is 59 or below or within 60-days of release of the original score in cases where the owner does not appeal. Accordingly, on NOV's and NODs concerning poor physical condition of the project, HUD will insert the heading, "Compliance, Disposition and Enforcement Plan" in the space immediately preceding the NOV's/NODs' instructions to the owner to:***

- ***Conduct a survey of 100 % of the project, identifying all physical deficiencies;***
- ***Correct the physical deficiencies identified at the project from the survey, including, but not limited to, those deficiencies identified in the REAC inspection;***
- ***Execute a certification that the project is in compliance with HUD's physical condition standards of 24 CFR § 5.703 and state and local codes; Submit the completed survey and certification form to the HUD Account Executive in 60 days of receipt of HUD's notice; and***
- ***Provide tenants with a "Notice of Compliance, Disposition and Enforcement Plan" for the project and provide HUD with a certification that of compliance with this directive.***

Should the necessary repairs extend beyond the 60-day cure period specified in the NOV/NOD, the CDE Plan instructs the owner to submit a repair plan with the completed survey and provide a reasonable time table for when the deficiencies will be completed, stating the cost and source of funds to be used for repairs. HUD will work with the owner to determine if the owner's request to amend the plan is acceptable and adequately protects the tenants' interests. Any such changes to the timetable will be considered amendments to the CDE plan. A sample "Notice of Default of Housing Assistance Payments (HAP) Contract and Compliance Disposition and Enforcement (CDE) Plan" is included as Attachment A.

---

<sup>5</sup> Under the current protocol the Departmental Enforcement Center (DEC) issues NOV/NODs for projects that receive scores of 30 or below and the Hub Director is responsible for issuing NOV/NODs for projects that receive scores of 31 to 59. This practice will remain the same. The only change is that these documents will now include a section called the "CDE Plan."

D. Providing “Notice of the CDE Plan”

**Section 230(b)(1) further requires HUD to “provide notice of the Plan to the owner, tenants, the local government, any mortgagees, and any contract administrator.”** This statutory language adds an additional requirement to HUD’s current practices. ***Going forward, all NOV/NODs containing the “Compliance, Disposition and Enforcement Plan” heading will also contain instructions to the owner to provide the project tenants with a “Notice of the Plan.” A form “Notice of a Compliance, Disposition and Enforcement Plan” is attached hereto as Attachment B. Note, however, HUD is not requiring the owners to provide tenants with a copy of NOV/NODs containing the CDE Plan.***

***The preparer of the NOV/NOD containing the CDE Plan (either the Multifamily Housing Account Executive (for scores from 59 to 31) or the DEC Analyst (for scores of 30 or below) will instruct the owner to deliver the “Notice of a Compliance, Disposition and Enforcement Plan” to each tenant and provide HUD with a certification that such delivery has been completed. In addition, the Notice Preparer will send a copy of Attachment B to the appropriate unit of local government, any lenders (if known to HUD) and any contract administrator for the project. The Notice Preparer must document the “Comment” section of the “Physical Inspection Detail” screen in the Integrated Real Estate Management System (iREMs) to annotate the issuance of these notices to the additional parties.***

E. REAC Re-inspection Requests

Multifamily Account Executives and DEC Analysts should continue to process requests for re-inspection following Notice H-2011-24. Notice H-2011-24 states that if the owner of a project with a score of 31 to 59 responds to an NOV/NOD by providing HUD with a copy of the 100% survey of the project and the Project Owner’s Certification (“Project Owner’s Certification”) that the project is in compliance with HUD’s physical condition standards and state and local codes (See Attachment A), then a re-inspection is scheduled one year from the date of the last inspection. If the owner fails to respond to the NOV/NOD by submitting the Project Owner’ Certification and the 100% survey of the project’s deficiencies, then HUD strives to conduct a re-inspection as soon after the 60-day cure period mentioned in the NOV/NOD expires as possible. Projects that receive a score of 30 or below on a physical inspection will also be scheduled for a re-inspection as soon as possible after the cure period mentioned in the NOV/NOD expires regardless of whether they submit the Owner’s Certification and the 100% survey. ***In cases where the deficiencies noted on the last REAC inspection report and the owner’s 100% survey cannot be completed in 60-days, the NOV/NOD (CDE Plan) now instructs the owner to submit a repair plan with the 100% survey and to request an extension of time to complete the repairs. This repair plan must provide the cost and source of funds that will be used to make the repairs. If the repair plan is approved it will serve as an amendment to the CDE Plan. If the repair plan is not approved a re-inspection will be scheduled as soon as possible after the 60-day cure period expires.***

Should the results of a re-inspection show that the project continues to be in poor physical condition (i.e., as reflected by a score of 59 or less), then HUD moves to the next appropriate steps to enforce compliance. Such actions include considering imposition of civil

money penalties (CMPs), abatement of the Section 8 or other rental assistance subsidy, in whole or in part, and possible assignment of an FHA loan and/or foreclosure.

F. Follow-up to REAC Re-inspection Results

*After the DEC issues the NOV/NODs (CDE Plans), the DEC will keep the physical referral open until the REAC re-inspection report is released. If the DEC determines that the project's physical condition (as reflected by the re-inspection report) demonstrates that the owner has not complied with an expired CDE Plan, the DEC will alert the MFH Account Executive and will proceed to handle the matter for imposition of civil money penalties, if applicable. A subsequent REAC score of 59 or less will be deemed to violate the CDE Plan.*

MFH staff will follow the procedures set out in Notice H-2011-24 concerning the timing for requesting REAC re-inspections on projects that received NOV/NODs (CDE Plans) from MFH. *Multifamily Housing will be tracking all REAC inspection scores of properties that scored 59 or less and if the next REAC re-inspection score is also less than 60 (i.e., "the project receives consecutive scores of less than 60 on REAC inspections"), MFH will follow the procedures set out in Section III below. A subsequent REAC score of 59 or less will be deemed to violate the CDE Plan.*

### III. Failure to Comply with the Terms of a CDE Plan

If the owner fails to comply with the terms of the CDE Plan, Section 230(b)(2) **allows** the Department to **replace project management with a management agent** acceptable to the Secretary and **requires the Department to take one or more of the following four actions and provide notice of these actions to the owner, local government, and any PBCA/contract administrators and/ or mortgagees:**

- ***Impose Civil Money Penalties.*** *If the project is not already in the DEC for the physical deficiencies, MFH staff must make an elective referral to the DEC using iREMS.*
- ***Abate, including partial abatement,*** any Section 8 Housing Assistance Payments (HAP) or other rental assistance contract until all deficiencies have been corrected. The Multifamily Housing Account Executive must request approval from the Director, Business Relationships and Special Initiatives Division to suspend, abate or terminate the HAP contract. If the rental assistance contract is to be terminated, the Hub Director must also request approval to relocate the residents.
- Encourage a ***transfer of the project*** or transfer and assignment of a HAP Contract to a new owner. The Department cannot mandate the transfer of a project and/or assignment of a HAP Contract. However, the field office can strongly encourage and owner to explore this option in lieu of an enforcement action such as abatement and relocation of the residents and/or foreclosure. Field staff may even help facilitate this process by contacting potential transferees and holding discussions with the current owner regarding a possible transfer. Any formal request for a Transfer of Physical Assets must be

approved by HUD using the current procedures for doing so found in Chapter 13 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing.

- ***Seek judicial appointment of a receiver*** to manage the property or ***seek a judicial order of specific performance*** to cure all project deficiencies.

***Upon initiating any of the enforcement actions noted above, HUD staff will issue Attachment C, entitled “Notice of Enforcement Action” to the parties identified in Section II, D. above. This means, for example, if the DEC issues a Complaint for Civil Money Penalties to the owner, the DEC will also instruct the owner to provide a “Notice of Enforcement Action” to all tenants, with the appropriate section marked for the initiation of an administrative proceeding for civil money penalties. The DEC must also send a similar “Notice of Enforcement Action” to the local government, lender (if known) and contract administrator. Similarly, in situations where Multifamily Housing issues the owner an Abatement of the HAP Contract, the Multifamily Housing Account Executive will instruct the owner to provide a “Notice of Enforcement Action” to all tenants with the appropriate sections marked. The Multifamily Housing Account Executive must also send a “Notice of Enforcement Action” to the local government, lender (if known) and contract administrator.***

In addition to these Section 230 actions, the following actions will also be considered:

- In the case of an insured, HUD-Held, Section 202 Direct Loan or Capital Advance or a Section 811 Direct Loan or Capital Advance, the Hub Director may also request approval from the Director, Business Relationships and Special Initiatives Division, Office of Asset Management, to proceed with assignment and/or foreclosure of the loan or capital advance following the procedures found in the May 31, 2006 memorandum captioned, “Fiscal Year 2006 Property Disposition Program.”
- The Hub Director may recommend that the Department exclude the owner from further participation in HUD programs, using a Limited Denial of Participation (LDP), a Suspension or a Debarment. (Contact the Compliance Division of the DEC for assistance in this regard.)

The Multifamily Hub should discuss with the appropriate DEC Satellite Office which course of action it intends to take.

#### **IV. Section 230 Reporting Requirements**

***Section 230 requires the Department to report to Congress semi-annually.*** The report must cover any project that receives a physical inspection score of 30 or less and all properties that receive consecutive scores of 59 or below. ***The Business Relationships and Special Initiatives Division will create a SharePoint site to track this information.*** Section 230 states that the report must include, at a minimum, the enforcement actions being taken to address the poor physical condition (i.e., under a CDE plan, civil money penalties imposed, abatement and termination of HAP contract, etc.), and all actions being taken to protect the residents.

## V Findings and Certifications

### A. Paperwork Reduction Act

The information collection requirements contained in this document are approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned control number 2502-0369. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

### A. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50.19(c), which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

If you have any questions regarding the attached guidance, please contact Brandt Witte, Housing Program Manager, Business Relationships and Special Initiatives Division, Office of Multifamily Asset Management at (202) 402-2614.

---

Biniam Gebre  
Acting Assistant Secretary for Housing -  
Federal Housing Commissioner

Attachments