



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

All Multifamily Regional Directors
All Multifamily Satellite Office
Directors
All Multifamily Directors of Asset
Management
All Multifamily Field Counsel
All Contract Administrators
Director, Departmental Enforcement
Center

Notice: H 2018-08

Issued:

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superseded.

Cross Reference: H 2015-03
H 2015-02
H 2012-16
H 2011-24

Subject: Servicing of 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

This Notice provides guidance to Office of Multifamily Asset Management and Portfolio Oversight (OAMPO) staff for implementing Section 222 of Division L, Title II, of the Consolidated Appropriations Act, 2018 ("Section 222"), and Section 223 of Division K, Title II, of the Consolidated Appropriations Act, 2017 ("Section 223"),¹ which apply to projects subject to HUD's Physical Conditions Standards and Inspection Requirements² as codified at 24 C.F.R. part 5, subpart G, when:

- The property fails to meet the PCS&IR, as indicated by a score below 60 on a physical inspection³; and/or
- A project owner fails to timely and properly certify in writing that the Exigent Health and Safety (EHS) deficiencies identified during a physical inspection have been resolved.

This Notice also provides guidance on options that asset managers can use when a property fails a component part of an inspection while still scoring 60 or above and provides amended guidance to OAMPO staff regarding the placement of flags in the Active Partners Performance System (APPS) relating to a physical inspection score. It further provides guidance to OAMPO staff for addressing all other projects with unsatisfactory physical conditions, as

¹ Because Section 222 and Section 223 are substantially identical, both sections are referred to in this Notice as "Section 222," the more recent enactment.

² Because Section 222 refers to this subpart as the "Uniform Physical Condition Standards" ("UPCS"), references in this Notice to this subpart are also to the UPCS.

³ The language in the statutes creates ambiguity by stating that they apply to projects with physical inspection scores "60 or below." However, other sections state that the Secretary may withdraw a Notice of Default if an owner's appeal raises the score to "60 or above," and that the Secretary shall report to Congress quarterly on all projects with physical inspection scores of "of less than 60." Since it has always been HUD's practice to issue Notices of Default or Violation when a project receives a score below 60, this Notice assumes that Congress intended it to apply to projects that receive a physical inspection score of 59 or below.

evidenced by repeated low REAC scores, significant tenant complaints, local code violations, staff site visits, or other methods.

This Notice is effective immediately and applies to projects for which HUD released or releases a physical inspection report on or after May 5, 2017, the date of enactment of Section 223 of the Consolidated Appropriations Act of 2017.

I. Applicability

Section 222 applies to multifamily projects “with a section 8 contract or contract for similar project-based assistance.”⁴ For purposes of this Notice, the Department considers that “a section 8 contract or contract for similar project-based assistance” to include projects subject to any of the following rental assistance contracts⁵:

- Housing Assistance Payments (HAP) contracts;
- Rent Supplement (Rent Supp) contracts;
- Rental Assistance Payments (RAP) contracts;
- Section 202 or 811 Project Rental Assistance Contracts (PRACs);
- Section 202/162 Project Assistance Contracts (PACs);
- Section 811 Project Rental Assistance (PRAs); and
- Senior Preservation Rental Assistance Contracts (SPRACs)

II. Background

Housing Notice H-2015-02, *Required Actions for Multifamily Housing Projects Receiving Failing Scores from HUD’s Real Estate Assessment Center (REAC)*, implemented Section 230 of the Consolidated Appropriations Act of 2014 and Section 226 of HUD’s Fiscal Year 2015 Appropriations Act, which were identical. Appropriations law subsequently enacted for 2016 did not change the requirements for HUD, and so H-2015-02 has not been superseded until now.

Further, OAMPO has determined that the potential risks attributable to projects that do not meet the PCS&IR can be addressed, in part, through revised procedures for placing flags in APPS. HUD’s prior guidance in this regard (Housing Notice H2012-16⁶) has failed to address these risks as originally intended.

This Notice supersedes H-2015-02 and H-2012-16 by:

- Implementing the new requirements under Section 222;
- Expanding on the prior guidance to include a portfolio-wide strategy for addressing projects that do not meet PCS&IR; and
- Modifying prior guidance with respect to placing flags in APPS for owners that fail to meet their obligations under the PCS&IR.

III. Responsible Offices

⁴ Referring to housing assisted under Section 8 of the United States Act of 1937, 42 U.S.C 1437f.

⁵ Neither Section 222 nor Section 223 applies to units assisted under the Section 8 Project-Based Voucher Program or to public housing units assisted under Section 9 of the United States Housing Act of 1937. 42 U.S.C. 14378.

⁶ Housing Notice H-2012-16, *Extension of Housing Notice H2011-24: 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*, and predecessor Housing Notices H-2011-24 and H-2010-24.

Under current protocols with the Departmental Enforcement Center (DEC) and REAC, projects that receive inspection scores of 30 or less are automatically referred to the DEC. The DEC's procedures for handling physical referrals are consistent with this Notice. OAMPO staff are still responsible for placing a flag in APPS and asset servicing while a referral is with the DEC. But OAMPO staff should confer with DEC staff on matters other than basic servicing actions. The DEC Director and Deputy Director in Headquarters and the 5 DEC satellite office directors have delegated authority to take certain actions with respect to owner violations. Those actions that the DEC has no delegated authority to approve will be referred to OAMPO Regional Directors or the OAMPO Director in Headquarters.

Projects that receive REAC inspection scores of greater than 30 are generally handled by OAMPO staff. However, DEC workload and resources permitting, OAMPO may make elective referrals to the DEC for projects that receive scores above 30 if OAMPO determines that DEC assistance would be beneficial. For example, if a project receives consecutive REAC inspection scores above 30 but less than 60, the DEC's attention may expedite corrective action. To make an elective referral, OAMPO management in the field should coordinate with the DEC satellite office for their jurisdiction. The DEC and OAMPO staff in the field should order follow-up inspections pursuant to section IV of this Notice and keep the administrative record up to date in the Integrated Real Estate Management System (iREMS).

Within OAMPO, the Multifamily Asset and Counterparty Oversight Division (MACOD) is responsible for tracking HUD's performance under Section 222 and will also monitor OAMPO's performance under this Notice.

IV. Procedures for Projects with Assistance Contracts and/or Regulatory Agreements

The actions below must be taken for all projects with an assistance contract and/or a regulatory agreement, consistent with contractual and other regulatory requirements:

- When the issuance of a physical inspection reveals an inspection score below 60 and/or;
- When a property owner fails to timely and properly certify to HUD in writing that all EHS deficiencies identified during a physical inspection have been corrected.

The date of issuance of a physical inspection report is identified as the "Release Date" in iREMS and the date the owner has access to the physical inspection report. Staff must keep track of physical inspections for projects they are responsible for and ensure that the timelines provided in this Notice are met. Pursuant to 24 C.F.R. §200.857, owners must certify in writing to HUD within three (3) business days after an inspection that all EHS deficiencies identified during the inspection have been resolved.

Issuance of NOV/NOD

Within 15 days of the physical inspection report release date, a notice of violation of regulatory agreement and/or a notice of default of subsidy contract (NOV/NOD), must be issued to the owner of the property.⁷ At a minimum, each NOV/NOD must advise the owner of the violations/defaults of the owner's business agreements, and provide a reasonable period ("cure period") to correct the deficiencies and take other actions identified below.

⁷ The 15 days is mandatory for all properties for which Section 222 is applicable. This deadline may be extended for properties not covered under Section 222 for good cause.

A. If the violations/defaults relate to deficiencies identified in a REAC inspection report that resulted in a score below 60, the owner should be directed to take the following actions within the cure period (e.g., 60 days):

1. Conduct a survey of the entire project, including all units, common areas, grounds, building systems and site(s);
2. Correct all deficiencies at the property, including those identified in the REAC inspection report and the owner's survey; and
3. Submit to their Account Executive (AE) a copy of the owner's survey and a form certification that all deficiencies have been corrected and that the property meets HUD's PCS&IR.

B. If the violations/defaults relate to the owner's failure to timely and properly certify to HUD that all identified EHS deficiencies have been resolved, the owner should be provided with a cure period of three (3) business days to submit the required certification to the AE.

C. If the violations/defaults relate to conditions described in both A and B above, the NOV/NOD must prescribe the corrective actions identified for both conditions along with their respective cure periods.

D. If the properties have project-based rental assistance with one or more buildings constructed before 1978 and are family properties not designated as "elderly" or "handicapped" housing, such as Section 202 or 811 properties, the NOV/NOD must include the LBP Compliance Documentation Instructions ("Instructions") (attached).

Each NOV/NOD must also direct the owner to provide a copy of the NOV/NOD to the project's tenants and require the owner to certify it has done so by reasonable means such as leaving a notice under each door, posting in a mail room and on each floor, etc.⁸ Upon issuance of the NOV/NOD, HUD staff must supply a copy of each NOV/NOD to the Contract Administrator, any mortgagee and the chief executive of the municipal/local government.

NOVs/NODs must be executed by the HUD official having delegated authority. Examples of NOV/NODs and form certification are provided in the attachments to this Notice. Those NOV/NODs issued by OAMPO are issued by a Multifamily Regional Director or Asset Management Division Director, and those issued by the Departmental Enforcement Center (DEC) are issued by the DEC Director or Deputy Director or a DEC Satellite Office Director.

Notwithstanding the provisions of Section 222, NOV/NODs are legal notices required under our business agreements, and they provide the basis for any enforcement action taken by HUD if the compliance requirements in the notices are not met. Therefore, the notices must be accurate and include all elements required under the business agreements, regardless of the minimum requirements stated in this Notice. For example, some HAP contracts provide that the contract administrator (CA) must declare defaults under the HAP contract. In such instances, the NOD should be prepared for execution by both the CA and the delegated OAMPO or DEC official.

If the owner appeals the physical inspection pursuant to the UPCS requirements, and the resulting inspection score rises to 60 or above, HUD may withdraw any NOV/NOD. However,

⁸ Note that, if the NOV/NOD is related to non-compliance with the Lead Safe Housing Rule (24 CFR 35, subparts B – R) (LSHR), this resident notification does not substitute for the required notifications to residents after lead paint inspection, lead hazard risk assessments, or lead hazard remediation activities. 24 CFR 35.125. If any of those lead activities have been conducted, the lead notifications must be provided.

there is no requirement for HUD to do so and the facts of each case should be carefully considered by the HUD official who executed the NOV/NOD to ensure such actions are consistent with this Notice, Section 222, the PCS&IR and other HUD policies. Despite an appeal that results in a score over 60, owners are required to maintain their properties decent, safe and sanitary conditions at all times.⁹ For example, HUD may refrain from withdrawing an NOV/NOD in cases where projects have been cited for extensive and/or serious code violations by local authorities or where HUD staff has identified serious adverse conditions at the project during a site visit.

Notwithstanding the requirements of Section 222; nothing in this Notice, any owner's business agreements with HUD, or other HUD policies, procedures or regulations prevent HUD from issuing NOV/NODs or taking other appropriate actions if/when an owner fails to maintain a project in accordance with HUD's standards.

Issuance of Demand for Corrective Action

If a property scores above 60 on a REAC but OAMPO staff believe unsatisfactory conditions exist, a Demand for Corrective Action (DCA) may be issued to require the Owner to perform a unit survey and complete necessary repairs. Unsatisfactory conditions may be evidenced by:

- A. Less than 50% of possible REAC points earned in any category, particularly within units;
- B. Repeated inspection findings that indicate systemic deficiencies;
- C. Significant inspection findings that may pose health and safety risks to the tenants;
- D. Significant local code violations;
- E. Multiple tenant complaints about property condition; and/or
- F. Conditions observed by OAMPO staff during a site visit outside of a REAC or MOR.

A DCA should be issued by the Multifamily Regional Director or Asset Management Division Director and should include a specified deadline by which the owner must respond. If the owner is non-responsive, OAMPO may proceed to further enforcement action. OAMPO may contact the DEC for assistance in considering what actions are appropriate or to possibly make a referral to the DEC.

Requests for Extension

Requests for extension of the requirement to submit an EHS certification may not be approved except by the FHA Commissioner. Any extension of the requirement to submit an EHS certification is a waiver of current statute and/or regulation.

Owner requests for extension of other NOV/NOD or DCA requirements may be considered at the field office level and approved by the appropriate Multifamily Regional or Satellite Office Director. However, prior to any such approval, and prior to the deadline provided in the NOV/NOD or DCA, the owner must request an extension in writing from the field office. At a minimum, the owner's request must include:

- A copy of the owner's complete survey of the property;

⁹ Note that, if the NOV/NOD is related to non-compliance with the Lead Safe Housing Rule (24 CFR 35, subparts B – R) (LSHR), this resident notification does not substitute for the required notifications to residents after lead paint inspection, lead hazard risk assessments, or lead hazard remediation activities. 24 CFR 35.125. If any of those lead activities have been conducted, the lead notifications must be provided.

- A status report of all deficiencies identified in the owner’s survey and the REAC inspection report; and
- A thorough repair plan to correct all remaining deficiencies, including timelines, repair/replacement costs and sources of funding.

All extension approvals must be made in writing and include any additional requirements and conditions. Examples of additional conditions supporting an extension of time include invoices, weekly certifications of repairs, scope of work for specific areas such as electrical, plumbing, roofing, etc. The DEC will not approve such requests but will forward them to the appropriate OAMPO field office for review.

REAC Re-inspection Requests

After an NOV/NOD is issued, a new REAC inspection must be ordered to ensure that the owner has corrected the deficiencies at the property, and to ensure that the project meets the PCS&IR. The time frame for that REAC inspection is determined by the REAC score, as described in detail below. The Department, at its discretion, may decide that a physical inspection immediately after the cure period in the NOV/NOD expires is not necessary. In this case, the project will be inspected in accordance with the regular HUD rules noted at 24 CFR, §200.855. The request will be made by whomever issues the NOV/NOD (OAMPO or the DEC) through an entry in OAMPO’s SharePoint site at:

<http://hudsharepoint.hud.gov/sites/DASMFH/OMAM/brsi/Lists/ReInspection%20Requests%20%20Owner%20Did%20Not%20Certify%20List/View%20by%20Hub.aspx>.

Scores of 30 and under: For projects that receive a score of 30 and under, the re-inspection request should be made immediately upon issuance of the NOV/NOD. Typically, the DEC issues the NOV/NOD in these circumstances and will order the re-inspection in such instances. The ideal date requested for the re-inspection should be as soon as possible after the expiration of the cure period provided in the NOV/NOD. If an extension of the cure period is later approved by OAMPO, the re-inspection request must be modified – by OAMPO staff – to occur as soon as possible after the expiration of the extended cure period.

Scores of 31 and above¹⁰: For projects that receive a score of 31 and above, the request for re-inspection should be delayed until after the cure period provided in the NOV/NOD expires, including any cure period extension granted by OAMPO. If the owner timely fulfills the requirements of the NOV/NOD, the re-inspection should be ordered to occur within one year after the date of the last inspection.¹¹ (This may require that OAMPO staff modify the DEC’s prior request for re-inspection in SharePoint if a score of 30 or less is subsequently changed to a score over 30 on appeal.) If the owner fails to timely fulfill any of the requirements of the NOV/NOD, the re-inspection should be requested to occur as soon as possible. Such requests will be made by OAMPO staff even if the NOV/NOD was issued by the DEC.

Any exceptions to the re-inspection scheduling requirements above should be coordinated in advance with the MACOD.

¹⁰ Includes properties that originally received a score of 30 or less, but the score was adjusted to a score over 30 due to an appeal.

¹¹ This has no impact on the APPS flag, as later discussed in this Notice.

Lack of Owner Compliance

If the owner fails to comply with the requirements of the NOV/NOD, or if upon re-inspection of the project HUD determines that the property still does not meet the UPCS; the actions below should be considered consistent with current HUD policy and applicable statutes, regulations, and contracts.

Compliance/stabilization workout arrangement: In effect, this is partially achieved through HUD's review, modification, and approval of an owner's repair plan at the time a cure period extension is requested. Beyond that, however, it is always within HUD's authority to require an amended plan if an owner has not achieved full compliance within the agreed period. Voluntary compliance is the preferred outcome in most instances and helps assure a stable environment for the project's tenants. Determinations regarding such arrangements are left to the discretion of local OAMPO management.

Require a change in management agent: When voluntary compliance has not been achieved, a change in management may produce the desired outcome. If the owner will not change the management voluntarily, in certain circumstances, HUD may compel such a change. For instance, some business agreements permit HUD to demand a change in management agent at any time. Management changes may also be imposed on projects that are subject to Section 222. To the extent that demanding a change in management is within HUD's authority, local OAMPO management has the discretion to make such demands.

Transfer of the property or the Section 8 contract: HUD cannot compel an owner to liquidate its interests in real estate. However, to the extent that HUD can facilitate a smooth, voluntary transfer of the project and/or the Section 8 contract to an owner that is capable and willing to abide by HUD's program requirements, the risks to the tenants and HUD's security interests could be mitigated. OAMPO staff can better facilitate such voluntary transfers if they are armed with information about the local market and other participants that may have interest in acquiring such a property.

Impose civil money penalties (CMPs): Imposing CMPs does not assure compliance. However, to the extent that the risk of CMPs may encourage owner compliance, the DEC should be consulted, as the authority to impose CMPs is delegated to the DEC. A settlement of CMPs with the DEC could include a compliance requirement, such as a reasonable repair plan.

Termination of rental assistance contract: When voluntary efforts fail, termination the of rental assistance contract and relocation of the residents is a contract remedy that requires coordination and approval from OAMPO in headquarters. Of primary concern for HUD is the protection of the project's residents, through an assurance of alternative housing. The termination process requires, among other things, coordination with HUD's Office of Public and Indian Housing (PIH) and OAMPO's Property Disposition Division¹².

Default of regulatory agreement and foreclosure: Resolving HUD's security interests – e.g., through foreclosure, asset sale, etc. – is not a preferred option due to the cost to HUD of such

¹² Pursuant to Section 222, HUD will give tenants written notice of its intent to terminate a rental assistance contract and provide them with an opportunity to comment unless the Department determines that major threats to health and safety exist that warrant hastening the relocation process. Major threats to health and safety include but are not limited to those defined as health and safety deficiencies in HUD's Dictionary of Deficiency Definitions as well as others that are not defined as health and safety deficiencies, but HUD deems a threat to the residents' security and well-being such as broken or missing windows, missing or damaged sprinkler heads, broken playground equipment, etc.

efforts and the impact on the community. Where it is the most viable option, however, the process begins with declaring a default under the regulatory agreement. Insured mortgages must also be assigned to HUD through the claims process. This option must be coordinated with OAMPO in headquarters pursuant to established procedures. The most recent guidance on this subject was provided to Asset Management staff in a memorandum dated May 31, 2006, and can be found at the following link: http://hudatwork.hud.gov/HUD/housing/doc/pdmemo2006_36801.pdf

Receivership: Taking control of a property, either through mortgagee-in-possession or as receiver is costly and potentially disruptive to residents and the community. Receivership is not an available remedy for properties subject only to a Section 8 contract. However, for properties with HUD-insured or HUD held mortgages, it should be considered as a last resort and only with the participation of HUD counsel and OAMPO's Property Disposition Division. Typically, such actions require the assistance of a United States Attorney. In any event, prior coordination with OAMPO in headquarters is required.

Limited Denial of Participation (LDP): As with CMPs, an LDP will not ensure that an owner will comply with program requirements. Rather, it protects HUD, for a limited time and within a specific program and geographic jurisdiction, against the participant's irresponsible behavior. LDPs may be imposed by Regional and Satellite Office Directors, as well as the DEC Director or Deputy Director and DEC Satellite Office Directors.

Suspension/Debarment: Like LDPs, suspensions and debarments protect the government from irresponsible behavior: They are not penalties. However, suspensions and debarments are effective across the federal government, and not only to HUD programs. Further, they may be for periods longer than an LDP would be effective. The DEC Director is HUD's debarment official, and all debarment requests should be referred to the DEC's Director of Compliance.

The list of enforcement options above is not exhaustive and HUD, as it deems warranted, may either initiate any available enforcement action authorized under existing statutes, regulations, contracts or other documents; or cooperate with the Department of Justice in asserting civil or criminal claims. Furthermore, if HUD determines, after a re-inspection, that an owner has falsely certified that EHS repairs have been made or that all deficiencies found during the initial inspection have been corrected, HUD may consider taking action against the owner under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.* Any request for action under this provision should be sent to the Office of General Counsel, Office of Program Enforcement

V. Procedures for Projects Without Assistance Contracts and/or Regulatory Agreements

The DEC will refer projects receiving scores of 30 or less that are not subject to an assistance contract or regulatory agreement, such as a stand-alone use agreement, to OAMPO. In these situations, the DEC has no delegated authority to issue requisite legal notices or to pursue CMPS. Rather, the DEC's only authority in such instances is suspension/debarment. In such instances, OAMPO staff should attempt to work with owners toward voluntary compliance or consult with their program counsel regarding owners unwilling to comply.

VI. APPS Flags

When a property receives a physical inspection score below 60 and/or HUD determines that a project does not meet HUD's PCS&IR, the owner and project participants will be flagged in APPS if they fail to provide the "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” or an approvable repair plan in the time frame required by an NOV/NOD. The owner and project participants will also be flagged in APPS if they receive consecutive physical inspection scores below 60 or, as otherwise determined by HUD, the project does not meet PCS&IR.

APPS flags must also be entered by the Account Executive (AE) in APPS at the time a project receives an inspection score of 30 or less, and the property is automatically referred to the DEC. The AE must also ensure that the other parties (principals and managing agent) are manually flagged. Once they are placed in APPS, APPS flags shall remain in place unless and until the property is re-inspected and receives a score of 60 or above or HUD otherwise determines that the property meets HUD’s decent, safe, and sanitary standard.

VII. Section 222 Reporting Requirements

Section 222 requires the Department to report to Congress quarterly. The report must include all projects covered under Section 222 that either:

- Receive a REAC inspection score of less than 60; or
- Receive an Unsatisfactory Management and Occupancy Review within the past 36 months.

The report must include the enforcement actions taken to address each property’s physical conditions, the actions taken to protect each project’s tenants and, generally, any administrative or legislative recommendations to further improve living conditions at assisted projects. These reports will be formulated by MACOD with data collected from the Regional and Satellite field offices and the DEC.

VIII. Findings and Certifications

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.

Role of OGC Field Counsel

If a standard NOV/NOD or DCA is issued, there is no need for OGC Field counsel review. However, legal advice should be sought if there is a substantial change to the model letters. Legal advice may be sought when taking an action based on local code violations or other non-standard demands for compliance. Field Counsel should be contacted when preparing a Limited Denial of Participation. In addition, if the business agreements are non-standard, legal advice may also be sought. Model letters are attached to this guidance.

Questions concerning this Notice should be directed to your property’s Account Executive in your local HUD Field Office. You may also contact Brandt Witte, Program Analyst, Multifamily Asset and Counterparty Oversight Division (MACOD), Office of Asset Management and Portfolio Oversight at (202) 402-2614. Persons with speech or hearing impairments may access their field office via TTY by calling the Federal Relay Service at (800) 877-8339.

Brian D. Montgomery
Assistant Secretary for Housing –
Federal Housing Commissioner

Attachments

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 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).

On [date of REAC inspection], HUD's Real Estate Assessment Center ("REAC") inspected the Project, which resulted in a score of [inspection score]. The inspection report, which HUD has made available to the Owner, identified serious deficiencies that demonstrate that the Owner is in default of its statutory, contractual, and/or regulatory duties to maintain the Project in decent, safe, and sanitary condition. The deficiencies cited in the REAC report include but are not limited to the following: [List 5 examples of most serious deficiencies here].

Accordingly, the Owner shall take the following corrective actions within sixty (60) days of the Owner's receipt of this Notice:

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. Correct all physical deficiencies identified at the Project from the Owner's survey and REAC's inspection report;

4. Execute the enclosed certification that: all deficiencies identified at the Project have been corrected; the Project meets HUD's Physical Condition Standards and Inspection Requirements and applicable state and local codes;
5. 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]

HUD may 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.

[For Projects subject to the Lead Safe Housing Rule (LSHR)]

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 deficiencies identified in this Notice, HUD may "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:

ATTACHMENT B
SAMPLE NOTICE OF VIOLATION OF REGULATORY AGREEMENT

[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 Violation of Regulatory Agreement

Project Name: [Project Name]

Project Location: [Project City/Town]

FHA Number: [FHA #]

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 violation of the Regulatory Agreement between the Owner and HUD. Pursuant to section [7 - verify section #] of the Regulatory Agreement, the Owner is required to "maintain the mortgaged premises, accommodations and the grounds and equipment appurtenant thereto, in good repair and condition...". HUD's physical conditions standards are provided at 24 C.F.R. part 5.703, *et. al.*

On [date of REAC inspection] HUD's Real Estate Assessment Center ("REAC") inspected the Project and the Project received a score of [inspection score]. The inspection report, which HUD made available to the Owner, identified serious deficiencies that demonstrate that the Owner is in violation of the Regulatory Agreement. Some of the deficiencies cited in the REAC report include but are not limited to the following: [List 5 examples of most serious deficiencies here.].

Accordingly, the Owner shall take the following corrective action within sixty (60) days of the Owner's receipt of this Notice:

1. Provide a copy of this Notice to each of the Project's residents receiving project-based Section 8 assistance and certify to HUD that it has done so;
2. Conduct a survey of the entire Project, identifying all physical deficiencies;
3. Correct all physical deficiencies identified at the Project from the Owner's survey and REAC's inspection report;
4. Execute the enclosed certification that: all deficiencies identified at the Project have been corrected; the Project meets HUD's Physical Condition Standards an Inspection Requirements and applicable state and local codes;
5. 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]

HUD may re-inspect the Project to ascertain compliance with the terms of the Regulatory Agreement. If the Owner fails to take the corrective action required herein, HUD may declare a default of the Regulatory Agreement. Such a default may result in the liquidation of HUD's mortgage interests through foreclosure or other means. Further, HUD may pursue any other remedies provided under the Regulatory Agreement or as otherwise provided by law, including civil money penalties against the owner and others responsible for the operation of the Project.

[For Projects subject to the Lead Safe Housing Rule (LSHR)]

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 deficiencies identified in this Notice, if the Owner is otherwise permitted to make distributions of Project funds; pursuant to section [6(e) – confirm section] of the Regulatory Agreement, the Owner is prohibited from making distributions for so long as any of the requirements of this Notice have not been met, or while the Project does not meet the requirements of 24 C.F.R. 5.703.

HUD may “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.

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.