Extended Version

HUD Updates Guidance for Addressing Multifamily Housing Low Physical Inspection Scores

National Low Income Housing Coalition
(October 31, 2018)

HUD issued Notice H-2018-08 providing updated guidance to HUD Multifamily staff regarding actions to take when a private property assisted with various HUD programs have a Uniform Physical Condition Standards (UPCS) score less than 60 and/or when a property owner fails to certify within 3 days that Exigent Health and Safety (EHS) deficiencies have been corrected.

Background

Public housing and private properties assisted with Section 8 rental assistance and other programs administered by HUD's Office of Multifamily Housing Programs are subject to inspections through HUD's Real Estate Assessment Center (REAC). REAC collects and scores data on a property's physical condition as well as its financial condition. REAC no longer considers resident satisfaction.

REAC scores all Multifamily housing properties' physical condition on a 100-point scale. Properties with a score of 90 or above are "Standard 1" and are inspected every three years. Properties with a score less than 90 but more than 80 are "Standard 2" and are inspected every two years. Properties with a score less than 80 are inspected every year. Standard 1 and 2 properties that have Exigent Health and Safety (EHS) deficiencies must resolve them immediately and file a written report within three business days.

Exigent Health and Safety (EHS) deficiencies are not explicitly defined, but an August 9, 2012 *Federal Register* notice pertaining to public housing contains a revised Dictionary of Deficiency Definitions that describes UPCS health and safety (H&S) deficiencies and explains that EHS deficiencies are a subset of H&S deficiencies. For various "inspectable" items the dictionary indicates whether an item has an H&S deficiency and whether it is life threatening (LT) or non-life threatening (NLT). For example, a water heater with a misaligned ventilation system is LT, while a water heater with a missing pressure relief valve is NLT. Life threatening Exigent Health and Safety deficiencies require immediate attention.

Notice H-2018-08

Notice H-2018-08 replaces Notice H-2015-02. It provides guidance to staff of HUD's Office of Multifamily Asset Management and Portfolio Oversight (OAMPO) for implementing Section 223 of the 2017 appropriations act and Section 222 of the 2018 appropriations act. The Notice is effective immediately and applies to projects for which a physical inspection score was released on or after May 5, 2017, the date Section 223 was enacted.

In addition to properties with a Section 8 Housing Assistance Payment (HAP) contract, it applies to: Rent Supplement (Rent Supp), Rental Assistance Program (RAP), Section 202 or 811 Project Rental Assistance Contracts (PRACs), Section 201/162 Project Assistance Contracts (PACs), Section 811 Project Rental Assistance (PRAs), and Senior Preservation Rental Assistance Contracts (SPRACs).

There is no change to the current practice of automatically referring a project that receives a physical inspection score of 30 or less to HUD's Departmental Enforcement Center (DEC), or the practice of OAMPO staff working with a project that receives a physical inspection score above 30. However, OAMPO staff may refer projects to DEC if thought beneficial, for example if a project consecutively receives physical inspection scores above 30 but less than 60.

Notice H-2018-08 lists actions that must be taken when a property has a Uniform Physical Condition Standards (UPCS) score less than 60 and/or when a property owner fails to certify within 3 days that Exigent Health and Safety (EHS) deficiencies have been corrected. Actions listed in the Notice include:

1. Issue within 15 days of release of the physical inspection report, a notice of violation of regulatory agreement (NOV) and/or a notice of default of subsidy contract (NOD). The NOV/NOD must notify the owner of the violations/defaults and provide a reasonable time to correct the deficiency, a "cure period." Owners must provide a copy of the NOV/NOD to residents by leaving a notice under each door, or posting the notice in the mail room and on each floor, or by other means. HUD must provide a copy of a NOV/NOD to the chief executive officer of the local government.

   For scores less than 60, during the cure period the NOV/NOD should direct owners to:
   a. Conduct a survey of the entire project, including all units, common areas, grounds, building systems and site(s);
   b. Correct all deficiencies at the property, including those identified in the REAC inspection report and the owner's survey; and,
   c. Submit to their Account Executive (AE) a copy of the owner's survey and certification that all deficiencies have been corrected and that the property meets UPCS.

   If an owner fails to certify in a timely and proper way that all EHS deficiencies have been resolved, the NOV/NOD should provide the owner with a cure period of three business days to submit the required certification to the AE.

   If a property has project-based rental assistance with one or more buildings constructed before 1978 that are family properties not designated as "elderly" or "handicapped" (such as Section 202 or 811 properties) the NOV/NOD must include the Lead-Based Paint (LBP) Compliance Documentation Instructions.

2. Issue a demand for corrective action (DCA) if a property scores above 60 but OAMPO staff think unsatisfactory conditions exist. The DCA may require the owner to perform a unit survey and conduct necessary repairs.

   Unsatisfactory conditions might include:
   a. Earning less than 50% of possible REAC points in any category (dwelling units, building exterior, common areas, the site), particularly within dwelling units;
   b. Repeated inspection findings that indicate systemic deficiencies;
   c. Significant inspection findings that may pose health and safety risks to residents;
   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 Management Occupancy Review (MOR).

3. Conduct a REAC re-inspection to ensure that an owner has corrected the deficiencies. The time frame for conducting the re-inspection depends on whether the REAC score was 30 or less.

   a. For scores of 30 or less, a re-inspection request should be made immediately when the NOV/NOD is issued. The ideal date of a re-inspection should be as soon as possible after the expiration of the cure period in the NOV/NOD.

   b. For scores of 31 or more, a request for re-inspection should be for some time after the cure period. If an owner fulfills the requirements of a NOV/NOD in a timely manner, the re-inspection should be ordered to occur within one year after the date of the last inspection. But if an owner fails to fulfill any of the requirements of a NOV/NOD in a timely manner, the re-inspection should be requested to occur as soon as possible.

4. If an owner fails to comply with the requirements of a NOV/NOD, or if upon re-inspection HUD determines that the property still does not meet UPCS, HUD may:
   - Seek a voluntary amended compliance plan or require one.
   - Require a change in management.
   - Seek a voluntary transfer of the property or the Section 8 contract to another willing owner.
   - Impose civil money penalties.
   - Terminate the rental assistance contract and relocate residents.
   - Declare a default of the regulatory agreement and foreclose on the property.
   - Take control of the property under receivership.

Section 222 requires HUD to submit quarterly reports to Congress. The reports must include all projects that receive a REAC score of less than 60 or receive an Unsatisfactory Management and Occupancy Review (MOR) within the past 36 months. (MORs are detailed in Chapter 6 of HUD Handbook 4350.1 REV-1 CHG-2.) The report must include actions taken to address each property's physical condition to protect residents.

Notice H-2018-08 is at: https://bit.ly/2SsswuJ

More information about Project-Based Housing is on page 4-23 of NLIHC's *2018 Advocates' Guide*.

More information about Section 811 is on page 4-32 of NLIHC's *2018 Advocates' Guide*.

More information about Section 202 is on page 4-29 of NLIHC's *2018 Advocates' Guide*.