DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 200

[Docket No. FR–4452–P–01]

RIN 2501–AC45

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes for multifamily housing (non-public housing as more fully described in the Supplementary Information section) certain administrative processes by which HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing; the owners, under certain circumstances, will be provided an opportunity to seek technical review of HUD's physical condition assessment of the multifamily housing; and HUD may take action in certain cases where the housing is found not to be in compliance with the physical condition standards.

DATES: Comments Due Date: January 25, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For further information about multifamily issues covered by this rule, contact: Kenneth Hannon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6274, Washington, DC 20410; telephone (202) 708–0547, ext. 2599 (this is not a toll-free number).

For further information about the scoring methodology or the technical review process, contact: Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number).

For both offices, persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—Uniform Physical Conditions Standards and Uniform Physical Inspection Protocols

On September 1, 1998 (63 FR 46566), HUD published a final rule that established uniform physical condition standards for public housing, and housing that is insured and/or assisted under certain HUD programs (collectively, HUD properties). The September 1, 1998, final rule also established uniform physical inspection protocols, based on computerized software developed by HUD, that allows HUD to determine compliance with these standards. The uniform physical condition standards are intended to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary and in good repair. The uniform inspection protocols are intended to assure that, to the greatest extent possible, there is uniformity and objectivity in the evaluation of the physical condition of HUD properties.

Before issuance of the September 1, 1998, final rule, HUD properties were required to meet physical condition standards and to undergo an annual physical inspection. The standards and inspection protocols which were then applicable to these properties, however, varied from HUD program to HUD program. The September 1, 1998, final rule was the first step directed toward achieving uniformity and consistency in the physical condition standards applicable to all HUD properties and in the inspection procedures to be used. For multifamily housing (as defined in Section IV of this preamble), the September 1, 1998, final rule represented the first step toward uniform and standardized assessment of the physical condition of multifamily housing properties. This proposed rule proceeds to the next stage which is to establish for multifamily housing properties certain administrative processes by which (1) HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing properties; (2) the owners, under certain circumstances, will be provided an opportunity to seek technical or other review of HUD's physical condition assessment of the multifamily housing properties; and (3) HUD may take action in certain cases where a property is found not to be in compliance with the physical condition standards.

II. Assessing and Scoring the Physical Condition of HUD Properties—HUD's Real Estate Assessment Center

The establishment of a system by which all HUD properties are assessed for compliance with physical conditions standards using uniform criteria is one of the key reforms of the HUD 2020 Management Reform Plan. The HUD 2020 Management Reform Plan, announced by Secretary Andrew Cuomo on June 26, 1997, is directed to (1) empowering people and communities to improve themselves, and (2) restoring HUD's reputation and credibility by improving the efficiency and effectiveness of HUD's programs, operations and delivery of services. Under the HUD 2020 Management Reform Plan, HUD's newly established Real Estate Assessment Center (REAC) is charged, among other things, with the responsibility for assessing and scoring the physical condition of HUD properties. Until the establishment of the REAC, HUD's Office of Housing and its Office of Public and Indian Housing independently operated separate real estate assessment operations, yet the administration of both organization's multifamily portfolios is a common function of asset management. In the HUD 2020 Management Reform Plan, HUD advised that the assessment of all properties of the Office of Housing and the Office of Public and Indian Housing would be consolidated, and the evaluation standards and procedures would be made uniform to the greatest extent possible. The REAC is responsible for assessing and scoring the performance of HUD properties.

With the establishment of the REAC, HUD now has in place an effective and comprehensive assessment system for physically inspecting and financially assessing all HUD properties using uniform inspection protocols. Application of uniform physical condition standards to all HUD properties and evaluation through uniform inspection protocols are important to a fair assessment process. One of HUD's objectives under HUD 2020 Management Reform is not only to identify where performance by program participants fails to meet acceptable standards (and to assist these participants in improving their performance or take enforcement action where appropriate), but also to identify those program participants that meet or

exceed acceptable standards and to provide incentives to these participants wherever possible. As part of the administrative processes to be established by this proposed rule, the REAC has begun a baseline physical inspection review of certain multifamily housing properties (baseline review). This review was announced by notice published in the **Federal Register** on February 9, 1999 (64 FR 6370) (February 9, 1999 Baseline Notice). This review was requested by the Congressional conferees in the FY 1999 HUD Appropriations Act.

III. Enforcing Compliance with HUD Program Requirements—HUD's Enforcement Center

Under the HUD 2020 Management Reform Plan, HUD has combined certain non-civil rights enforcement actions into one authority—the Departmental Enforcement Center (DEC). Before establishment of the DEC, each of HUD's program offices (the Office of Community Planning and Development, the Office of Housing, and the Office of Public and Indian Housing) operated independent enforcement functions, with different standards and procedures. The DEC is now the central Departmental office for taking action against owners of HUD assisted or insured properties determined to be in noncompliance with the rules and regulations of the Department or their contractual obligations with the Department. As will be discussed in more detail below, the DEC will have an important role in the administrative process, proposed in this rule, for covered multifamily housing.

IV. This Proposed Rule—Administrative Process for Scoring and Ranking Multifamily Housing Properties

(A) Covered Multifamily Housing Properties

Multifamily housing properties covered by this rule are the same as those listed in 24 CFR 5.701(a) and (b), published on September 1, 1998.

These properties are:

(a) Housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. ''Project-based assistance'' means Section 8 assistance that is attached to the structure (see 24 CFR 982.1(b)(1) regarding the distinction between ''project-based'' and ''tenant-based'' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(3) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances); and

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) Housing with mortgages insured or held by HUD, or housing that is receiving insurance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

(5) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);

(6) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(7) Section 231 of the NHA (Housing for Elderly Persons);

(8) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(9) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(10) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(11) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(12) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

As noted above, the covered properties are the same as those listed in 24 CFR 5.701(a) and (b) of the September 1, 1998, final rule. In the September 1, 1998, final rule, the reference to 'section 221(d)(3) and (5) of the NHA (Housing for Moderate Income and Displaced Persons)' is intended to cover both the section 221(d)(3) BMIR (Below-Market Interest Rate) program *and* the section 221(d)(3) MIR (Market Interest Rate) program. HUD now recognizes, however, that there is a possibility for confusion with this reference because one could misconstrue the reference as only applicable to section 221(d)(3) BMIR properties. A section 221(d)(3) BMIR property is insured under section 221(d)(3) of the NHA as is the section 221(d)(3) MIR Program, but the below-market interest rate for the section 221(d)(3) BMIR Program is provided pursuant to section 221(d)(5). Therefore, in this proposed rule, the coverage is more precisely delineated by reflecting the separate references to both programs.

(B) Process for Assessing, Scoring and Ranking Multifamily Housing Properties

For owners of covered multifamily housing properties, this proposed rule would add a new subpart P to 24 CFR part 200, to establish an assessment process for multifamily housing properties which would include the following components.

(1) *Scoring and Ranking the Physical Condition of Multifamily Housing Properties.* The rule proposes to establish a system for ranking multifamily housing properties covered by the February 9, 1999 Baseline Notice. For these properties, the ranking is based on the physical inspection results of the baseline review. Newly endorsed multifamily properties will be inspected in the first year after endorsement and then ranked in accordance with the process described in this proposed rule.

(a) *Physical Condition Designations.* Depending upon the results of its physical condition inspection, a multifamily housing property would be assigned one of the following designations: (1) Standard 1 performing property; (2) standard 2 performing property; or (3) standard 3 performing property. The physical condition designation assigned to a multifamily housing property will be based on numerical thresholds developed as a result of the REAC's baseline review of multifamily properties. This rule does not propose to establish at this time the numerical scores that will distinguish between the three categories of properties. HUD believes that meaningful numerical thresholds can only be determined after the REAC substantially completes its baseline review (using HUD's new uniform and computerized physical inspection protocol), and the REAC has had sufficient time to properly evaluate this data.

(b) *Methodology for Ranking.* When the baseline review is substantially completed, multifamily housing properties will be ranked in accordance with the following methodology. Multifamily housing properties are scored on the basis of 100 point scale. For each designation category, the lowest score in the category becomes the numerical threshold for that category.

(i) *Standard 1 Performing Properties—Highest 20 Percent.* Covered multifamily housing properties scoring in the highest 20 percent of a physical

condition inspection will be designated standard 1 performing properties and will be required to undergo a physical inspection once every three (3) years.

(ii) *Standard 2 Performing Properties—Next Highest 30 Percent.* Covered multifamily housing properties scoring in the next highest 30 percent of a physical condition inspection will be designated standard 2 performing properties and only will be required to undergo physical inspection once every two (2) years.

(iii) *Standard 3 Performing Properties—Remaining 50 Percent.* Covered multifamily housing properties scoring in the remaining 50 percent will be designated standard 3 performing properties, will be required to continue with the annual physical inspection currently required under covered HUD programs.

Example of Designation Process. To illustrate more clearly how the ranking will be done, assume for purposes of this example that the baseline review shows that those multifamily housing properties that rank in the top 20 percent have physical condition scores ranging from 100 to 80 with 100 being the maximum number of points that can be received for a physical condition inspection. As a result of this baseline review, all properties scoring 80 and above will be designated standard 1 performing properties.

Further assume for purposes of this illustration that the multifamily housing properties that fall into the next category of 30 percent have physical condition scores ranging from less than 80 but at least 70. These properties will be designated standard 2 performing properties, and all properties thereafter scoring at least 70, but less than 80, will be standard 2 performing properties.

The remaining 50 percent of multifamily properties will have scores of less than 70. These properties will be designated standard 3 performing properties, with the threshold being less than 70.

Resolving Exigent Health and Safety Deficiencies. Owners of multifamily housing properties scoring in a standard 1 or standard 2 range which have been cited by the REAC as having a Exigent Health and Safety deficiency(s) are obligated to resolve the deficiency(s) to be classified as standard 1 and standard 2 properties. The owners must certify and provide reasonable evidence that the deficiency(s) has been resolved to the applicable Multifamily Hub Director.

Meeting Physical Condition Standards Notwithstanding Performance Designation. Regardless of the performance designation assigned to an owner's property, an owner is obligated to maintain its property in accordance with HUD's uniform physical condition standards as required by 24 CFR part 5, subpart G, the Regulatory Agreement and/or the Housing Assistance Payment (HAP) Contract. Good management principles require an owner to conduct routine inspections of its projects, develop improvement plans, and again, maintain its property to meet the standard of decent, safe, sanitary and in good repair.

(c) *Inspecting and Scoring Individual Properties.* The process by which scores are developed was discussed in HUD's notice, ''Public Housing Assessment System; Notice of Physical Condition Scoring,'' published in the **Federal Register** on May 13, 1999, and again on June 23, 1999. Although this notice was directed to public housing agencies and describes the physical condition scoring process under the Public Housing Assessment System, the process for determining scores is the same for multifamily housing properties. The physical condition scoring process for both public housing and multifamily properties is based on HUD's uniform physical condition standards and use of HUD's uniform physical inspection protocols.

The physical condition designation assigned to a multifamily housing property does not prohibit HUD (the REAC, DEC or the Office of Housing) from conducting an inspection on any covered multifamily housing property at any time that HUD has reason to believe that the property has deteriorated significantly, or if information is brought to HUD that the physical condition of the property has deteriorated significantly, since the date that the last inspection was conducted. If HUD's new inspection verifies that the multifamily housing property has deteriorated significantly, HUD may revise the physical condition designation of the property, or take whatever action may be appropriate.

In addition to physical inspections performed to determine the physical condition of multifamily properties as provided by this rule, HUD may perform interim inspections for certain purposes such as section 8 contract renewal, partial release of security, permission to sell the security, or in connection with mortgage restructuring.

(2) *Technical Review of Physical Inspection Score Results.* This rule proposes to adopt as one of the administrative processes for multifamily housing properties, the technical review of physical inspection results described in HUD's notice, ''Real Estate Assessment Center; Technical Review of Physical Inspection Results,'' published in the **Federal Register** on May 13, 1999. The **Federal Register** notice describes the process for requesting (of the REAC) and the granting (by the REAC) a technical review of physical inspection results for public housing agencies. Based on that notice, this rule proposes to adopt the following procedures for covered multifamily housing properties.

Review of Physical Inspection Report and Identification of Objectively Verifiable and Material Error. Upon completion of a physical inspection of a multifamily housing property, the REAC will provide the owner with a physical inspection report. The physical inspection report includes a copy of the physical inspection results, the physical condition score and ranking, an explanation of the score and the owner's rights to request a technical review no later than 30 days following issuance of the physical inspection results to the owner. The rule imposes the responsibility on the owner to carefully review the report, particularly those items classified as exigent health and safety (EHS). All EHS items must be mitigated immediately, and the owner is required to file a written report with the local HUD office within 72 hours of the inspection. The owner is also responsible for conducting its own survey of the total project based on the REAC's physical inspection findings.

If the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection of an owner's multifamily housing property, which, if corrected, would result in a significant improvement in the property's overall score, the owner may request a technical review of the physical inspection results of the property.

Request for Technical Review and Burden of Proof. Until electronic transmission is arranged between HUD and the owner, the owner has a period of 30 calendar days to (i) review the physical inspection results and property score and determine if the results and score indicate that an objectively verifiable and material error (or errors) occurred in the inspection, which if corrected would result in a significant improvement in the property's overall score; and (ii) request a technical review by the REAC of the property's physical inspection results. A request for a technical review of physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by the REAC, with a copy to the Multifamily Hub Director (MFD), no later than the 30th calendar day

following issuance of the physical inspection report to the owner. Note that the review period of 30 days will be the requisite review period only until electronic transmission of the physical inspection report is established. When electronic transmission is arranged between HUD and the owner, the review period will be 15 calendar days.

The request must be received by the REAC and be accompanied by the owner's reasonable evidence that an objectively verifiable and material error (or errors) occurred, which if corrected would result in a significant improvement in the property's overall score. A technical review of physical inspection results will not be conducted based on conditions that were corrected subsequent to the inspection nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of a deficiency (e.g., categorization of the deficiency as minor, major or severe).

The burden of proof rests with the owner to reasonably demonstrate that an objectively verifiable and material error occurred in the inspection through the submission of evidence, which would result in a significant improvement in the property's overall score. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence.

What Constitutes Material Errors. An objectively verifiable material error must be present to allow for a technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

1. *Building Data Error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the subject project owner, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is information that HUD needs to know, and will be corrected upon notice to the REAC.

2. *Unit Count Error.* A unit count error occurs if the total number of units involved in the scoring process is incorrect. Since the scoring process uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

3. *A Non-Existent Deficiency Error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

What Constitutes Significant Improvement. Significant improvement refers to the correction of a material error, asserted by the owner, which causes the score for the owner's property to improve by crossing an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing).

Determining Whether Material Error Occurred and What Action Is Warranted. Upon receipt of the owner's request for technical review of a property's physical inspection results, the REAC will evaluate the owner's property file and the evidence provided by the owner that an objectively verifiable and material error occurred which, if corrected, would result in a significant improvement in the property's overall score. If the REAC's evaluation determines that an objectively verifiable and material error (or errors) has been reasonably documented by the owner and if corrected would result in a significant improvement in the property's overall score, then the REAC shall take one or a combination of the following actions: (1) Undertake a new inspection; (2) correct the inspection report; or (3) issue a new physical condition score.

For an owner to understand how the REAC may conclude that a significant improvement may result from a new inspection, the owner may use the REAC's document titled ''Items, Weights and Criticality Levels'' to determine whether a significant improvement in the property's score may result from a new inspection. This document was included as Appendix 1 in the Notice of Physical Condition Scoring, published in the **Federal Register** on May 13, 1999, and republished on June 23, 1999 (64 FR 33650). The different severity levels of deficiencies (severe, major and minor) are defined in the REAC's ''Dictionary of Deficiencies Definitions,'' which is included as Appendix 2 in the Notice of Physical Condition Score published on May 13, 1999. These two documents are also available on the REAC Internet Site at http://www.hud.gov/reac.

Responsibility for the Cost of a New Inspection. If a new inspection score results in a significant improvement from the original physical inspection score, HUD shall bear the expense of the new inspection. If no significant improvement in the score is shown, then the owner must bear the expense of the new inspection. The cost of the new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(3) Adjustment of Physical Condition Score Based on Considerations Other Than Technical Review and Reinspection. Under certain circumstances, it may be appropriate for HUD to review the results of a physical inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection. Circumstances such as, but not necessarily limited to, inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the HUD physical condition protocol; or cases where the owner has been scored for elements (e.g., roads, sidewalks, mail boxes, resident owned appliances, etc.) that it does not own and is not responsible for maintaining, may be addressed by a formal procedure to be initiated by the owner's notification to the applicable HUD Field Office and submission to that office of appropriate proof of the anomalous or inappropriate application. This process may result in a reinspection and/or rescoring of the inspection based on Office of Housing recommendation after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application. An owner may submit the request for this adjustment either prior to or after the physical inspection has been concluded. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (e) of this section. The procedures outlined in this Notice shall be binding on the REAC, the Office of Housing and the DEC. The notice will be applicable to both public housing and multifamily properties.

(C) Administrative Review of Properties Referred to the Departmental Enforcement Center

The files of any of the multifamily housing properties may be submitted to HUD's Departmental Enforcement Center (DEC) or to the appropriate MFD for evaluation, or both, at the discretion of the Office of Housing. For these properties, the following will occur:

(1) *Notification to Owner of Submission of Property File to the MFD and DEC.* The Department will provide

for written notification to the owner that the file on the owner's property is being submitted to the MFD and/or DEC for evaluation. The written notification will be provided by HUD at the time the REAC issues the physical inspection report to the owner or at such other time as referral occurs.

(2) *30-Day Period for Owner to Provide the DEC with Supporting and Relevant Information and Documentation.* The owner has 30 calendar days, from the date of written notification to the owner, to provide comments, proposals, or any other information which will assist the MFD and DEC in conducting a comprehensive evaluation of the property. A proposal provided by an owner may include the owner's plan to correct deficiencies (corrective action plan), which is encouraged by the DEC. During the 30-day response time available to the owner, the DEC may encourage the owner to submit a corrective action plan. The corrective action plan, if timely submitted during the 30-day period (whether on the owner's initiative or at the request of the DEC), may serve as additional information for the DEC to consider in determining appropriate action to take at the conclusion of the evaluation period. A corrective action plan may be required of the owner at the conclusion of the DEC's evaluation of the property.

(3) *Evaluation of the Property.* During the evaluation period, the DEC will perform an analysis of the multifamily housing property. The evaluation may include input from tenants, HUD multifamily officials, elected officials and others as may be appropriate. The MFD will assist with the evaluation of the property. The DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of the individuals and groups listed above. The DEC's evaluation may include a site visit to the owner's property.

The DEC is committed to perform its evaluation as quickly as possible. The comments and proposals of the owners which have been provided since the REAC inspection, and any repairs that have been made since the REAC inspection, will be given serious consideration during the DEC evaluation period. During this evaluation period, since the owner and the Multifamily Hub have now been made aware of serious deficiencies at the property which resulted in the low REAC score, the owner must exert a full measure of oversight and ensure that all deficiencies are corrected.

(4) *Continuing Responsibilities of HUD Multifamily Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's multifamily program offices continue to be responsible for routine asset management tasks on properties and all servicing actions (e.g., rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, for insured mortgages, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

As part of its evaluation and development of the compliance plan (discussed under Section (D) below), the DEC will put together a team to evaluate and develop a corrective action plan. The Multifamily Hub Program Office will assign a Senior Project Manager to the team, who will be a working member of the team and serve as team liaison to the HUB Director. If conflict or an impasse develops during the team's assignment, the liaison will notify the Multifamily Hub Director who will work to mitigate and eliminate all conflict. The Multifamily Hub Director may, if appropriate, enlist the assistance of the Office of Housing/DEC liaison in Headquarters to resolve any disputes.

(D) Enforcement Action

If, at the conclusion of the evaluation period, the DEC determines that enforcement action is appropriate, the DEC will provide written notification to the owner of the DEC's decision to formally accept the property for enforcement purposes.

(1) *DEC Owner Compliance Plan.* After notification to the owner of the DEC's decision, the DEC will produce a proposed action plan (DEC Compliance Plan), the purpose of which is to improve the physical condition of the owner's property and correct any other known violations by the owner of its regulatory, contractual or other obligations. The DEC Compliance Plan will describe (1) the actions that will be required of the owner to correct, mitigate or eliminate identified property deficiencies, problems, hazards, and/or address legal violations by owners, and (2) the period of time within which these actions must be completed. The DEC Compliance Plan will specify the compliance responsibilities of the owner.

The DEC Compliance Plan will be submitted to the MFD for review and concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

The owner will be provided a period of 30 calendar days to review the DEC Compliance Plan and respond to the DEC. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter Compliance Plan Proposal By Owner.* The owner may submit a counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-Cooperation and Non-Compliance by Owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan or to present an acceptable counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No Limitation on Existing Enforcement Authority.* The proposed rule will emphasize that the administrative process established for multifamily housing properties will not prohibit the Office of Housing, the DEC or HUD generally to take whatever immediate action may be necessary, as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(E) Clarification of Certain Issues Related to Physical Inspection of Multifamily Housing Properties

(1) *Recurring Inspection of Properties.* In response to concerns raised at the

time of issuance of the September 1, 1998, final rule, about the possibility of more inspections being performed prior to the property's normal inspection schedule, this rule proposes to clarify that any additional inspection will occur under the following circumstances: (i) The REAC's baseline inspection of the property after the mortgagee has conducted its own inspection in accordance with existing requirements; (ii) at the request of the owner in accordance with the procedures discussed earlier in this preamble; (iii) as part of the administrative review process described in this proposed rule; (iv) in response to HUD's belief that the property has deteriorated significantly since its previous physical inspection, or information brought to HUD that a property has significantly deteriorated since its previous physical inspection; (v) as part of quality control to assure that inspections are being conducted properly; (vi) for special purposes including but not limited to partial release of security, permission to sell the security, or in connection with mortgage restructuring; or (vii) to conduct an inspection in conjunction with any possible enforcement action by HUD.

(2) *Information about the Physical Inspection System*. In the preamble to the September 1, 1998, uniform physical conditions final rule, HUD advised that it would make the inspection software and guidebook available from the REAC. Both the software and guidebook are available from the REAC web page at www.hud.gov/reac, or through the REAC Customer Service Center at no cost (besides nominal cost of shipping) by calling 1–888–245–4860. Public versions of the physical inspection software will be available on compact disk (CD) and can be obtained by calling the REAC Customer Service Center. REAC may update or revise the physical inspection software and guidebook from time to time. When requesting the physical inspection software and guidebook, the requestor will be asked to provide the Uniform Resource Locator (URL) for their firm or organization, the requester's e:mail address and post office mailing address.

(3) *Material Alteration of Physical Inspection Software*. In response to concerns raised at the time of issuance of the September 1, 1998, final rule, about the cost of the physical inspection protocol, HUD advises that it will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

(F) Enforcement Issues of Concern to Small Entities

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847, approved March 29, 1996) (''SBREFA'') provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 21, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, *under appropriate circumstances*, waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity. Depending upon the circumstances surrounding the violation, it is not HUD's intent to put any individual or entity out of business by the penalties or settlement amounts paid to the Federal Government.

With respect to DEC enforcement actions taken in accordance with this proposed rule, HUD is cognizant that section 222 of SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its May 21, 1998 notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

Reporting and Recordkeeping Burden:

Section reference	Number of parties	Annual freq. of requirement	Est. Avg. time for requirement (hours)	Est. annual burden (hrs.)
§ 200.857 ..... Total Reporting and Recordkeeping Burden (Hours).	29,000	1	3	87,000

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4452) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Oliver Walker, Reports Liaison Officer, Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, 451—7th Street, SW, Room 4238, Washington, DC 20410

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule is not anticipated to have a significant economic impact on a substantial number of small entities. As stated in the June 30, 1998, proposed rule and September 1, 1998, final rule on uniform physical condition standards, all HUD housing has been subject to physical condition standards and a physical inspection requirement. There are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. The rules on uniform physical conditions standards and uniform physical inspections do not alter these requirement, nor do they shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals responsible for the inspection of HUD subsidized properties remain responsible. This proposed rule is a follow-up to the September 1, 1998, final rule on uniform physical inspection standards by establishing an administrative process by which multifamily housing properties are analyzed, scored and ranked. With the exception of exigent circumstances, the administrative process, as described in the preamble, allows for appropriate and reasonable notice and opportunity for review and comment, and a reasonable period for corrective action. With respect to the physical inspection process itself, in the preamble to this proposed rule, HUD reiterated its commitment to provide the software at no cost to covered entities as well as the accompanying guidebooks and to publish a notice that gives covered entities reasonable notice of when the software and guidance are available. With the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Executive Order, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d) (3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.188—Housing Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

List of Subjects in 24 CFR Parts 5 and 200

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Pets, Public

housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is proposed to be amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR Part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.701, paragraph (a) is revised, and a new paragraph (b) is added to read as follows:

§ 5.701 Applicability.

(a) This subpart applies to housing assisted under the HUD programs listed in 24 CFR 200.853(a).

(b) This subpart applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the programs listed in 24 CFR 200.853(b).

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

3. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715–18; 42 U.S.C. 2535(d).

4. A new subpart P is added to 24 CFR part 200 to read as follows:

Subpart P—Physical Condition of Multifamily Properties

Sec.
200.850 Purpose.
200.853 Applicability.
200.855 Physical condition standards.
200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

Subpart P—Physical Condition of Multifamily Properties

§ 200.850 Purpose.

The purpose of this subpart is to establish the physical conditions standards and physical inspection requirements that are applicable to certain multifamily housing properties.

§ 200.853 Applicability.

This subpart applies to:

(a) Housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. ''Project-based assistance'' means Section 8 assistance that is attached to the structure (see 24 CFR 982.1(b)(1) regarding the distinction between ''project-based'' and ''tenant-based'' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(3) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances); and

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) Housing with mortgages insured or held by HUD, or housing that is receiving insurance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

(5) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);

(6) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(7) Section 231 of the NHA (Housing for Elderly Persons);

(8) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(9) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(10) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(11) Section 241 of the NHA (Supplemental Loans for Multifamily Projects); and

(12) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

§ 200.855 Physical condition standards and physical inspection requirements.

The physical condition standards and physical inspection requirements in 24 CFR part 5, subpart G, are applicable to the properties assisted or insured that are listed in § 200.853.

§ 200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

(a) *Scoring and ranking of the physical condition of multifamily housing properties.* (1) HUD's Real Estate Assessment Center (REAC) will score and rank the physical condition of certain multifamily housing insured properties listed in § 200.853 upon the REAC's completion of its physical inspection of these properties (the baseline review), as described in HUD's Baseline Review Notice published on February 9, 1999. Newly endorsed multifamily properties will be inspected in the first year after endorsement and then ranked in accordance with the process described in this proposed rule.

(2) Depending upon the results of its physical condition inspection, a multifamily housing property will be assigned one of three designations—standard 1 performing, standard 2 performing and standard 3 performing—in accordance with the ranking process described in paragraph (b) of this section.

(b) *Methodology for Ranking.* (1) Multifamily housing properties will be ranked in accordance with the methodology provided in this paragraph (b). Multifamily housing properties are scored on the basis of 100 point scale. For each designation category, the lowest score in the category becomes the numerical threshold for that category.

(i) *Standard 1 Performing Property—Highest 20 Percent.* If a property scores in the highest 20 percent of the physical condition inspection of multifamily housing properties, the property will be designated a standard 1 performing property. Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.

(ii) *Standard 2 Performing Property—Next Highest 30 Percent.* If a property scores in the next highest 30 percent of the physical condition inspection of multifamily housing properties, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.

(iii) *Standard 3 Performing Property—Remaining 50 Percent.* If a property scores in the remaining 50 percent in the physical condition inspection of multifamily housing properties, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.

(2) Owners of multifamily housing properties scoring in a standard 1 or standard 2 range which have been cited by the REAC as having a Exigent Health and Safety deficiency(s) are obligated to resolve the deficiency(s) to be classified as standard 1 and standard 2 properties. The owners must certify and provide reasonable evidence that the

deficiency(s) has been resolved to the applicable Multifamily Hub Director.

(3) Regardless of the performance designation assigned to an owner's property, an owner is obligated to maintain its property in accordance with HUD's uniform physical condition standards as required by 24 CFR part 5, subpart G, the Regulatory Agreement and/or the Housing Assistance Payment (HAP) Contract. Good management principles require an owner to conduct routine inspections of its projects, develop improvement plans, and again, maintain its property to meet the standard of decent, safe, sanitary and in good repair.

(c) *Owner's review of physical inspection report and identification of objectively verifiable and material error.* (1) Upon completion of a physical inspection of a multifamily housing property, the REAC will provide the owner with a physical inspection report. The physical inspection report includes a copy of the physical inspection results, the physical condition score and ranking, an explanation of the score and the owner's right to request a technical review of the physical inspection results as described in paragraph (d) of this section.

(2) The owner must carefully review the report, particularly those items classified as exigent health and safety (EHS). The owner is also responsible for conducting its own survey of the total project based on the REAC's physical inspection findings. The owner must mitigate all EHS items immediately, and the owner must file a written report with the local HUD office within 72 hours of the inspection.

(3) If, following review of the physical inspection results and score, the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection, which, if corrected, will result in a significant improvement in the property's overall score, the owner may request a technical review within the following period, as applicable:

(i) 15 calendar days if the results and score are electronically transmitted to the owner; or

(ii) 30 calendar days if the results and score are transmitted to the owner by hard copy by certified mail.

(d) *Technical review of physical inspection results.* A request for a technical review of physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than the 15th calendar day or 30th calendar day, as applicable under paragraph (c)(3) of this section, following issuance of the physical inspection report to the owner.

(1) *Request for technical review.* The request must be accompanied by the owner's reasonable evidence that an objectively verifiable and material error (or errors) occurred which if corrected will result in a significant improvement in the overall score of the owner's property. A technical review of physical inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner, and recommendation of the appropriate HUD Multifamily Hub Director, the REAC will review the physical inspection and the owner's evidence. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions: undertake a new inspection; correct the original inspection; or issue a new physical condition score.

(2) *Burden of proof that error occurred rests with owner.* The burden of proof rests with the owner to demonstrate that an objectively verifiable and material error (or errors) occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence.

(3) *Material errors.* An objectively verifiable material error must be present to allow for a technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(4) *Significant improvement.* Significant improvement refers to the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing).

(5) *Determining whether material error occurred and what action is warranted.* Upon receipt of the owner's request for technical review of a property's physical inspection results, the REAC will evaluate the owner's property file and the evidence provided by the owner that an objectively verifiable and material error occurred which, if corrected, would result in a significant improvement in the property's overall score. If the REAC's evaluation determines that an objectively verifiable and material error (or errors) has been reasonably documented by the owner and if corrected would result in a significant improvement in the property's overall score, then the REAC shall take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the inspection report; or

(iii) Issue a new physical condition score.

(6) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the REAC and the new inspection score results in a significant improvement in the property's overall score, then HUD shall bear the expense of the new inspection. If no significant improvement occurs, then the owner must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(e) *Adjustment of physical condition score based on considerations other than technical review and reinspection.* Under certain circumstances, it may be appropriate for HUD to review the results of a physical inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection. Circumstances such as, but not necessarily limited to, inconsistencies between local code

requirements and the HUD physical inspection protocol; conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the HUD physical condition protocol; or cases where the owner has been scored for elements (*e.g.,* roads, sidewalks, mail boxes, resident owned appliances, etc.) that it does not own and is not responsible for maintaining, may be addressed by a formal procedure to be initiated by the owner's notification to the applicable HUD Field Office and submission to that office of appropriate proof of the anomalous or inappropriate application. This process may result in a reinspection and/or rescoring of the inspection based on Office of Housing recommendation after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application. An owner may submit the request for this adjustment either prior to or after the physical inspection has been concluded. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (e) of this section. The procedures outlined in this Notice shall be binding on the REAC, the Office of Housing and the DEC. The notice will be applicable to both public housing and multifamily properties.

(f) *Administrative review of properties.* The files of any of the multifamily housing properties may be submitted to HUD's Departmental Enforcement Center (DEC) or to the appropriate HUD Multifamily Hub Director (MFD) for evaluation, or both, at the discretion of the Office of Housing.

(1) *Notification to owner of submission of property file to the MFD and DEC.* The Department will provide for written notification to the owner that the file on the owner's property is being submitted to the MFD and/or the DEC for evaluation. The notification will be provided at the time the REAC issues the physical inspection report to the owner or at such other time as a referral occurs.

(2) *30-Day period for owner to provide the DEC with supporting and relevant information and documentation.* The owner has 30 calendar days, from the date of the REAC written notification to the owner, to provide comments, proposals, or any other information to the DEC which will assist the MFD and DEC in conducting a comprehensive evaluation of the property. A proposal provided by an owner may include the owner's plan to correct deficiencies (corrective action plan). During the 30-day response time available to the owner, the DEC may encourage the owner to submit a corrective action plan. The corrective action plan, if timely submitted during the 30-day period (whether on the owner's initiative or at the request of the DEC), may serve as additional information for the DEC to consider in determining appropriate action to take at the conclusion of the evaluation period. If not submitted during the 30-day response time, a corrective action plan may be required of the owner at the conclusion of the DEC's evaluation of the property.

(3) *Evaluation of the property.* During the evaluation period, the DEC will perform an analysis of the multifamily housing property, which may include input from tenants, HUD multifamily officials, elected officials, and others as may be appropriate. Although the MFD will assist with the evaluation, for insured mortgages, the DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph (f)(2). The DEC's evaluation may include a site visit to the owner's property.

(4) *Continuing responsibilities of HUD Multifamily Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's multifamily program offices continue to be responsible for routine asset management tasks on properties and all servicing actions (e.g., rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

(g) *Enforcement action.* If, at the conclusion of the evaluation period, the DEC determines that enforcement action is appropriate, the DEC will provide written notification to the owner of the DEC's decision to formally accept the property for enforcement purposes.

(1) *DEC Owner Compliance Plan.* (i) After notification to the owner of the DEC's decision, the DEC will produce a proposed action plan (DEC Compliance Plan), the purpose of which is to improve the physical condition of the owner's property, and correct any other known violations by the owner of its legal obligations. The DEC Compliance Plan will describe:

(A) The actions that will be required of the owner to correct, mitigate or eliminate identified property deficiencies, problems, hazards, and/or correct any other known violations by the owner;

(B) The period of time within which these actions must be completed; and

(C) The compliance responsibilities of the owner.

(ii) The DEC Compliance Plan will be submitted to the MFD for review and concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

(iii) Following submission of the DEC Compliance Plan to the owner, the owner will be provided a period of 30 calendar days to review and accept the DEC Compliance Plan. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter compliance plan proposal by owner.* The owner may submit an acceptable counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-cooperation and Non-compliance by owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan, or to present a counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit the Office of Housing, the DEC, or HUD generally, to take whatever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other

documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(h) *Limitations on material alteration of physical inspection software.* HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

Dated: November 4, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

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