# RCM HUD UPDATE 2015

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How to get “Add-On” Management Fees

Please note this is not a National HUD policy but it’s up to each individual HUD HUB. So, it may vary from office to office. Each HUB office has its own list of permissible add-ons with a flat dollar amounts per unit per month.

HUD includes a list of “Examples of Long-Term Project Conditions That Could Justify Add-On Fees” in Handbook 4381.5.

Some examples are:

- High-density sites - A high percentage of three or more bedrooms.
- Scattered sites – example five or six different sites with three or four units at each site.
- Remote Location – traveling to the remote site takes a plane or a day's drive.
- Adverse neighbor conditions – area with a lot of deteriorated or substandard housing or that are affected by a high incidence of crime or vandalism causing higher maintenance and repair costs.
- Sites owned by nonprofits or cooperatives – Some nonprofits need more assistance and cooperatives have additional legal and administrative responsibilities. HUD acknowledges that managing these sites requires more sophisticated knowledge and effort and should get a higher fee.
- Subsidy/Program mix – combination of subsidies requires more “administrative oversight”.
- Site predominantly catering to disabled residents - Section 202 811 and so on.
- Sites committed to the Multifamily Better Building Challenge – Better Building challenge have made a commitment to reduce their energy usage by 20 percent in 10 years.
How to get a copy of fee schedule:

To determine which add-ons are available in your area, call your local HUD HUB and ask for the latest add-ons list issued by that office. Note, HUD Handbook 4381.5 par. 3.7 says they’re supposed to issue one and sent it when requested. If its over two-year-old, ask for the newest list. Each office is required to review fees every two years.
Disparate Impact under the Fair Housing Act

In June of 2015 the US Supreme Court upheld “Disparate Impact” as a form of discrimination under the Fair Housing act.

What is Disparate Impact?

(HUD Definition) A practice that actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex handicap, familial status or national origin.

This rule has complicated proof issues.

Proofing disparate impact

- Need not to show intent for disparate impact claims
- Claims based on statistics that suggest a housing policy has a discriminatory effect on a protected class.
- Disparate impact is used to attack policies or practices that are neutral on their face but that have allegedly disproportionate impact on minorities.
- Disparate impact may expose cooperatives to liability for otherwise “normal” operations and policies.

Crime/drug credit screening policies may have a disproportionate effect.

Three Step Burden- shifting approach:

- The plaintiff (or charging party) must make a prima facie (First Look) showing of either a disparate impact or segregative effect.
- If the discriminatory effect is shown, the burden of proof shifts to the respondent to show “Legally sufficient justification.”
- If the respondent satisfies the burden, then the charging party/plaintiff may still establish liability by proving that these substantial, legitimate, nondiscriminatory interests could be served by another practice that has a less discriminatory effect.
The future:

- Expect swift increase in the number of cases
- Effectively, expands number of “pseudo-protected classes” (high risk borrowers, convicted felons, persons with non-wage income)
- Lower courts will have to wrestle with the details.

Future kind of challenges

1. Residency preference
2. Drug/crime screening policies
3. Membership decisions based on source or type of income
4. Credit screening
5. House rules

What to do now:

- Review new/existing policies or practices
- Be cautious about rules that focus on specific groups (Like restricting children's activities)
- Document the what and why on occupancy requirements, preferences and house rules.
With the rollout of the new Uniform Physical Condition Standards (UPCS) inspection software (version 4.0), the Real Estate Assessment Center (REAC) now has the capability to collect more detailed information about observations made during the inspection of properties. Therefore, the report has been modified to provide this detailed information, and also to make the results of the inspection more clear. This “Cheat Sheet” provides a basic summary of the various sections of the modified report, listed in the order in which they appear.

- **'Inspection Snapshot'** provides a high level summary of the inspection.
- **'Property Profile'** (see figure 1 below) identifies the number of Buildings and Units together with the occupancy information.
- **'Participant Profile'** (see figure 2 below) identifies property participants and provides their contact information. A new presence indicator will show who amongst the property participants (Management Agent, Owner and/or Site Manager) were present at the time of inspection.
- **'Score Summary'** (see figure 3 below) provides an overview of the inspection score for each of the 5 inspectable areas.
- **'Health & Safety Summary'** shows any observed ‘Life’ and/or ‘Non-Life’ threatening ‘Health & Safety’ deficiencies.
- **'Systemic Deficiencies'** shows ‘Capital’ and ‘Ordinary’ repair items.
- **'Building/Unit Summary'** (see figure 4 below) provides important property data, including ‘Year of Construction’, ‘Number of Floors’ and ‘Building Type’.
- **'Certificates'** provides a listing of certifications that may be required for the property.
- **'Score Details'** provides an explanation of the score for the property including the source of any points deducted. Note that the inspection software allows for the recording of the same deficiency as many times as it occurs. However, it is only scored once. The number within the parentheses after the Deficiency indicates the number of observations for this inspectable area.
- **'Deficiency Details'** (see figure 5 below) identifies all recorded deficiencies for an inspectable area. The Decisions Column in this section lists the details on how the inspector identified the defect. While the ‘Score Details’ page described above focused on the number of points deducted, this section will identify all cited deficiencies, regardless of impact on score.
**Figure 1: Property Profile**

**Inspection Summary Report (POA) for Inspection #999999**

<table>
<thead>
<tr>
<th>Property Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Name:</td>
</tr>
<tr>
<td>FHA #:</td>
</tr>
<tr>
<td>Organization:</td>
</tr>
<tr>
<td>Multiple Site?:</td>
</tr>
<tr>
<td>Address Line 1:</td>
</tr>
<tr>
<td>City:</td>
</tr>
<tr>
<td>ZIP:</td>
</tr>
<tr>
<td>Phone:</td>
</tr>
<tr>
<td>Fax:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Building</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type</td>
<td>Expected</td>
</tr>
<tr>
<td>Residential</td>
<td>120</td>
</tr>
<tr>
<td>Common</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>120</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Occupancy Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Occupied Units</td>
</tr>
<tr>
<td>Occupancy Rate</td>
</tr>
<tr>
<td>Inspect Vacant Units</td>
</tr>
</tbody>
</table>

Comments: 54%; No Bed Bugs Reported Per POA

This section identifies the number of expected buildings in the HUD system.
This section identifies the number of actual buildings on site.
This section identifies the number of buildings in the sample.
This section identifies the number of expected units in the HUD system.
This section identifies the number of actual units on site.
This section identifies the number of units in the sample.
### Participant Profile

#### Management Agent [Primary Contact / Present During Inspection]
- **Name (F, M, L):** Manager P. Agent
- **Organization:** HUD Property Management
- **Address Line 1:** 456 Other Street
- **City:** Anytown
- **ZIP:** 12345
- **Phone:** (999) 555-2345
- **Fax:** (999) 555-2346

#### Owner [Not Present During Inspection]
- **Name (F, M, L):** Happy T. Owner
- **Organization:** HUD Property Management
- **Address Line 1:** 456 Other Street
- **City:** Anytown
- **ZIP:** 12345
- **Phone:** (999) 555-3456
- **Fax:** (999) 555-3457

#### Site Manager [Present During Inspection]
- **Name (F, M, L):** Site Manager
- **Organization:** HUD Property Management
- **Address Line 1:** 123 Main Street
- **City:** Anytown
- **ZIP:** 12345
- **Phone:** (999) 555-4567
- **Fax:** (999) 555-4568

This section not only identifies the relevant property participants, but also states whether a participant was present during the inspection.

Note: The report generation date/time does not reflect the inspection release date/time.
### Score Summary

**Inspection Summary Report (POA) for Inspection #999999**

<table>
<thead>
<tr>
<th>Area</th>
<th>Possible Points</th>
<th>Deductions (Excluding H&amp;S)</th>
<th>Pre H&amp;S Points</th>
<th>H&amp;S Deductions</th>
<th>Final Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site</td>
<td>12.97</td>
<td>0.00</td>
<td>12.97</td>
<td>0.00</td>
<td>12.97</td>
</tr>
<tr>
<td>Building Exterior</td>
<td>16.74</td>
<td>7.21</td>
<td>9.53</td>
<td>0.00</td>
<td>9.53</td>
</tr>
<tr>
<td>Building Systems</td>
<td>18.86</td>
<td>2.23</td>
<td>16.63</td>
<td>10.00</td>
<td>6.63</td>
</tr>
<tr>
<td>Common Area</td>
<td>14.23</td>
<td>6.22</td>
<td>8.00</td>
<td>0.00</td>
<td>8.00</td>
</tr>
<tr>
<td>Unit</td>
<td>37.21</td>
<td>1.74</td>
<td>35.46</td>
<td>6.04</td>
<td>29.42</td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>17.41</td>
<td>82.59</td>
<td>16.04</td>
<td>66.56</td>
</tr>
</tbody>
</table>

**Score Version:** 1  **Score Date:** 01/01/2014  **Final Score:** 67c*

*This column identifies possible points that a property can receive in each of the five property areas: site, building.*

*This column identifies deductions that were not classified as Health and Safety ("H & S") deductions.*

*This column identifies the property's score in each area before incorporating Health and Safety ("H & S") deductions.*

*This column identifies all Health and Safety ("H & S") deductions.*

*This column reflects the property's score for all five areas, minus all deductions, including all Health and Safety ("H & S") deductions, which results in the Final Score for the property.*

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**Report generation date/time:** 01/01/2014 04:13 PM  **Score Version:** 1  **Page:** 4 of 20  **Report template version:** 04/15/2011  **Note:** The report generation datetime does not reflect the inspection release datetime.
### Figure 4: Building/Unit Summary

#### Inspection Summary Report (POA) for Inspection #999999

#### Building/Unit Summary

<table>
<thead>
<tr>
<th>Entity</th>
<th>Expected</th>
<th>Actual</th>
<th># Inspected</th>
<th># Reported Uninspectable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Unit</td>
<td>120</td>
<td>120</td>
<td>22</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Building 1 - HUD ASSOCIATED PROPERTY [Sample, Inspected]

- **Address Line 1:** 123-A Main Street
- **City:** Anytown
- **State:** AK
- **Zip:** 12345
- **Extension:** 1234

<table>
<thead>
<tr>
<th>Type</th>
<th>Constructed In</th>
<th>Floors</th>
<th>Expected Unit Count</th>
<th>Actual Unit Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elevator Structure</td>
<td>2008</td>
<td>3</td>
<td>120</td>
<td>120</td>
</tr>
</tbody>
</table>

#### Comments:

<table>
<thead>
<tr>
<th>Unit #</th>
<th># Bedrooms</th>
<th>Occupied?</th>
</tr>
</thead>
<tbody>
<tr>
<td>101</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>107</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>113</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>119</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>128</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>134</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>139</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>203</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>208</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>213</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>219</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>226</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>232</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>237</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>300</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>305</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>311</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>316</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
<tr>
<td>322</td>
<td>1 Bedroom</td>
<td>Yes</td>
</tr>
<tr>
<td>327</td>
<td>2 Bedrooms</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Report generation date/time: 01/01/2014 04:13 PM
Score Version: 1
Page: 7 of 20
Report template version: 04/15/2011
Note: The report generation date/time does not reflect the inspection release date/time.
### Deficiency Details

<table>
<thead>
<tr>
<th>Item</th>
<th>Location/Comments</th>
<th>Deficiency/Severity</th>
<th>Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Site - HUD ASSOCIATED PROPERTY</strong></td>
<td>Site(0)</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td><strong>Building 1 - HUD ASSOCIATED PROPERTY [Sample Inspected]</strong></td>
<td>Building Exterior</td>
<td>Non-Health And Safety Deficiencies</td>
<td></td>
</tr>
<tr>
<td><strong>Roofs</strong></td>
<td>BE - Missing/Damaged Components from Downspout/Gutter (Roofs) - L2</td>
<td>Missing/Damaged Components from Downspout/Gutter - L2</td>
<td>You see that components of the drainage system including gutters, leaders, downspouts and drain openings are missing or damaged but there is NO visible damage to surrounding surfaces</td>
</tr>
<tr>
<td><strong>Walls</strong></td>
<td>exterior elevation near D exit door</td>
<td>BE - Missing Pieces/Holes/ Spalling (Walls) - L2</td>
<td>Surface Deterioration and Spalling - Smaller than a sheet of paper</td>
</tr>
<tr>
<td><strong>Walls</strong></td>
<td>exterior elevation near exit door B hallway</td>
<td>BE - Missing Pieces/Holes/ Spalling (Walls) - L2</td>
<td>Surface Deterioration and Spalling - Smaller than a sheet of paper</td>
</tr>
<tr>
<td><strong>Walls</strong></td>
<td>exterior wall elevation above A wing exit door</td>
<td>BE - Missing Pieces/Holes/ Spalling (Walls) - L2</td>
<td>Surface Deterioration and Spalling - Smaller than a sheet of paper</td>
</tr>
<tr>
<td><strong>Building 1 - HUD ASSOCIATED PROPERTY [Sample Inspected]</strong></td>
<td>Building Systems</td>
<td>Non-Health And Safety Deficiencies</td>
<td></td>
</tr>
<tr>
<td><strong>Emergency Power</strong></td>
<td>Floor 2 Exit signage light fixture auxiliary power supply: inoperable (near unit 206)</td>
<td>BS - Auxiliary Lighting Inoperable (Emergency Power) - L3</td>
<td>Auxiliary lighting does not function</td>
</tr>
<tr>
<td><strong>Health And Safety Deficiencies</strong></td>
<td></td>
<td>BS - Missing Sprinkler Head</td>
<td>Sprinkler head or its</td>
</tr>
</tbody>
</table>

Report generation date/time: 01/01/2014 04:13 PM
Report template version: 04/15/2011
Note: The report generation date/time does not reflect the inspection release date/time.
Notice: H 2015-02

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

Notice: H 2015-02

Issued: February 24, 2015
Expires: This notice remains in effect until amended, revoked, or superseded

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

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

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

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

A. Projects covered

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

- Rent Supplement Contract
- RAP Contract
- Section 202 Project Rental Assistance Contract
- Section 811 Project Rental Assistance Contract
- Section 202/162 Project Assistance Contract
- Section 811 Project Rental Assistance
- Senior Preservation Rental Assistance Contract

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

B. Triggers for action

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

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

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

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2 Because section 230(a) states that it applies to multifamily housing projects with a section 8 contract, Section 202/8 Housing Assistance Payments Contracts are also covered.
HUD's database. This release date is also noted on the email message that HUD sends to the owner electronically. Further, the Department notes that the word "receives" appears in Section 230(a) in the present tense. With respect to the third bullet, HUD will therefore consider any inspection report that was released on or after the date of the law's enactment (i.e., January 17, 2014) to be the first inspection in any series of inspections that will constitute "consecutive" scores.

II. Impact on Current Procedures

A. HUD's initial notice to owner

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

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

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

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

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

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

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

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

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

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

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

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

E. REAC Re-inspection Requests

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

Should the results of a re-inspection show that the project continues to be in poor physical condition (i.e., as reflected by a score of 59 or less), then HUD moves to the next appropriate steps to enforce compliance. Such actions include considering imposition of civil
money penalties (CMPs), abatement of the Section 8 or other rental assistance subsidy, in whole or in part, and possible assignment of an FHA loan and/or foreclosure.

F. Follow-up to REAC Re-inspection Results

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

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

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

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

- **Impose Civil Money Penalties.** If the project is not already in the DEC for the physical deficiencies, MFH staff must make an elective referral to the DEC using iREMS.

- **Abate, including partial abatement,** any Section 8 Housing Assistance Payments (HAP) or other rental assistance contract until all deficiencies have been corrected. The Multifamily Housing Account Executive must request approval from the Director, Business Relationships and Special Initiatives Division to suspend, abate or terminate the HAP contract. If the rental assistance contract is to be terminated, the Hub Director must also request approval to relocate the residents.

- **Encourage a transfer of the project** or transfer and assignment of a HAP Contract to a new owner. The Department cannot mandate the transfer of a project and/or assignment of a HAP Contract. However, the field office can strongly encourage and owner to explore this option in lieu of an enforcement action such as abatement and relocation of the residents and/or foreclosure. Field staff may even help facilitate this process by contacting potential transferees and holding discussions with the current owner regarding a possible transfer. Any formal request for a Transfer of Physical Assets must be
approved by HUD using the current procedures for doing so found in Chapter 13 of HUD Handbook 4350.1, Multifamily Asset Management and Project Servicing.

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

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

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

- In the case of an insured, HUD-Held, Section 202 Direct Loan or Capital Advance or a Section 811 Direct Loan or Capital Advance, the Hub Director may also request approval from the Director, Business Relationships and Special Initiatives Division, Office of Asset Management, to proceed with assignment and/or foreclosure of the loan or capital advance following the procedures found in the May 31, 2006 memorandum captioned, “Fiscal Year 2006 Property Disposition Program.”

- The Hub Director may recommend that the Department exclude the owner from further participation in HUD programs, using a Limited Denial of Participation (LDP), a Suspension or a Debarment. (Contact the Compliance Division of the DEC for assistance in this regard.)

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

IV. Section 230 Reporting Requirements

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

A. Paperwork Reduction Act

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

A. Environmental Impact

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

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

__________________________
Biniam Gebre
Acting Assistant Secretary for Housing -
Federal Housing Commissioner

Attachments
ATTACHMENT A

SAMPLE NOTICE OF DEFAULT OF THE HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT AND COMPLIANCE, DISPOSITION AND ENFORCEMENT (CDE) PLAN

[HUD office letterhead with address]

[Date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[Owner’s representative name]
[Owner’s name]
[Owner’s address]

SUBJECT: Notice of Default of the Housing Assistance Payments (HAP) Contract and Compliance, Disposition and Enforcement Plan
Project Name: [Project Name]
Project Location: [Project City/Town]
HAP Contract Number(s): [HAP #(s)]
iREMS Number: [iREMS #]

Dear [Owner’s representative name]:

This letter constitutes formal notice by the Secretary of the United States Department of Housing & Urban Development ("HUD"), that [Owner’s name], ("Owner"), owner of [Project’s
Name) ("Project"), is in default of the HUD Housing Assistance Payments ("HAP") Contract effective [original HAP date] with subsequent HAP Renewals, the latest HAP Basic Contract Multi-year Term Renewal with an effective date of [last renewal date]. Pursuant to paragraph [2.5(a)- verify paragraph #] of the HAP, the Owner "agrees to maintain and operate the contract units and related facilities to provide decent, safe and sanitary housing including the provisions of all the services, maintenance and utilities set forth...". [Additionally, pursuant to paragraph [7(b)- verify paragraph #] of the HAP Renewal, the Owner warrants that the rental units to be leased by the Owner under the Renewal Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures) and shall be maintained in such condition during the term of the Renewal Contract.] This standard is set forth in HUD regulation 24 C.F.R. § 5.703, et. al.

On [date of REAC inspection] the Real Estate Assessment Center ("REAC") inspected the Project and the Project received a score of [inspection score]. The inspection report identified serious deficiencies that demonstrate the Owner is in default of the HAP Contract [and HAP Renewal Contract]. Some of the deficiencies cited in the REAC report include, but are not limited to the following:

[Summarize the REAC inspection report here. Identify major health and safety issues from the Health and Safety Summary. Summarize systemic deficiencies from the Systemic Deficiencies section of the inspection report. The following is an example from a description used in the pilot:


Compliance, Disposition and Enforcement (CDE) Plan

Accordingly, the Owner shall take the following corrective action within 60 days of the date of receipt of this Notice:

- Conduct a survey of 100 % of the Project, identifying all physical deficiencies;
- Correct all of the physical deficiencies identified at the Project from the survey, including, but not limited to, those deficiencies identified in the REAC inspection;
- Provide tenants with the enclosed "Notice of Compliance, Disposition and Enforcement Plan" for the Project.
- Execute the enclosed certification that the Project is in compliance with HUD's physical condition standards of 24 CFR 5.703 and state and local codes and that the Owner has provided the tenants with the enclosed "Notice of Compliance, Disposition, and Enforcement Plan."
- Submit the completed survey and certification within 60 days of receipt of HUD's notice to:

U.S. Department of Housing and Urban Development
[HUD office address]

Attention: [Name of Account Executive, Project Manager or DEC Analyst handling the matter]

Unless HUD agrees otherwise in writing, the owner must correct all physical deficiencies identified in the survey of the Project within 60 days of receiving the CDE Plan. Should the necessary repairs extend beyond 60 days, the Owner must submit to HUD at the address noted above, a repair plan with the completed survey and request a reasonable extension of time to complete the repair of all deficiencies found by the survey, stating the cost and source of funds to be used for repairs. Any HUD approved extension to the 60-day deadline will be made in writing and will amend the CDE plan. HUD will work with the owner to determine if the owner's request to amend the CDE plan is acceptable and adequately protects the tenants' interests.

HUD will re-inspect the Project to confirm that the Owner is in compliance with the HAP Contract.

If the Owner fails to take the necessary corrective action, then the Section 8 assistance may be reduced, suspended, abated, or terminated under the above referenced HAP Contract, and any other remedies may be taken as provided by the parties' agreement(s) or as otherwise provided by law.

For the reasons described in this Notice and Compliance, Disposition and Enforcement Plan, HUD will flag the Owner in HUD's Active Partners Performance System (APPS). This flag may adversely affect the Owner's eligibility for participation in HUD programs, under HUD’s Previous Participation Certification procedure, by constituting a standard for disapproval.

HUD may continue its review of any other contractual agreements between the Owner and HUD beyond the matters identified in this notice. If HUD determines that there are additional contractual violations or defaults, HUD's subsequent declaration of any such violations or defaults will not affect the requirements set out in this notice.

If there are any questions concerning this Notice, please contact [HUD contact name], [HUD contact title], at [HUD contact telephone number].

Sincerely,

[Name of signatory]
[Title of signatory]

Enclosures:
NOTICE OF A COMPLIANCE, DISPOSITION AND ENFORCEMENT (CDE) PLAN FOR
[PROJECT NAME, FHA Number, iREMS Number]
Certification
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 tenants residing at Project have received a "Notice of Compliance, Disposition and
Enforcement Plan" relating to these physical deficiencies.

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.
NOTICE OF A COMPLIANCE, DISPOSITION AND ENFORCEMENT (CDE) PLAN
FOR [PROJECT NAME, FHA Number, iREMS Number]

Pursuant to Section 230 of the Consolidated Appropriations Act, 2014, this is a notice from the United States Department of Housing and Urban Development (HUD) that HUD has issued to the owner of [project name] ("Project"), a Compliance, Disposition and Enforcement (CDE) Plan, for the Project.

The CDE Plan instructs the owner to:

- Conduct a survey 100% of the Project, identifying all physical deficiencies;
- Correct the physical deficiencies at the Project, including, but not limited to, those deficiencies identified in the HUD Real Estate Assessment Center (REAC) inspection;
- Execute a certification that the project is in compliance with HUD's physical condition standards of 24 CFR 5.703 and state and local codes;
- Submit the completed survey and certification form to the HUD project manager within 60 days of receipt of HUD's notice; and
- Provide this notice to all tenants.

Unless HUD agrees otherwise in writing, the owner must correct all physical deficiencies identified in the survey of the Project within 60 days of receiving the CDE Plan.

If you are aware of any owner actions contrary to these instructions, contact [EA] at [EA's telephone number.]
NOTICE OF AN ENFORCEMENT ACTION AGAINST [PROJECT NAME, FHA Number, iREMS Number]

Pursuant to Section 230 of the Consolidated Appropriations Act, 2014, the United States Department of Housing and Urban Development (HUD) is providing this notice that HUD has initiated an enforcement action against the owner of [Project] for the failure to comply with HUD's requirements for maintaining the Project in acceptable physical condition.

Specifically, the notice to the owner involved: [check appropriate action]

____  HUD's initiation of an administrative proceeding to impose civil money penalties.

____  HUD's abatement, including partial abatement, of assistance payments to the owner, under the Section 8 contract, until the deficiencies are corrected.

____  HUD's filing of a lawsuit before a judge to appoint a receiver to operate the Project and correct the deficiencies.

____  HUD's filing of a lawsuit before a judge seeking an order for specific performance to the owner to correct the deficiencies.

____  Other
Management and Occupancy Review

MOR

How to do

1. Prepare every day
2. Set a goal of obtaining “Superior rating
3. Develop written standards for residents files
4. Communicate basic file maintenance rules
5. Establish a quality control system

Prior to the MOR date:

1. Notify residents
2. Review HUD 9834
3. Refer to the HUD Handbook 4350.3 Occupancy Requirements of subsidized Multifamily Housing Programs.
4. Complete Addendum B
5. Begin organizing
6. Check physical condition
Suggested Outline for Project Based Section 8 Tenant Files

Group 1 - Application and Eligibility Documents
   - Rental Application
   - Credit/Criminal Background History Reports
   - EIV Existing Tenant Search Report
   - Social Security Number Verification
   - Age Verification
   - Citizenship Declaration
   - Citizenship Verification
   - Family Summary Sheet
   - Race and Ethnic Data Reporting Form
   - Supplement to Application (HUD Form 92006)
   - Verification of Disability
   - Reasonable Accommodation Forms

Group 2 - Lease, Addendums, Security Deposit
   - Documents Lease
   - Lease Addendums
     (VAWA) House Rules
   - Lead-Based Paint Disclosure Security Deposit
   - Agreement Pet Rules (and other pet data) Live-In Aide Agreement, if applicable

Group 3 - Move-In Documents
   - Move-In 50059
   - Verifications
   - EIV - 90 Day Income Report

Group 4 - Tenant Correspondence
   - Lease Violations
   - Policy Change Notices

Group 5 - Inspections
Move-In
Inspection
Annual
Inspections

Group 6 - Re-certifications (use a divider after each action)

Executed 50059/50059A

Verifications

EIV reports - 'exception for tax credit & RD properties

Recertification Questionnaire

Disposal of Assets Declaration

HUD 9887/9887A

Recodification Notices

Annual Acknowledgement
Tenant Selection Plan (TSP) Checklist

1. PROGRAM / PROJECT ELIGIBILITY

Specific Population:
• is the property designated for a special population (e.g., elderly or disabled)?
• If so, does the TSP identify the population served? Citizenship:
  • Are policies regarding verification of citizenship described, including how citizenship requirements are implemented?
Social security numbers:
• Are the requirements to provide SSNs and verification for all household members prior to admission (regardless of age) described, including the consequences of not providing SSNs timely?

2. INCOME LIMITS

• Are income limits for the property specified, i.e., Low, Very Low, Extremely Low? (Actual dollar figures are not necessary, just the limits.)
• Are correct income limits applied based on the HAP effective date (pre and post 10/1/81)?

3. ACCEPTING APPLICATIONS AND SELECTING FROM THE WAITING LIST

• Are the procedures regarding accepting applications in the TSP?
  • Are the waiting list procedures in the TSP?
  • Do waiting list procedures include removal of applicants?
  • Do waiting list procedures include how households without SSNs will be handled? Preferences, including income targeting:
  • Do regulatory, statutory, or owner-adopted preferences apply?
  • Are all applicable preferences stated in the TSP?
  • Is income targeting methodology described?
  • If wait list order is the method used, is alternative method defined?
  • Are statistics requiring alternative method to adopt stated? Screening applicants:
  • Are mandatory screening criteria addressed?
  • Does the TSP include all screening procedures utilized?
  • Does the TSP mention the EIV Existing Tenant Search Report? Rejecting applicants:
  • Are the reasons for denial of applications specified?
  • Is the policy to consider extenuating circumstances stated (if any)?
  • Does the TSP mention VAWA?
4. OCCUPANCY STANDARDS
   • Are standards defined for all unit sizes available?

5. UNIT TRANSFER POLICIES
   • Are policies for selection of applicant versus resident for unit transfers identified?

6. POLICIES TO COMPLY WITH SECTION 504 AND THE FAIR HOUSING ACT
   • Does the TSP include a non-discrimination statement (race, color, etc.)?

7. POLICY FOR OPENING AND CLOSING THE WAITING LIST
   • Are policies described?

8. STUDENT ELIGIBILITY
   • Does the TSP correctly define an eligible student?
Utility Allowances

At least once every three years projects with anniversary dates on or after December 19, 2015 are required to establish and recommend to their contract administrator baseline utility allowances for each of their bedroom sizes. On the second and third years, HUD will provide a factor to be applied to the baseline. In other words, the process described below need only be done once every three years.

How to establish the baseline:

- The required sample size is based not on the total number of units in the property but on the total number of units of a given bedroom size (i.e., 1BR, 2BRs, etc.) in the property. If the project has more than one building, separate calculations for each BR size would suffice unless the various buildings are substantially different. In other words, if you have two buildings and, for example, one is a high rise and the other attached townhouses, separate calculations would be required for each building.

- Minimum sample sizes are as follows. These are minimums. You are not required to collect more than the minimum.

<table>
<thead>
<tr>
<th>Number of Units of given BR size</th>
<th>Minimum sample size for that unit type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 20</td>
<td>All</td>
</tr>
<tr>
<td>21 - 61</td>
<td>20</td>
</tr>
<tr>
<td>62 - 71</td>
<td>21</td>
</tr>
<tr>
<td>72 - 83</td>
<td>22</td>
</tr>
<tr>
<td>84 - 99</td>
<td>23</td>
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<td>100 - 120</td>
<td>24</td>
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<td>121 - 149</td>
<td>25</td>
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<tr>
<td>150 - 191</td>
<td>26</td>
</tr>
<tr>
<td>192 - 259</td>
<td>27</td>
</tr>
<tr>
<td>260 - 388</td>
<td>28</td>
</tr>
<tr>
<td>389 +</td>
<td>29</td>
</tr>
</tbody>
</table>
A unit must be excluded from the sample if it:

• Is receiving an increased utility allowance as a reasonable accommodation;
• Has been vacant for more than two months (i.e., it must have been occupied for at least 10 months during the 12 month period being sampled); or
• Is receiving a flat utility rate as part of a low-income rate assistance program.

The same 12 month sampling period must be used for all units included in the submission.

• As indicated above, a sample unit can have been vacant for one or two months during this period.
• It is not necessary that the same tenant have been in occupancy during the 12 month sampling period (e.g., so long as the vacancy turnover took no more than 2 months, the unit can be included in the sample).

When calculating the monthly average for purposes of making your recommendations, do not exclude the “high” and “low,” as some contract administrators have, in the past, directed.

HUD has provided as Attachment A of Notice H 2015-04 a sample spreadsheet for use in calculating and making your recommendations. Use of this spreadsheet is not mandatory, but if you choose to use your own forms they must provide essentially the same information as on Attachment A both as to the calculations and the recommendation itself.

• The recommendation form is the Summary Sheet in Attachment A.
• The calculations are done on the 2nd, 3rd, 4th, etc. sheets in Attachment A.

Tenants are required to provide management agents with the information necessary to conduct a utility survey and prepare a recommendation. A sample release form/letter to utility companies is attached. This sample was created by HUD.

• The Notice requires that you treat a failure by a tenant to cooperate as a violation of the lease. At the same time, though, HUD understands that in some jurisdictions no judge would agree to evict a tenant for failure to provide utility information. You can rely on your counsel’s advice in such circumstances, but be sure to document it.

If you are unable to obtain the minimum number of samples for a given unit size, you must provide an explanation, with appropriate documentation, of why this is the case and, if applicable, what you did to obtain the full sample size.

• If the reason for exclusion of a unit was provision of a higher UA as a reasonable accommodation, too few months of occupancy, or a flat utility rate, simply indicate this.
• If the reason was failure of the tenant(s) to cooperate, provide documentation such as sample copies of letter(s) to tenants requesting the information and of your efforts to enforce your request.
If the utility allowance covers more than one utility (e.g., electricity and gas), you will have to demonstrate how you arrived at your recommendation. This will require separate calculations for each utility. Therefore, you probably will want to use an Attachment A spreadsheet for each utility. Since each spreadsheet will give you its own Summary Page, you will then have to combine the numbers on a separate page when you submit the package to your contact administrator.

If you are recommending a reduction of utility allowances you must provide the tenants with at least 30 days notice of your intent to make that recommendation. Attached is a blank copy of a sample notice to tenants of intent to reduce utility allowances.

A copy of the notice – together with any tenant comments – must be included with your submission to the contract administrator. It therefore is important that you begin your utility analysis process well before the date by which you must submit your request for rent increase. As a reminder, OCAF rent increases are supposed to be submitted at least 120 days before the contract anniversary date. In effect, since you can’t know for sure if your utility survey will result in a recommendation to reduce a utility allowance, this means that you should begin the triennial process of establishing a baseline six months before the contract anniversary date.

If the reduction in utility allowance is approved, you must provide the tenants with at least 30 days notice of that approval. A sample notice is attached.

If the UA decrease will exceed 15% of the current UA and that decrease is equal to or greater than $10 per month, the decrease must be phased in. The decrease the first year will be 15%, with the remainder (up to 15%) implemented in the second and (if applicable) third year of the triennial cycle.

• When calculating the second year UA, first apply the remainder of the UA reduction before applying the Utility Adjustment Factor that will be provided by HUD.

What must your submission to the contract administrator include?

Your submission to your contract administrator must include:

✓ Recommendation form (Attachment A of Notice H-2015-14 or equivalent);
✓ Spreadsheet(s) showing your calculations (Attachment A of Notice H-2015-14 or equivalent);
✓ Utility bills, or printout from utility company;
✓ If applicable, an explanation of and documentation relative to any failure to obtain the minimum sample size; and
✓ If applicable, a copy of the notice to tenants of intent to reduce utility allowances together with any comments received by the tenants.
SAMPLE RELEASE OF TENANT UTILITY INFORMATION

DATE:

TO: (Name of Utility Provider Address) FROM: (Name Owner/Agent Address)

SUBJECT: Request for Utility Information

Dear Sir/Madam:

The person named below receives housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). The Department provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. These utility allowances are adjusted each year and supported by an owner’s analysis of the property’s utility costs and consumption data.

In order to perform this utility analysis and better estimate the allowance provided to our tenants, your cooperation is requested in providing cost and/or consumption data for the below individual for the previous 12 months. Below you will find the tenant’s consent to release this information.

Thank you for your help with HUD’s goal of ensuring the right benefits go to the right individuals.

Request for Utility Information for: NAME: 

ADDRESS: 

PLEASE RETURN THIS UTILITY INFORMATION TO THE PERSON LISTED ABOVE

CONSENT TO THE RELEASE OF UTILITY INFORMATION: I hereby authorize the release of the requested utility information to the building owner and to HUD for the term of my tenancy at the above address. Information obtained under this consent is limited to utility cost and consumption for the address provided above. I understand that my utility information will be used to adjust utility allowances and to enable HUD to better conserve energy and better manage its expenditures on utilities.

Signature of Tenant Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

Name of Property Owner or Agent Title

Signature of Property Owner or Agent Date

PENALTIES FOR MISUSING THIS CONSENT:

Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security numbers are contained in the Social Security Act at 208 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a) (6), (7) and (8).
NOTICE OF REQUEST TO DECREASE UTILITY ALLOWANCES

Date of Notice (30 days prior to the date of utility submission)

On [date], [name of development] management plans to submit a request for approval to decrease the utility allowance to the

The proposed decreases have been requested, because our most recent sampling of resident utility bills has produced a decrease in the average utility rates.

The utility allowance decreases for which we have requested approval are:

<table>
<thead>
<tr>
<th>Bedrooms</th>
<th>Present Utility Allowance</th>
<th>Proposed Utility Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

(Tenant Notification and Rights on back.)
Tenant Notification and Rights

For 30 days after the posting date of the notice, a copy of the materials submitted to [address] in support of the utility allowance decrease request will be available during normal business hours at [address] for inspection and duplication by residents of [name of development] and, if the residents wish, by legal or other representatives acting for them individually or as a group.

During the 30 day period after the posting date of the notice, residents of [name of development] may submit written comments on the proposed utility allowance decrease to management at [address]. Resident representatives may assist tenants in preparing those comments. If, at request or otherwise, we make any material change during the comment period in the materials available for inspection and duplication, management will notify the residents of the change or changes, and the residents will have a 15 day period from the date of the additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed utility allowance decrease. These comments will be transmitted to [assigned asset manager] along with management's evaluation of the comments and the request for the utility allowance decrease. Residents and resident representatives may also send a copy of their comments directly to [assigned asset manager] at the following address:

or the Department of Housing and Urban Development (HUD) may approve, adjust upward or downward, or disapprove the proposed utility allowance decrease upon reviewing the request and comments. When advises management in writing of the decision on the request, the residents will be notified. If the request is approved, any allowable change will become effective in accordance with the terms of existing leases and only after the residents receive at least 30 days notice of the approved utility allowance decrease.
NOTICE TO RESIDENTS OF APPROVED CHANGE IN UTILITY ALLOWANCE

Reference: PROPERTY
Contract Number: XXXX-XXXX-XXX
Date of Notice: DATE

Take notice that on DATE, CONTRACT ADMINISTRATOR acting on behalf of HUD, approved a decrease in the utility allowance for certain units at PROPERTY. The utility allowance was decreased because data obtained from UTILITY COMPANY showed that actual costs were lower than the utility allowance. Effective DATE, the utility allowances will be adjusted as follows:

<table>
<thead>
<tr>
<th>Unit Type</th>
<th># Of Units</th>
<th>Current UA</th>
<th>New UA</th>
<th>Amount of Change</th>
</tr>
</thead>
</table>

A copy of the materials that were submitted in support of the utility allowance calculation are available during normal business hours at ADDRESS for a period of 30 days from the date of service of this notice. These materials are available for inspection and copying by tenants of PROPERTY and, if the tenants wish, by legal or other representatives acting for them individually or as a group.

During a period of 30 days from the date of service of this notice, tenants of PROPERTY may submit written comments regarding the utility allowance change to us at ADDRESS. Tenant representatives may assist tenants in preparing those comments. These comments will be transmitted along with our evaluation of them.

You will be given at least 30 days notice before the utility allowance change is implemented in accordance with the terms of existing leases.
SAMPLE RELEASE OF TENANT UTILITY INFORMATION

DATE:

TO: (Name of Utility Provider Address) FROM: (Name Owner/Agent Address)

SUBJECT: Request for Utility Information

Dear Sir/Madam:

The person named below receives housing assistance under a program of the U.S. Department of Housing and Urban Development (HUD). The Department provides utility allowances to properties receiving subsidy assistance where all or some utilities are paid directly by the tenants. These utility allowances are adjusted each year and supported by an owner's analysis of the property's utility costs and consumption data.

In order to perform this utility analysis and better estimate the allowance provided to our tenants, your cooperation is requested in providing cost and/or consumption data for the below individual for the previous 12 months. Below you will find the tenant's consent to release this information.

Thank you for your help with HUD's goal of ensuring the right benefits go to the right individuals.

Request for Utility Information for: NAME:

ADDRESS:

PLEASE RETURN THIS UTILITY INFORMATION TO THE PERSON LISTED ABOVE

CONSENT TO THE RELEASE OF UTILITY INFORMATION: I hereby authorize the release of the requested utility information to the building owner and to HUD for the term of my tenancy at the above address. Information obtained under this consent is limited to utility cost and consumption for the address provided above. I understand that my utility information will be used to adjust utility allowances and to enable HUD to better conserve energy and better manage its expenditures on utilities.

Signature of Tenant Date

Note to Applicant/Tenant: You do not have to sign this form if either the requesting organization or the organization supplying the information is left blank.

Name of Property Owner or Agent Title

Signature of Property Owner or Agent Date

PENALTIES FOR MISUSING THIS CONSENT:
Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper uses of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains, or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security numbers are contained in the Social Security Act at 408 (a) (6), (7) and (8). Violations of these provisions are cited as violations of 42 USC 408 (a) (6), (7) and (8).
<table>
<thead>
<tr>
<th>Contract Units</th>
<th>Units to be Sampled</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>1 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>2 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>3 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>4 Bedroom Units</td>
<td>0</td>
</tr>
<tr>
<td>5 Bedroom Units</td>
<td>0</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Average as Calculated from Analysis</th>
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</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
</tr>
<tr>
<td>1 Bedroom Units</td>
</tr>
<tr>
<td>2 Bedroom Units</td>
</tr>
<tr>
<td>3 Bedroom Units</td>
</tr>
<tr>
<td>4 Bedroom Units</td>
</tr>
<tr>
<td>5 Bedroom Units</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current Utility Allowance</th>
<th>Proposed Utility Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>1 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>2 Bedroom Units</td>
<td></td>
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<tr>
<td>3 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>4 Bedroom Units</td>
<td></td>
</tr>
<tr>
<td>5 Bedroom Units</td>
<td></td>
</tr>
</tbody>
</table>
Subject: Methodology for Completing a Multifamily Housing Utility Analysis

I. PURPOSE

This notice provides instruction to owners and management agents (O/As) for completing the utility analysis required at the time of the annual or special adjustment of contract rents and when a utility rate change results in a cumulative increase of 10 percent or more from the most recently approved utility allowance. As discussed below in Part III, the notice builds upon the June 2011 memorandum titled *Clarification Utility Allowance Regulations* issued by former Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante.

II. APPLICABILITY

This notice is applicable for the following programs:

A. Project-based Section 8
   1. New Construction
   2. State Agency Financed
   3. Substantial Rehabilitation
   4. Section 202/8
   5. Rural Housing Services (RHS) Section 515/8
   6. Loan Management Set-Aside (LMSA)
   7. Property Disposition Set-Aside (PDSA)

B. Section 101 Rent Supplement
C. Section 202/162 Project Assistance Contract (PAC)
D. Section 202 Project Rental Assistance Contract (PRAC)
E. Section 202 Senior Preservation Rental Assistance Contracts (SPRAC)
Section 811 PRAC; Project Rental Assistance (PRA)\(^1\)

Section 236

Section 236 Rental Assistance Payments (RAP)

Section 221(d)(3) Below Market Interest Rate (BMIR)

III. BACKGROUND

The Department of Housing and Urban Development’s (HUD) Office of Multifamily Housing has been working towards streamlining the methodology for utility analyses as part of a larger effort to make energy and water conservation a priority at all HUD Multifamily properties. Currently, HUD’s annual outlay for utilities is more than six billion dollars a year. HUD is exploring how to make the Multifamily portfolio more energy and water efficient, to reduce O/As’ operating costs and reduce HUD outlays for utilities.

The Department is a partner in the President’s Better Buildings Challenge (BBC), a voluntary leadership initiative that asks building owners, developers, and managers to make a public commitment to energy efficiency. Many BBC Multifamily partners own HUD-affiliated properties and Multifamily Housing is providing incentives to help O/As meet the BBC goal to reduce energy consumption by 20 percent over ten years across their entire portfolio. Accurate utility data collection and analysis are integral to success in the reduction of energy and water consumption. This notice is a key step in streamlining the methodology for determining utility allowances. Additionally, it is expected that the data-centered approach will offer an opportunity for O/As to reevaluate property energy usage and make efforts to conserve where feasible.

In June 2011, then Deputy Assistant Secretary for Multifamily Housing Programs, Carol J. Galante issued a memorandum to Multifamily Hub and Program Center Directors and Contract Administrators providing clarifications to existing statutes, regulations, and policies regarding utility allowances in Multifamily Housing properties, but did not identify a methodology to be used to complete a utility analysis and determine utility allowances. The memorandum clarified the following:

- Owners of multifamily housing properties that receive subsidy assistance, and for which HUD provides a utility allowance, are required to adjust their properties’ utility allowances every year at the time of the annual and special adjustments of contract rents.
- Utility adjustments must be supported by a utility analysis.

\(^1\) A Project Rental Assistance (PRA) property with a Rental Assistance Contract (RAC) that specifies use of the HUD Multifamily Housing policy for developing utility allowances will use the methodology outlined in this notice to develop utility allowances for that property.
• Adjustments to the utility allowance must be made regardless of whether the utility analysis shows an increase or a decrease.

• Rent adjustments must be held until the owner submits the utility analysis and all other required submissions. Once submitted, the rent adjustment will be retroactively implemented.

• Owner certifications in lieu of a utility analysis are not permitted.

• As required by 24 CFR 245.405(a) and 245.410, a minimum of 30-days notice must be provided to tenants for any utility allowance decrease.

• Tenants have the right to participate in and comment on a proposed decrease in the utility allowance.

• A decrease in a tenant's utility allowance does not constitute a change in total tenant payment.

• Multiple utility allowance adjustments are permitted throughout the contract year.

• A utility allowance must be increased mid-year when changes in utility rates result in an increase of 10 percent or more to the utility allowance from the most recently approved utility allowance.

Since the June 2011 memorandum was issued, industry partners have requested that Multifamily Housing leadership provide a national standard for an acceptable analysis, which will also provide an appropriate utility allowance to their tenants. To accomplish these goals, industry leaders asked Multifamily Housing to provide helpful tools to assist them in conducting a reliable analysis. These tools, which have been included in this notice or as an attachment to this notice, include a sample tenant consent form, a directive requiring tenants to provide utility data upon request, and an Excel spreadsheet to aid in the allowance calculation.

The regulation at 24 CFR Part 5.603 defines Utility Allowance as the estimate of the “monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances.” The utility analysis methodology described below is premised on calculating average utility consumption based on actual tenant consumption by unit size, which Multifamily Housing in consultation with HUD’s Office of Policy Development and Research proposes as an estimate of reasonable consumption by an energy-conservative household of modest circumstances. This has been and continues to be the basis for utility analyses in the programs covered by this notice.

IV. UTILITY ANALYSIS METHODOLOGY

Multifamily property owners must establish baseline utility allowances for each of their bedroom sizes once every third year, which are determined by using the baseline utility analysis outlined in Section A below. For the two years after the baseline is established, O/As have the option to perform a factor-based utility analysis, as described in Section B below.
A. Baseline Utility Analysis

A baseline utility analysis makes use of the sample size methodology detailed in Part VI below. To perform a baseline analysis, the O/A must perform the following steps:

1. Request utility data from either the utility company or the tenant household for at least the number of units determined by the sample size methodology detailed below. This must be done for each bedroom size at the property. If the property consists of multiple identical buildings (or buildings that are substantially similar), then the sampling may be performed at the property level (encompassing all buildings on a site) for each bedroom size. If the buildings are not identical, the sampling must be done for each bedroom size for each building.

A unit should be excluded from the sample if it:

a) Is receiving an increased utility allowance as a reasonable accommodation;

b) Has been vacant for 2 or more months. Units included in the sample should have at least 10 months of occupancy; or

c) Is receiving a flat utility rate as part of a low-income rate assistance utility program.

Note: A baseline utility analysis can use a sampling greater than the HUD approved sample size.

2. Determine the average utility cost for each bedroom size without removing any units from the analysis beyond those excluded from the sample size as indicated in (1) above.

Do not remove the highest or lowest utility cost household when determining the average.

3. Recommend this amount to the contract administrator (CA) for approval.

A sample format for utility allowance submissions, which includes built-in formulas to average utility costs for each unit size, can be found as Attachment A to this notice.

Multifamily Housing recognizes the difficulties associated with obtaining utility data from utility companies and tenant households. To assist in obtaining the
required sample size, a sample tenant release form is attached to the notice (Attachment B). Designating a workstation in the management office for tenants to access their utility accounts and print utility information has proven to be an effective way to obtain data.

1. Implementation - Properties with Contract Anniversary Dates Within 180 Days of Publication of this Notice

Properties that fall into this category can choose to perform their upcoming annual utility analysis using either the existing methodology or the methodology outlined in this notice. If the existing methodology is used, a baseline analysis as described above must be used at the next contract anniversary date to establish baseline utility allowances.

2. Properties with Contract Anniversary Dates 180 Days after Publication of this Notice

Properties that fall into this category must perform their upcoming utility analysis using the methodology outlined in this notice.

B. Factor-Based Utility Analysis

For the two years after a baseline utility analysis is completed, the utility allowance amounts for each bedroom size and each utility at the property can be adjusted by a state-specific increase factor, the Utility Allowance Factor (UAF), provided by HUD, in lieu of a baseline utility analysis. The UAF, which can be found on the HUDUser website, is determined by considering the state-specific average retail price of electricity, natural gas, water, and oil/propane for residential customers that is published by the U.S. Energy Information Administration.

After completing the property’s utility analysis under the factor-based utility analysis method, O/As should compare the adjusted utility analysis to their paid utilities over the previous twelve months. If, in the O/A’s determination, the results indicate a significant disparity between the two, the O/A should complete a baseline analysis to help ensure the allowance(s) provided are accurate.

C. Utility Allowance Changes Outside of the Contract Rent Adjustment Schedule

Owners are required to submit documentation and a request for an increase in utility allowances when changes in utility rates result in a cumulative increase in utility allowances of 10 percent or more from the most recently approved utility allowance. When the owner requests an increase in utility allowances, the owner must submit either of the following as evidence of the rate change:
1. Utility bills from the month prior to the utility rate change and the first month after the utility rate change; or

2. Verification of the increase from the utility provider.

Note that a 10 percent or greater increase in any one utility component may not necessarily result in a corresponding 10 percent or greater increase in the utility allowance. Only when a utility rate change results in a cumulative utility allowance increase of 10 percent or more must the owner request the increase.

If required under the triennial cycle, the owner must still complete a baseline utility analysis at the next contract rent adjustment. If the owner performed a baseline utility analysis in the previous year and can use a factor-based utility analysis at the time of contract rent adjustment, the utility for which the rate was raised will not be adjusted by the UAF for that utility; however, all other utilities will be adjusted by the UAF.

V. UTILITY ALLOWANCE DECREASES

A. Notice to tenants

Whenever an adjustment to the utility allowance results in a decrease, an owner must follow the requirements of 24 CFR Part 245.405(a) and 245.410 regarding notice to tenants.

B. Phase-in of certain decreases

If the utility allowance decrease that results from the initial application of this methodology would exceed 15 percent of the most recent utility allowance and that decrease is equal to or greater than $10, the decrease must be phased-in. This means the O/A will implement a 15 percent decrease from the most recent utility allowance for that year, and then implement the remainder of the calculated decrease the following year, so that no decrease in any one year is greater than 15 percent.

For example, if a tenant’s previous utility allowance was $120 and the analysis indicates a total adjustment that decreases it to $96 (a 20 percent decrease), the utility allowance has exceeded the 15 percent decrease (and the decrease is at least $10); the O/A will submit an adjustment to $102 (a 15 percent decrease from $120) in the first year and then a further adjustment the following year to $96 (multiplied by the applicable UAF), such that the full adjustment is phased-in over two years. The UAF will be applied in the second and third years of the triennial cycle after subtracting out any phased reduction. To continue with the example above, $96 would be multiplied by the UAF to establish the second-year utility allowance. (If the decrease is less than $10, the owner will implement the full decrease without any phase-in.)
VI. UTILITY ANALYSIS SAMPLE SIZE

The O/A must use an appropriate sample size to perform a statistically accurate utility analysis. Multifamily Housing requested assistance from HUD’s Office of Policy Development and Research (PD&R) to determine the appropriate sample size. To support this study, utility analyses were obtained from properties in California, Florida, Indiana, Massachusetts, New York, North Carolina, Ohio, and Washington, DC. PD&R’s research, which used a 12 percent margin of error and a 95 percent confidence interval, resulted in the sample size rule and formula below.

This formula has been built into the utility allowance submission template mentioned earlier and Figure 1 below shows how it translates based on the number of units per bedroom size.

<table>
<thead>
<tr>
<th>Number of Units *</th>
<th>Minimum Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-20</td>
<td>All</td>
</tr>
<tr>
<td>21-61</td>
<td>20</td>
</tr>
<tr>
<td>62-71</td>
<td>21</td>
</tr>
<tr>
<td>72-83</td>
<td>22</td>
</tr>
<tr>
<td>84-99</td>
<td>23</td>
</tr>
<tr>
<td>100-120</td>
<td>24</td>
</tr>
<tr>
<td>121-149</td>
<td>25</td>
</tr>
<tr>
<td>150-191</td>
<td>26</td>
</tr>
<tr>
<td>192-259</td>
<td>27</td>
</tr>
<tr>
<td>260-388</td>
<td>28</td>
</tr>
<tr>
<td>389 and above</td>
<td>29</td>
</tr>
</tbody>
</table>

*Per bedroom size. If the property consists of multiple non-identical buildings (the buildings are not substantially similar), then the sampling must be performed for each bedroom size for each building on the site.
Figure 2 below illustrates how many units would be sampled using a random representation of contract units of multiple bedroom sizes within a property.

<table>
<thead>
<tr>
<th>Bedroom Size</th>
<th>Number of Contract Units</th>
<th>Sampling for Utility analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 Bedroom</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>1 Bedroom</td>
<td>113</td>
<td>24</td>
</tr>
<tr>
<td>2 Bedroom</td>
<td>74</td>
<td>22</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>4 Bedroom</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Total Units</td>
<td>259</td>
<td>88</td>
</tr>
</tbody>
</table>

Rule:
- If $N < 20$, sample all units
- If $21 \leq N \leq 61$, sample 20 units
- If $N > 61$, sample $n_0$ using the formula below.

Formula:
$$n_0 = \frac{(z^2) \times (CV^2)}{(e^2 + \frac{(z^2) \times (CV^2)}{N})}$$

$N$ is the number of Section 8 units of a particular bedroom size
$z$ is the value corresponding to a 95% confidence interval = 1.96
$CV$ is the coefficient of variation of utilities, which is set at 0.34
$e$ is the acceptable percent margin of error, which is set at 0.1

VII. ALLOWANCES FOR NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

Properties undergoing new construction or substantial rehabilitation may establish initial utility allowances for new or rehabilitated units based on analysis completed at underwriting through an energy consumption model, including an HFA-approved utility allowance calculator. This option is based on guidance established by the Internal Revenue Service under Section 42 Utility Allowance Regulations Update. The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by HUD. Third, the owner must furnish a copy of the estimates derived from the energy consumption model to HUD or the CA and make copies of the estimates available to all tenants in the building. Finally, the building owner must pay for all costs incurred in obtaining the utility estimates from the qualified professional and providing...
the estimates to HUD and tenants. The O/A may use the utility allowance model instead of the methodology outlined in this notice to establish utility allowances only in the first year of occupancy post-construction.

For example, a property newly constructed or rehabilitated under the Rental Assistance Demonstration (RAD) program and converting to project-based rental assistance may establish initial utility allowances using such a calculator. However, when the property is occupied and the owner can obtain 12 months of consumption data, the owner must then follow the methodology in this notice and establish a baseline analysis. A newly constructed or rehabilitated property with a Section 8 HAP contract added to it through an 8 (bb) transfer of budget authority, or an existing Section 8 property undergoing rehabilitation in conjunction with a contract renewal under Chapter 15 of the Section 8 Renewal Guide would also be examples of properties that may initially utilize an energy consumption model calculator to estimate utility allowances, but thereafter follow the methodology in this notice.

VIII. ADMINISTRATIVE PROCEDURES

Upon completion of the utility analysis, the O/A must submit the analysis to the CA for review and approval. Calculations may be made using a software tool of the owner’s choice (e.g. they may use the Excel spreadsheet offered by HUD or other tabulation software) as long as the inputs reflect the methodology detailed in this Notice. HUD will serve as a resource to O/As by providing training and technical assistance where possible.

IX. REQUIREMENTS FOR TENANT HOUSEHOLDS

A. Tenant Utility Release Form

An Owner may require a tenant to sign a release for utility data in certain circumstances. For example, a utility company may require a tenant release as a condition of providing utility data. If a tenant release is necessary, the O/A will request and the tenant household is required to sign a release under 24 CFR 5.659 and the HUD Model Lease for Subsidized Projects. For HUD programs, the release remains applicable for the household’s term of tenancy; however, there may be utility providers that require a tenant’s signed release form more frequently. A sample tenant utility release form is included here as Attachment B.

B. Households are required to provide utility data and documentation if requested.

In accordance with the regulation at 24 CFR 5.659 and the HUD Model Lease for Subsidized Projects, households must provide utility documentation as requested by the O/A and the request does not have to correspond with a household’s recertification. Tenants must also disclose if they are paying a flat rate as part of a
low-income rate assistance program.

C. Disclosure of Utility Assistance

Households are required to disclose whether they are receiving utility assistance from sources other than HUD. O/As must ask this question at a tenant’s annual recertification of income and family composition, because these assistance payments are a source of income and are included in the determination of annual income and the calculation of total tenant payment. See 24 CFR 5.609(a) and HUD Handbook 4350.3 paragraph 5-6.G.1. Households receiving utility assistance from sources other than HUD continue to receive the baseline HUD utility allowance as determined by the most recent utility analysis. Assistance that must be reported includes cash or other assistance from utility providers or other entities. Failure to disclose this income will be considered a lease violation in accordance with annual recertification requirements.

X. PENALTIES FOR TENANT NONCOMPLIANCE WITH PART IX

Failure to comply with the requirements in Part IX above is a lease violation and may result in termination of tenancy. If an owner pursues termination of tenancy, the termination must be carried out in accordance with Chapter 8 of HUD Handbook 4350.3, REV-1.

XI. VOLUNTARY USE OF EPA’S ENERGY STAR PORTFOLIO MANAGER

O/As of Multifamily Housing properties that both receive project-based rental assistance, and for which HUD provides a utility allowance, are encouraged to use ENERGY STAR Portfolio Manager, or an equivalent online tool, to track whole-building utility data (cost and consumption). If O/As cannot achieve whole-building data, they can utilize Portfolio Manager and follow the sampling protocol identified in this notice. ENERGY STAR Portfolio Manager is a no-cost, secure online resource that enables O/As to benchmark, track, and manage energy and water consumption at the property and portfolio level. O/As can use EPA’s ENERGY STAR Portfolio Manager to identify underperforming buildings, set investment priorities, monitor and verify efficiency improvements, receive EPA recognition for superior energy performance, and report out on building and portfolio performance.

For more information on the use of the EPA Portfolio Manager, please contact Michael Zatz at zatz.michael@epa.gov or go to http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.

XII. INFORMATION COLLECTION

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control numbers 2502-0352. In
accordance with the Paperwork Reduction Act, HUD 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.

XIII. CONTACT

For more information on the utility analysis methodology outlined in this notice, please contact Kate Brennan in the Office of Asset Management and Portfolio Oversight at Catherine.M.Brennan@hud.gov.

Edward L. Golding
Principal Deputy Assistant Secretary for Housing

Attachments
A – Sample Utility Analysis Submission Workbook
B – Sample Release of Tenant Utility Information
Frequently Asked Questions
Methodology for Completing a Multifamily Housing Utility Analysis
H 2015-04 (June 22, 2015)

Implementation Period

1. **Question:** What is the effective date of this notice?

   **Answer:** The implementation schedule is based on the contract anniversary date. If that date falls within the first 180 days after the publication of the notice (6/22/15), then the owner has a choice—s/he can choose to follow the new methodology, or follow the existing methodology. If the contract anniversary date is more than 180 days after the publication of the notice, s/he must follow the methodology in the notice.

Baseline Analysis

2. **Question:** What documentation will an O/A be required to submit with a utility analysis and request for approval of a U/A?

   **Answer:** The O/A will submit all of the backup information required to demonstrate how s/he calculated the new utility allowances.

   Some examples of backup information include:
   1. Copies of the tenant data received from utility providers, this is typically in summary format; or
   2. Copies of the printouts indicating a summary of monthly data if the tenant was able to obtain data online from their utility provider for the previous 12 months, or 10 months if the case may be; or
   3. If the O/A obtained actual monthly utility bills from a tenant, the O/A may submit a spreadsheet summarizing the average of the monthly bills. The actual utility bills will not need to be submitted to the CA but will need to be retained in the tenant files for the term of tenancy plus 3 years and will be subject to CA review;
   4. There may be cases where a combination of the above will need to be performed.

3. **Question:** We have some residents whose utility accounts are in a relative’s name and the utility company will not provide the information based on the resident’s signature. What do we do then?

   **Answer:** Have the relative obtain the info, or if possible, use other units for your sample.

4. **Question:** If an apartment is only occupied by a resident for 10 months, how do we handle the other 2 months and any partial months?
Answer: Get an average for the unit for the 10 months; do not use the partial months.

5. Question: When a resident vacates an apartment and another resident moves in, the utility company will only release the information for the current resident. Even if the apartment was vacant for only a few days, we may not have 10 months of usage for the new resident. How do we handle that?

Answer: In years when UA baseline calculations are anticipated, make every effort to collect information for the vacating resident prior to their departure. While you need 10 months of utility data for the same unit, the resident can change. In other words, you could have 5 months for one resident and 5 months for another resident. If you cannot obtain the information for at least 10 months, you should not use the unit in the sample.

6. Question: Can an O/A combine methods of data collection (some bills from residents, some information from the utility provider)?

Answer: You can use either method, or both. There may be cases in which the O/A has no choice but to combine methods.

7. Question: Some CAs/HUD offices require that estimated amounts for certain appliance usage be removed from the total utility bill. For example, owner/agents may be required to remove costs to run AC or to use washer/dryers installed in the units. Is this a HUD requirement or are individual agencies allowed to implement such requirements?

Answer: This is not a HUD requirement nor should any agency or HUD office impose such a requirement.

8. Question: Please clarify the rounding to the nearest whole dollar— in some cases there have been differences due to rounding.

Answer: Collect the data and calculate the average in dollars and cents, and then round the resulting U/A to the nearest dollar (>=.50 round up, <=.49 round down)

Sample Size

9. Question: If the owner is unable to obtain the minimal sample size despite best efforts, will the analysis be accepted based on available data?

Answer: The owner must demonstrate that every effort has been made to obtain the required sample and to otherwise meet the requirements of the analysis. It is an owner's responsibility to
provide an analysis that follows the protocol outlined in the notice as closely as possible, recognizing that the "perfect" sample may not always be available. It will be HUD's or the CA's responsibility, as appropriate, to make sure that the analysis justifies the resulting U/A's, with whatever compromises in the sampling were necessary to achieve that analysis. The CA, in consultation with HUD, may require the owner to complete another baseline the following year.

10. **Question:** For smaller properties, especially senior properties, that may have to use 100% sampling, certain circumstances will skew the resulting U/A up or down, e.g. residents spending weeks or months in a hospital, residents spending (colder) months with relatives, residents with medical conditions who need their apartments to be exceptionally warm, cold, or where they use medical equipment that uses a lot of energy. In most cases, the resident has not requested a reasonable accommodation to increase the U/A.

**Answer:** Smaller properties will necessarily require a proportionately larger sample size (including 100% sampling) in order to ensure statistically valid results. Management should encourage residents with medical equipment who have extraordinary utility bills to seek a reasonable accommodation for a higher utility allowance.

11. **Question:** If the property has 20 or fewer apartments and information is not available for at least 10 months in any number of units, does the sample size get reduced? For example: Property has 15 units so all the units must be included in the sample. However, 2 units are vacant and 2 units have only been occupied by the current resident for 5 or 6 months.

**Answer:** Even if 100% sampling is required, owners must exclude units that have not been occupied for at least 10 months. (see also question 9).

12. **Question:** Can you clarify the instruction on excluding units with less than 12 months of occupancy? The instructions indicate that a unit must be excluded if it has been vacant for 2 or more months, but then indicate that a unit with only 10 months of occupancy may be included.

**Answer:** The notice should have said to exclude units that have been vacant more than 2 months; units with only 10 months of occupancy may be included.

13. **Question:** Can you elaborate on sample sizes when the property has multiple floor plans for same bedroom size?

**Answer:** You would treat them as two different unit sizes if they appear on your rent schedule that way and sample for both sizes. For example, your rent schedule may indicate both a One Bedroom Unit and then a One Bedroom Unit (Large). This indicates that the unit size is different but the number of bedrooms is the same. It is likely that the U/A is different as well. If this is the case, these unit types should be considered individually. (If you are using the HUD worksheet attachment to the notice, you would amend it to include this additional unit type.)
14. **Question:** Can you use the usage amount for residents paying a flat rate, especially if most residents are paying a flat rate?

**Answer:** Generally, you would exclude the units of residents paying a flat rate, but this rule assumes that those units are the minority of units. If most residents pay a flat rate, including them in the sampling will give you a sample more representative of the whole. If you do so, document your reasons for doing so to help the CA/HUD determine if your approach was reasonable. And if you include these units, calculate the average based on the flat rate, not on the usage.

15. **Question:** Is the UA Analysis for all units at the property or just Section 8 units?

**Answer:** The U/A analysis covers only those units that receive a U/A; only HUD-assisted units will be included in the analysis.

16. **Question:** Is the flat utility rate exclusion meant apply to any unit receiving any kind of subsidy or just units that receive a flat utility rate? We have a variety of low income assistance programs that are not rate-based but result in lower utility bill amounts and would skew the average.

**Answer:** For now, the exclusion applies only to units with flat utility rates. We will review this policy and determine the best treatment of units receiving varying forms of subsidies. We welcome your feedback on this issue.

**HUD's Utility Analysis Excel Worksheet**

17. **Question:** Must an owner use the HUD-provided worksheet that was attached to the notice?

**Answer:** No, owners may develop their own worksheets to suit their needs, as long as they provide HUD/CA with adequate documentation.

18. **Question:** With the worksheet protected - how can we change to accommodate the same unit type i.e. 3 BR & 3 BR TH?

**Answer:** An unprotected version has been posted to HUDCLIPS. (Password is Sharkey)

19. **Question:** The HUD worksheet calculates averages based on the values entered. If you only have 10 months of data and enter 0 in the other two months, the average will calculate on all months that have data. Is this correct?

**Answer:** No, you should not enter any value for the months that are vacant (do not enter $0). Or, using the unprotected version of the worksheet that is now available, change the formula so that the average is calculated on only non-zero months. If you have only 10 months of data, the
average must be calculated on only those 10 months.

Release Forms

20. Question: The utility company requests we use their form for the release of information; is this okay?

Answer: The release form included with the notice is a sample. Owner/agents may use their own release form or a release form provided by the utility provider.

Mid-year U/A adjustments

21. Question: When a change in utility rates results in a 10% or more increase in the U/A, how do you compute the new allowance? Do you simply apply the % increase to the existing U/A?

Answer: Yes, you would apply the utility rate increase to that component of the U/A allowance, e.g. electric rates go up 15% so if the U/A for the property comprises both electricity costs and gas costs, you would apply the 15% to the electricity component of the U/A.

22. Question: What would be the historical time period to use for the new analysis?

Answer: The notice indicates that when rate increases cause U/As to increase 10% or more, an owner can submit the following evidence of the change: (1) utility bills from the month prior to the rate change and the first month after, or (2) other verification of the increase from the utility provider. So in that case, the owner isn’t looking at historical data, but actually justifying the rate increase with the most current data.

Utility Assistance As Income

23. Question: Some tenants receive assistance under the Department of Health and Human Services Low-Income Home Energy Assistance Program (LIHEAP). According to Handbook 4350.3 Exhibit 5-1 Income Inclusions and Exclusions, this form of assistance is listed under Income Exclusions (e). The notice states that tenants must report this type of assistance as income and that it must be counted as income. Is it included or excluded?

Answer: Although the notice indicates that this type of assistance must be reported as income, assistance under this specific program is excluded from income. Please see the May 20, 2014 Federal Register for the current list of federally mandated exclusions from income, here: http://www.gpo.gov/fdsys/pkg/FR-2014-05-20/pdf/2014-11688.pdf
The Factor-Based Utility Allowance Analysis

24. Question: Can you provide the link to the website referenced in the Notice regarding the factor-based increases and the UAF?

Answer: http://www.huduser.org/portal/datasets/muaf.html

25. Question: What is the timing of the issuance of the Utility Allowance Factor (UAF)?

Answer: The UAF is a component of the OCAF and so will typically be published yearly when the OCAF is published.

26. Question: In the years in which you perform a factor-based analysis, do you take the previous utility allowance before rounding or after rounding and then apply the factor.

Answer: You apply the factor to the previous approved utility allowance, which was the utility allowance after rounding. For example, if the previous year’s baseline analysis yielded an average 2-bedroom utility allowance of $38.49 and the approved utility allowance was thus $38 (after rounding), then in second year, the factor would be applied to $38.

27. Question: For the two years after a baseline utility analysis is completed, the Utility Allowance Factor (UAF) can be used. According to the Notice, the O/A “should compare the adjusted utility analysis to their paid utilities over the previous twelve months. If the results indicate a “significant disparity” between the two, the OA should complete a baseline analysis.” Please clarify what constitutes a “significant disparity,” and whether the paid utilities analysis documentation needs to be provided to the CA/HUD in order to use the UAF. Please also clarify the “paid utilities” – does this represent the common area utilities paid by the property?

Answer: A new baseline analysis is not mandated. We do want owners to look closely at the results of a factor-based analysis, and expect that they will make an appropriate decision about further analysis if those results appear very different from what their own paid utilities suggest (i.e., their common area utilities). This analysis does not need to be provided to the CA/HUD. The comparison is intended to have owners take a “second look” at the factor-based results. If it is suspected that special circumstances cause year-to-year fluctuations that materially differ than the utility adjustment factor, owners and CAs may consider completion of a new baseline.

28. Question: Does the U/A have to be changed for all baseline transactions, even one dollar?

Answer: Yes, factor-based as well, whether it is an increase or a decrease.

Utility Allowance Decreases – Phase In

29. Question: Are O/As required to phase-in a UA decrease?
Answer: Yes, but only in the *initial* implementation of the new methodology, and only if the decrease is 15% or more AND at least $10.

**Miscellaneous**

30. **Question**: Does the data used in the analysis for each unit have to be from the same time period for each unit?

   **Answer**: Yes, to the greatest extent possible.

31. **Question**: I have 3 contracts on one property - is analysis by contract or property?

   **Answer**: By property (keeping in mind that if the property consists of multiple buildings, the buildings must be substantially similar in order for you to sample by unit size property wide).

32. **Question**: I completed a utility analysis for a 2015 contract renewal that was due prior to June 22, 2015. If this baseline analysis complied with the requirements described in the Notice, do I have to complete a new baseline for 2016?

   **Answer**: Yes, your next utility analysis must be a baseline in accordance with the requirements of the notice.

33. **Question**: May an owner offer residents monthly incentives to provide copies of their utility bills every month? For example, $1.00 or $2.00 per month per resident as "Additional Costs to Rent" in the budget.

   **Answer**: Owners may offer incentives but they may not pay for them out of project funds nor include them as an expense in the budget.

34. **Question**: Which utility allowance calculators are HFA approved?

   **Answer**: The notice intentionally does not identify pre-approved tools as the field is changing regularly. This is the pertinent language in the notice:

   "The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. Second, the utility estimates must be calculated by either (1) a properly licensed engineer or (2) a qualified professional approved by HUD."

One example, however, is the CUAC tool, which is available for use in California, from the website of the Tax Credit Allocation committee. For the specific question re: HFAs, owners
would need to talk with an HFA directly.