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March 14, 2019

Brian Montgomery  
Acting Deputy Secretary  
Assistant Secretary for Housing – Federal Housing  
Commissioner  
U.S. Department of Housing and Urban Development  
451 Seventh Street S.W.  
Washington, DC 20410

Dominique Blom  
General Deputy Assistant Secretary for Public and  
Indian Housing  
U.S. Department of Housing and Urban  
Development  
451 Seventh Street S.W.  
Washington, DC 20410

**Subject: Changes to HUD’s Physical Inspection Notification Timeframe**

Dear Mr. Montgomery and Ms. Blom:

On behalf of the National Affordable Housing Management Association (NAHMA), our members strongly urge you to suspend or amend the Department of Housing and Urban Development (HUD) plan to drastically shorten its Real Estate Assessment Center (REAC) physical inspection notification timeframe for assisted housing properties, as announced on February 22, 2019 through PIH Notice 2019-02. The Notice changes the current practice of scheduling a physical property inspection in 30-60 days to requiring an inspection in exactly 14 days. Property owners not able to meet the exact 14-day schedule for property inspection – an infeasible and burdensome requirement for both property managers and affordable housing residents, as explained below – will face severe consequences, including receiving a “zero” (out of “one hundred”) REAC score and being referred to HUD’s Departmental Enforcement Center (DEC).

NAHMA members take great pride in providing quality housing that offers a safe, healthy environment for their residents. As property owners and managers, NAHMA members understand the agency’s efforts to strongly incentivize portfolio compliance, but we disagree with the newly imposed method for achieving it. According to HUD’s own data, 95% of the assisted portfolio satisfies the physical condition standards under the REAC protocol, with 5% of the vast portfolio designated by the agency as “troubled.” Although HUD’s planned adjustments to physical inspection notification timeframes is in large part targeted at the 5% of the portfolio that is troubled, this blanket policy change will severely impact the entire portfolio, most notably good property management owners and agents who maintain high performing portfolios.

In follow up to our members’ initial feedback to HUD regarding PIH Notice 2019-02, NAHMA believes that, as published, the severely compressed notice period will lead to a breakdown of the logistical feasibility of managing HUD-assisted properties, as well as the crucial elements of trust and collaboration between the agency and the owners and operators of affordable housing. We also believe that PIH Notice 2019-02 will create hardship for residents and will further erode the confidence and

integrity of the agency's physical inspections as a tool for assessing the state of the portfolio. We have instead proposed a number of alternate solutions for promoting ongoing physical standards of assisted properties to the decent, safe, and sanitary standard required by statute. NAHMA requests your urgent consideration of our members' concerns and alternative solutions for promoting quality affordable housing, as provided in this letter.

NAHMA's membership represents 75 percent of the affordable housing management industry, and includes its most distinguished multifamily owners and management companies across the country. Our membership shares the agency's goal of providing quality affordable housing to low-and moderate-income households, in particular by consistently maintaining subsidized properties in good physical condition throughout the year. Further, NAHMA provides a certification program that recognizes the outstanding achievements of property managers and owners who provide high-quality, affordable multifamily rental housing; through this "Communities of Quality" (COQ) program, NAHMA member properties from across the country continue to be nationally recognized not just on the physical and financial condition of the properties, but also on the quality of life they offer to residents.

### **Alternate Methods for Achieving Shared Goals**

In partnership with housing providers and in the best interest of residents, we urge HUD to take the following alternate and constructive approach with regard to its physical inspection process. Our shared goal continues to be providing access to quality affordable housing:

1. HUD should utilize recently enhanced inspection enforcement tools enacted by Congress to address the 5% of the portfolio that is "troubled," instead of circumventing Congress and penalizing the entire portfolio with a drastic policy change.
2. HUD should go through appropriate regulatory channels and in partnership with Congress to establish an improved, data-driven policy for physical inspection notification timeframes.
3. HUD should foster strong partnerships between the agency, owners and operators of affordable housing properties, and residents by allowing for proper notification and logistical feasibility when scheduling physical property inspections.
4. HUD should promote private owner participation in its assisted programs by implementing a forbearance policy in a limited number of documentable situations in which the property is held harmless for inspection scheduling non-compliance, such as natural disasters or major property rehabilitation.
5. HUD should improve data integrity of the REAC protocol by reversing its new automatic "zero" score policy in favor of a more accurate and actionable compliance incentive.

### **Explanations**

1. **HUD should utilize recently enhanced inspection enforcement tools enacted by Congress to address the 5% of the portfolio that is "troubled," instead of circumventing Congress and penalizing the entire portfolio.**

In recent appropriations language, Congress enacted significantly enhanced inspection enforcement tools for HUD, as well as requirements for owners and agents participating in HUD's assisted housing

programs. Several robust enforcement changes were implemented by the agency on October 29, 2018 through Notice HA-2018-08, including owner requirements when a property fails to meet HUD's Physical Conditions Standards and Inspection Requirements (PCS&IR), as indicated by a score below 60 on a physical inspection, or when a project owner fails to timely and properly certify in writing that the Exigent Health and Safety (EHS) deficiencies identified during a physical inspection have been resolved. Among other changes, the new enforcement requirements allow for HUD to replace the management agent, transfer a property, relocate tenants, change the contract, and impose monetary penalties once major deficiencies have been found and not corrected.

Additionally, Notice HA-2018-08 provides guidance on the agency's ability to issue a "Demand for Corrective Action" to an owner even if a property receives a passing REAC score, but the agency staff believe unsatisfactory conditions exist. We urge HUD to utilize these methods for addressing the small yet unacceptable portion of the assisted portfolio that is performing at substandard levels, as opposed to applying a punitive and arbitrary inspection protocol to the majority of the portfolio that has consistently maintained quality properties.

**2. HUD should go through appropriate regulatory channels and in partnership with Congress to establish an improved, data-driven policy for physical inspection notification timeframes.**

HUD has said that the current physical inspection process and protocol is not an appropriate method for promoting quality, year-round property maintenance in the assisted portfolio, due in large part to alleged extended notification periods prior to a physical inspection; it has further stated that it has lost confidence in the ability of the current REAC scoring and testing protocol to accurately and appropriately reflect the status of a property.

As such, we urge the agency to go through appropriate regulatory channels (including a federal register notice and public comment period), as well as in partnership with Congress, to design and implement improvements to the REAC process and protocol, including to amend the inspection notification timeframe. For example, HUD has stated that it plans to begin a REAC demonstration program in the fourth quarter of fiscal year 2019 in order to test an alternative inspection protocol in a contained regional sample of assisted properties and to accept feedback throughout the testing period.

Subjecting owners to an arbitrary and highly impractical scheduling constraint within the current, flawed inspection protocol serves only to accentuate the problematic issues with REAC that HUD has acknowledged; we urge HUD to evaluate alternative inspection notification timeframes, supported by data and accompanied by instruments for measuring success, within this longer-term overhaul demonstration approach and with the input of both Congress and affected stakeholders, such as the housing industry, inspector communities, and affordable housing residents.

**3. HUD should foster strong partnerships between the agency, owners and operators of affordable housing properties, and residents by allowing for proper notification and logistical feasibility when scheduling physical property inspections.**

The agency's recent announcement to severely limit the scheduling process for physical inspections of its assisted portfolio is intended by the agency to ensure acceptable property conditions at any given time. However, requiring an exact 14-day inspection disregards a number of important

logistical concerns related to preparing for and carrying out a physical inspection that may in effect harm both the residents and the properties involved:

- 3.1.** HUD's physical inspection results carry significant weight among communities, managers, owners, and the agency as a reflection of a property's status and performance. As such, properties generally coordinate for the appropriate regional staff to be present at the property for an inspection. However, many affordable portfolios span a vast geographic region, and it is neither feasible nor practical for owners and agents at the senior management level to arrange travel and work schedules to accommodate an exact day and under very short notice for what amounts to a full- or multi-day inspection appointment at a specific property.
- 3.2.** Requiring an exact inspection day disregards circumstances that are out of the property owners' or managers' control, such as limited agency- and inspector-capacity, as well as weather-related delays; the guidance as published does not allow for a mechanism to address this, but will instead still strongly penalize the owners in these instances.
- 3.3.** Property staff should be able to give residents reasonable notice when informing them of a possible impending in-unit inspection; once a property finds out that an inspection will occur in 14 calendar days, it is logistically unrealistic that the staff will be able to immediately post notices and reach all residents regarding the notice, leading to a significantly reduced tenant notification period for what amounts to a significant intrusion on the household.

If HUD moves forward with its plans to amend its inspection notification prior to going through a more deliberate and data-driven process of improving REAC, we urge HUD to adopt a reasonable 45-day scheduling timeframe, including a scheduling window. Adopting a more reasonable notice, accompanied by a scheduling window within which inspections can occur, will help facilitate the significant logistical considerations involved in maintaining a property, respectfully interacting with residents, and properly undergoing an important evaluation of the property.

NAHMA members share the agency's goal of providing quality affordable housing that is maintained in good condition *year-round*. Shortening the notification timeframe is intended by HUD to amend what the agency perceives as owners "performing to the test" through the use of inspection consultants and work orders that are lined up once the inspection has been scheduled, as opposed to maintaining the portfolio year-round.

However, NAHMA is very concerned that a severely shortened notification period will result in a *disincentive for conducting routine property maintenance* for the following reasons:

- 3.4.** A 14-day inspection notification period does not allow for the completion of already scheduled or already initiated routine maintenance projects that the agency is seeking to promote across the portfolio, such as window replacement, appliance upgrades, and general property upkeep.
- 3.5.** Because undergoing an inspection while maintenance is occurring onsite would negatively affect the results of the inspection, the possibility of a 14-day inspection notification will likely lead to owners and managers *delaying or avoiding routine maintenance projects* that cannot be completed within a 14-day window.

In order to meet the shared goals of incentivizing routine upkeep of assisted properties, NAHMA recommends the agency instead adopt an inspection notification timeframe of 45 days (with a scheduling window), which would allow for the completion of any routine maintenance or repair projects, but would not allow enough time for sub-standard properties to defraud the physical inspection process by completing a major property overhaul, as has been reported to have happened in a small yet unacceptable number of instances across the vast assisted portfolio.

**4. HUD should promote private owner participation in its assisted programs by implementing a forbearance policy in a limited number of documentable situations in which the property is held harmless for inspection scheduling non-compliance, such as natural disasters or major property rehabilitation.**

As published, PIH Notice 2019-02 does not consider scheduling circumstances that warrant reasonable exceptions. For example, the Notice states that a property that fails to undergo an inspection within the required timeframe will receive an automatic score of “zero.”

Even with a more reasonable and feasible inspection notification timeframe and scheduling window, this policy disregards documentable scenarios that fall outside of the owner’s control and that cause extensive delay or disrepair, such as the devastating effects of a natural disaster or instances in which a property is undergoing major rehabilitation. In fact, the agency often relies on private owners to take over troubled properties in an effort to bring them back to a standard that better serves the residents and the broader community; this type of property or portfolio “turn-around” often takes significant time and financial investment on behalf of the owner, which will be severely disincentivized under the agency’s new policy *unless a forbearance policy is adopted by the agency.*

In order to avoid unintended consequences, such as owners declining to take over portfolios in need of major rehab or in natural disaster-stricken areas, we urge the agency to adopt within any new inspection notification requirement a written forbearance policy that holds the property or owner harmless for a limited number of scenarios in which an inspection reasonably cannot take place.

**5. HUD should improve data integrity of the REAC protocol by reversing its new automatic “zero” score policy in favor of a more accurate and actionable compliance incentive.**

HUD has stated that a goal of adjusting the notice period is to improve the integrity of REAC’s ability to assess the state of the portfolio on any given day. The punitive incentive for owners to comply with the 14 day policy is to award a property that does not undergo an inspection in that timeframe an automatic score of “zero.” This inherently distorts REAC’s data of the portfolio, because inevitably, a consistently high- or even mid-performing property will not be able to undergo an inspection within the required time constraint due purely to *logistical reasons*; arbitrarily awarding a score of “zero” to properties will undermine any remaining integrity in REAC’s results data.

In addition, awarding a “zero” score refers a property to HUD’s Departmental Enforcement Center (DEC), a burdensome and lengthy process (for both agency staff and property managers) that should be reserved for instances in which it is truly warranted, and not for an inspection scheduling infeasibility, a weather-related delay, or an inspector-caused non-inspection, as is likely to happen under the new inspection policy. A DEC referral will bog down the process of getting the portfolio properly inspected, which is the stated goal of HUD’s changes, and the lingering record of a DEC

referral will *complicate the process of distinguishing “bad actors” from “good actors” in HUD programs*, one of HUD’s priority goals in amending the REAC process.

As an alternative method for incentivizing compliance within an inspection timeframe, NAHMA instead urges the agency to utilize its current tools for assigning a risk-factor to a property and incentivizing good business practice with the owner. These tools include the use of positive reinforcement, such as the current 3-2-1 risk-based physical inspection protocol for owners who consistently operate exceptional properties, which NAHMA recommends the agency continue to utilize and further enhance. Additionally, HUD also has a number of punitive tools at its disposal, such as the ability to issue a “Demand for Corrective Action” or the placement of flags in the Active Partners Performance System (APPS) to alert of a violation of a business agreement or a heightened risk-factor related to a property.

Both the “carrot” and “stick” policies currently available to the agency create strong incentives for owners to comply with inspection requirements, and they are effective in prompting follow-up action from HUD in the vast majority of cases; in addition, these tools are also more flexible for the agency to apply and remedy, and more accurate in terms of reflecting a property’s status (as opposed to an automatic and arbitrary inspection score of “zero”).

We thank you for your urgent consideration of this matter, and we look forward to working together to advance our shared goal of providing quality housing and improving economic opportunity for communities across the country. Please do not hesitate to reach out with questions to Kris Cook, NAHMA’s Executive Director, at 703-683-8630 x113, or Larry Keys, NAHMA’s Director of Government Affairs, at ext. 111.

Sincerely,



Kris Cook, CAE  
Executive Director

CC:

Senate Appropriations Committee Chairman Shelby and Ranking Member Leahy  
Senate Appropriations Committee, THUD Subcommittee Chairwoman Collins and Ranking Member Reed  
Senate Banking Committee Chairman Crapo and Ranking Member Brown  
Senate Banking Committee, Housing Subcommittee Chairman Perdue and Ranking Member Menendez  
House Appropriations Committee Chairwoman Lowey and Ranking Member Granger  
House Appropriations Committee, THUD Subcommittee Price and Ranking Member Diaz-Balart  
House Financial Services Committee Chairwoman Waters and Ranking Member McHenry  
House Financial Services Committee, Housing Subcommittee Chairman Clay and Ranking Member Duffy