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New HUD Inspection Guidance and New Penalties

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Recently issued HUD Notice 2018-08 updates HUD enforcement guidance and addresses provisions in The Consolidated Appropriations Acts for 2017 and 2018. In many respects this new Notice incorporates and clarifies procedures for MultiFamily properties that score below 60 in the Real Estate Assessment Center (“REAC”) physical inspection. The Notice does not extend to Public Housing.

HUD recognizes some subtleties that prior guidance lacked, such as recognizing when it is advisable to tailor resolution plans and reinspections to fit specific facts. There also provisions focusing in corrective. At the same time, the Notice mentions civil money penalties in conjunction of repair plans but of late we have seen civil money penalties processed separately from site condition issues.

The Notice notes that owners will be instructed to conduct a survey of the entire project, correct all deficiencies, and submit form certifications, which are existing procedures. There is no mention of how to address tenant changes or additions to units.

The Notice also implements lead based paint compliance verification. Any REAC failing property with project based rental assistance will receive instructions to submit documentation of compliance with Lead Safe Housing Rules.

However, the Notice also sets out the position that HUD is to issue a default notice 15 days after a failing (below 60) REAC, even though an owner has appealed and can continue to act on that notice even if the appeal is successful. In other words, the guidance instructs field offices they may continue to enforce on owners even after it is proven the factual basis for the default notice does not exist.

The Notice also provides that HUD staff may also provide default notices based not on the numerical and objective REAC criteria but on undefined opinions and findings by other government agencies.

The Notice follows on a recent HUD press release that it has “become clear that REAC’s 20-year-old scoring system needs to be changed to better reflect the physical conditions of the properties where more than two million families call home.”

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