Congress of the United States
U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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May 22, 2019

The Honorable Benjamin S. Carson Sr., M.D.
Secretary
US Department of Housing and Urban Development.
451 7th Street S.W.,
Washington DC, 20410

Re: Inspections for Nursing Facilities that have Section 232 REAC Loan Guarantees

Dear Secretary Carson:

I am writing to express concerns regarding the Office of Residential Care Facilities' (ORCF) current practice of exempting most Section 232 nursing facilities from Real Estate Assessment Center (REAC) facility inspections. Originally required for every facility with a mortgage guaranteed under the Department of Housing and Urban Development (HUD) Section 232 mortgage guarantee program, these inspections were designed as a way to ensure not only the financial viability of the facility being insured but also the safety, dignity, and well-being of those residing in the facility.

Congress established the Section 232 loan program in 1959 through the National Housing Act to provide mortgage insurance for residential care facilities, such as nursing homes, assisted living facilities, and board and care facilities.[1] These loans help finance the purchase, refinance, new construction, or substantial rehabilitation of a residential care facility and are financially beneficial to the facility which typically get lower interest rates when HUD guarantees their loan. In the event of a foreclosure, however, HUD is responsible. As of March 8, 2018, HUD had insured 2,458 nursing home mortgages with a collective principal balance exceeding $19.6 billion.

A regulatory change in 2012 exempted skilled nursing facilities (SNFs) from routine REAC inspections, stipulating that facilities insured after October 2012 no longer had to be inspected, and those that were insured before 2012 and had scored at least 60 (which HUD

[1] https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/fha_insurance

considers a "passing" score) were also exempted from inspections in perpetuity.[2] As a result of this exemption, HUD exempted from future inspections more than 86 percent of the facilities that Centers for Medicare & Medicaid Services (CMS) rated as 1 star (lowest quality) in its Five-Star Quality Rating System. The standards HUD uses to inspect nursing homes raise significant concerns for several reasons.

When a facility is exempted from inspection, research shows the facility often falls into disrepair. Average REAC scores have fallen since HUD reduced its inspections. In 2000, the average score was 82 out of 100. By 2016, the score had fallen to 72.[3] When the Joint Civil Fraud Division inspected facilities that had previously received passing scores (60 and over) but had not been inspected for at least five years, three had scores so low, not only would they not have passed, but they would have required a yearly follow-up inspection.

CMS surveys are not an acceptable substitute for REAC inspections. ORFC argues that because CMS also inspects nursing homes, the REAC inspections are redundant. This is not the case. CMS and state inspections focus on patient care issues and do not typically look at structural repair issues unless related specifically to a resident complaint. For example, CMS inspectors will not check the roof, fire doors, emergency lighting, fire extinguishers, or electrical panels – all vital components of REAC inspections.[4] One study showed that CMS surveyors neither entered bathrooms to look for mold nor ascended roofs to assess for leaks. In fact, when the Joint Civil Fraud Division compared CMS 5-Star Ratings with REAC scores, it found no correlation. Of the 248 facilities that had received a 5-Star (highest) CMS rating, almost 1 in 10 did not receive a passing REAC score (60 or above).

Allowing facilities to fall into disrepair costs the taxpayer money. According to ORCF's handbook, REAC inspection reports are one of the tools that account executives should use to monitor nursing facility performance. When a facility goes out of business and defaults on its loan, the financial burden falls on U.S. taxpayers who are backing the loans. An OIG report on financial oversight of the Section 232 loan guarantee program showed that HUD did not always have and use sufficient financial information to adequately assess and monitor nursing homes.[5] Specifically, OIG found that the program: (1) allowed four defaulted nursing homes to remain in its portfolio for up to six-and-a-half years; (2) made a partial payment to help one nursing home return to solvency (and it went bankrupt 14 months later); (3) insured a nursing home that did not operate as a single-asset entity and a nursing home that did not submit a marketing plan; (4) did not enforce its regulatory agreements at six nursing homes; and (5) did not properly classify nine nursing homes as troubled. In addition, HUD did not require owners, operators, and lenders to routinely submit financial data that were sufficient, accurate, complete, and timely.

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[2] As part of the Section 232 loan guarantee, HUD originally required routine inspections of the physical structure of all participating facilities through its REAC. Under the inspection process, facilities receive a score between 1-100, with 100 being the highest score and points subsequently deducted for deficiencies in the facility's physical structure. Facilities with an 80 or below were required to have ongoing annual inspections.

[3] Office of Inspector General, Office of Evaluation. "The Office of Residential Care Facilities use of Real Estate Assessment Center Scores" Report Number: 2017-OE-0011. September 15, 2017.

[4] Office of the Inspector General, Office of Evaluation. "Topic Brief: Skilled Nursing Facilities Currently Exempted From Real Estate Assessment Center Inspections." February, 22, 2019.

[5] Office of Inspector General, Office of Audit, Region 1. "U.S. Department of Housing and Urban Development, Office of Residential Care Facilities. HUD's Monitoring of the Financial performance of Section 232 Nursing Homes" Audit Report Number: 2018-BO-0001. September 17, 2018.

As a result, nine nursing homes with more than $82.4 million in HUD-insured mortgages were at risk of default, putting HUD at risk of losing more than $32.1 million for the defaulted mortgages and owing more than $10 million in carrying costs. Structures falling into disrepair are often an early warning sign of financial insolvency and may have been identified earlier if REAC inspections had been conducted.

Additionally, I ask that you update the REAC inspection standards and ensure that such inspections are timely. According to the Office of the Inspector General (OIG) the small number of HUD-guaranteed facilities that are still inspected are often overdue. At least 26 facilities that had scored below 60 on their last inspection had not received a follow-up within 476 days, suggesting lax enforcement even for those homes that require additional inspections under the looser rules.[6]

In conclusion, the Section 232 loan guarantee program benefits nursing facilities by guaranteeing loans, and, in return, the American taxpayer should expect that the facilities will maintain safe living conditions for their residents. CMS surveys are no substitute for REAC inspections. Without REAC inspections we know many facilities fall into disrepair. By failing to conduct REAC inspections of the facilities, HUD's ORCF is allowing facilities whose loans are guaranteed by the government to shirk their responsibilities to invest in safe and comfortable structural environment for their residents.

I urge you to reinstitute REAC inspections, with modifications to make them as appropriate as possible to guarantee the safety, dignity and well-being of nursing home residents. If you have any questions, please contact Rachel Dolin with the Committee on Ways and Means, at Rachel.Dolin@mail.house.gov or 202-225-3625.

Sincerely,

Richard E. Neal
Chairman

[6] Office of Inspector General, Office of Evaluation. "The Office of Residential Care Facilities use of Real Estate Assessment Center Scores" Report Number: 2017-OE-0011. September 15, 2017.