

## Chapter 8 (Revised effective August 1, 2024)

### NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 5 Subpart G and Notice PIH 2023-28]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) and Project Based Voucher (PBV) assistance meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2024. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan [Notice PIH 2023-28].

All units must pass an NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets NSPIRE standards. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

Provided they meet certain requirements, HUD permits PHAs to establish some additional local requirements in their administrative plans. The use of the term *NSPIRE* in this plan refers to the combination of both HUD and PHA-established requirements. However, state and local codes, compliance is not part of the determination of whether a unit passes the NSPIRE standards.

This chapter explains HUD and PHA requirements related to physical inspections and rent reasonableness as follows:

Part I. Physical Standards. This part discusses NSPIRE standards required of units occupied by HCV and PBV-assisted families. It also identifies affirmative habitability requirements for all units and life-threatening conditions that must be corrected in 24 hours.

Part II. The Inspection Process. This part describes the types of inspections the PHA will make and the steps that will be taken when units do not meet NSPIRE standards.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA will use to make rent reasonableness determinations.

Special NSPIRE requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction. Special requirements for the PBV and RAD PBV programs (if applicable) are discussed in Chapters 17 and 18, respectively.

## **ART I: NSPIRE STANDARDS**

NSPIRE standards are published on HUD's NSPIRE website as well as in the NSPIRE Final Rule [FR Notice 5/1//2023].

### **8-I.A. INSPECTABLE AREAS [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)]**

NSPIRE defines the inspectable areas for inspection under the standards as inside, outside and unit. However, the inspection requirement for the HCV and PBV programs only applies to units occupied or to be occupied by HCV or PBV participants and common areas and exterior areas which either service or are associated with such units.

### **8-I.B. AFFIRMATIVE HABITABILITY REQUIREMENTS [24 CFR 5.703(b), (c), and (d)]**

NSPIRE provides for minimum, or affirmative, habitability requirements for each area (unit, inside, outside). These areas must meet these requirements for habitability, which are listed in Exhibit 8-1.

The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness [24 CFR 5.703(e)].

The NSPIRE Smoke Alarm Standard does not require that smoke alarms have a sealed battery; however, upon the effective date of the Public and Federally Assisted Housing Fire Safety Act of 2022 on December 29, 2024, sealed batteries *will* be required.

### **8-I.C. MODIFICATIONS TO PROVIDE ACCESSIBILITY [24 CFR 100.203; Notice 2003-31; and Notice PIH 2014-02]**

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest-bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable NSPIRE requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

#### **LHA Policy**

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

**8-I.D. ADDITIONAL LOCAL REQUIREMENTS [24 CFR 5.705(a)(3) and Notice PIH 2023-28]**

The PHA may impose variations to the NSPIRE standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to NSPIRE standards and approved variations must be added to the administrative plan.

HUD may approve inspection criteria variations if the variations apply standards in local housing codes or other codes adopted by the PHA or because of local climatic or geographic conditions. Acceptability criteria variations may only be approved by HUD if such variations either meet or exceed the performance requirements or significantly expand affordable housing opportunities for families assisted under the program.

**LHA Policy**

The LHA has not requested any HUD-approved variations to NSPIRE standards.

**8-I.E. LIFE-THREATENING DEFICIENCIES [Notice PIH 2023-28]**

HUD previously required the PHA to define life-threatening conditions in the administrative plan. The NSPIRE standards now describe those conditions which are considered life-threatening and must be corrected within 24 hours.

The following are a list of life-threatening deficiencies under NSPIRE:

| <b>Inspectable Item</b>           | <b>Deficiency</b>   |
|-----------------------------------|---|
| Call-for-Aid System               | System is blocked, or pull cord is higher than 6 inches off the floor.  |
|                                   | System does not function properly   |
| Carbon Monoxide Alarm             | Carbon monoxide alarm is missing, not installed, or not installed in a proper location.   |
|                                   | Carbon monoxide alarm is obstructed.  |
|                                   | Carbon monoxide alarm does not produce an audio or visual alarm when tested.  |
| Chimney                           | A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior. |
|                                   | Chimney exhibits signs of structural failure.   |
| Clothes Dryer Exhaust Ventilation | Electric dryer transition duct is detached or missing.  |
|                                   | Gas dryer transition duct is detached or missing.   |
|                                   | Electric dryer exhaust ventilation system has restricted airflow.   |
|                                   | Dryer transition duct is constructed of unsuitable material.  |

| Inspectable Item                                  | Deficiency  |
|---|---|
|   | Gas dryer exhaust ventilation system has restricted airflow.  |
| Door – Entry                                      | Entry door is missing.  |
| Door – Fire Labeled                               | Fire labeled door is missing.   |
| Egress  | Obstructed means of egress.   |
|   | Sleeping room is located on the third floor or below and has an obstructed rescue opening.  |
|   | Fire escape is obstructed.  |
| Electrical – Conductor, Outlet, and Switch        | Outlet or switch is damaged.  |
|   | Exposed electrical conductor.   |
|   | Water is currently in contact with an electrical conductor.   |
| Electrical – Service Panel                        | The overcurrent protection device is damaged.   |
| Exit Sign   | Exit sign is damaged, missing, obstructed, or not adequately illuminated.   |
| Fire Escape                                       | Fire extinguisher is damaged or missing.  |
| Fire Extinguisher                                 | Fire extinguisher pressure gauge reads over or under-charged.   |
|   | Fire extinguisher service tag is missing, illegible, or expired.  |
|   | Fire extinguisher is damaged or missing.  |
| Flammable and Combustible Items                   | Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR<br>Improperly stored chemicals.  |
| Guardrail   | Guardrail is missing or not installed.  |
|   | Guardrail is not functionally adequate.   |
| Heating, Ventilation, and Air Conditioning (HVAC) | The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit. |
|   | Unvented space heater that burns gas, oil, or kerosene is present.  |
|   | Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.   |
|   | Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.   |
| Leak – Gas or Oil                                 | Natural gas, propane, or oil leak.  |
| Mold-like Substance                               | Presence of mold-like substance at extremely high levels is   |

| Inspectable Item   | Deficiency  |
|--------------------|---|
|                    | observed visually.  |
| Smoke Alarm        | Smoke alarm is not installed where required.  |
|                    | Smoke alarm is obstructed.  |
|                    | Smoke alarm does not produce an audio or visual alarm when tested.  |
| Sprinkler Assembly | Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head. |
|                    | Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.                 |
|                    | Sprinkler assembly has evidence of corrosion.   |
|                    | Sprinkler assembly has evidence of foreign material that is detrimental to performance.                               |
| Structural System  | Structural system exhibits signs of serious failure.  |
| Toilet             | Only 1 toilet was installed, and it is missing.   |
| Water Heater       | Chimney or flue piping is blocked, misaligned, or missing.  |
|                    | Gas shutoff valve is damaged, missing, or not installed.  |

However, PHAs may add additional deficiencies which the PHA considers life-threatening provided they are described in the administrative plan.

**LHA Policy**

In addition to those listed under the NSPIRE standards, the following are considered life-threatening conditions:

Utilities not in service, including no running hot water

**8-I.F. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

**Family Responsibilities**

The family is responsible for correcting the following deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.

**LHA Policy**

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

## **Owner Responsibilities**

The owner must maintain the unit in accordance with NSPIRE regulations and standards. The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (as provided in 24 CFR 982.404(b) and 982.551(c)).

### **LHA Policy**

The owner is responsible for all NSPIRE violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation, the owner may take legal action to evict the family.

The owner will be required to repair an inoperable smoke detector unless the LHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the NSPIRE standards in accordance with HUD requirements. See 8-II-G.

## **8-I.G. LEAD-BASED PAINT**

PHAs and owners must comply with the requirements and timelines in 24 CFR Part 35 Subpart M—Tenant-Based Rental Assistance and Subpart H—Project-Based Assistance. PHAs and owners are reminded that any deteriorated paint in target housing, or other lead-based paint hazard identified through a lead-based paint risk assessment or lead-based paint inspection is considered a violation of NSPIRE standards.

For the HCV program, Subpart M applies to units where a child under age six resides or is expected to reside, common areas that service that unit, and exterior painted surfaces associated with that unit or common areas. For project-based programs, Subpart H applies to assisted units and common areas of the property regardless of whether a child under age six resides or is expected to reside in the unit. NSPIRE does not alter any of the lead-based paint requirements in Part 35 for these programs.

### **Special Requirements for Children with Elevated Blood Lead Level [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]**

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of

identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

#### **8-I.H. VIOLATION OF SPACE STANDARDS [24 CFR 5.703(d)(5)]**

Units assisted under the HCV or PBV programs must have at least one bedroom or living/sleeping room for each two persons. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. Each habitable room must have two working outlets or one working outlet and a permanent light. HUD defines a *habitable room* as a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas [FR Notice 5/11/23].

A unit that does not meet these space standards is defined as *overcrowded*.

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.



## PART II: THE INSPECTION PROCESS

### 8-II.A. OVERVIEW [24 CFR 982.405]

#### Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually or biennially (or triennially for small rural PHAs as defined in 24 CFR 982.305(b)(2)), depending on PHA policy, to confirm that the unit still meets NSPIRE standards.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the NSPIRE standards.

#### Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all NSPIRE inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A *PHA-owned unit* is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

For information on the inspection of PHA-owned units in the PBV program, see Chapters 17 and 18.

#### Inspection Costs [Notice PIH 2016-05; 24 CFR 5.705(d)]

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)].

In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

**LHA Policy**

The PHA will not charge a fee for failed reinspections.

**Remote Video Inspections (RVIs) [Notice PIH 2020-31]**

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform NSPIRE inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates NSPIRE standards, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

**LHA Policy**

The LHA will not conduct any inspection using RVI.

**Notice and Scheduling**

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

**LHA Policy**

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the LHA will give as much notice as possible, given the nature of the emergency.

**Owner and Family Inspection Attendance**

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

**LHA Policy**

When a family occupies the unit at the time of inspection an authorized adult must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted but is not required.

## **8-II.B. INITIAL INSPECTION**

### **Approving Units [FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406]**

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet NSPIRE standards before the PHA approves assisted tenancy. However, while the PHA is required to conduct an inspection prior to approving assisted tenancy, PHAs have two options for bringing units under HAP contract (or, in the case of PBV, approving occupancy and the execution of a lease) more quickly. The PHA may, but is not required to approve assisted tenancy and start HAP if the unit:

- Fails the initial inspection, but only if no life-threatening deficiencies are identified.
- Passed an alternative inspection in the last 24 months.

Otherwise, if neither of the above provisions are adopted, the PHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

#### **LHA Policy**

The unit must pass the initial inspection on or before the effective date of the HAP contract.

The LHA will not rely on alternative inspections and will conduct an initial inspection for each unit prior to executing a HAP contract with the owner.

### **Timing of Initial Inspections [24 CFR 982.395(b)(2)(i)]**

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection.

#### **LHA Policy**

The LHA will complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA).

### **Inspection Results and Reinspections**

For new units proposed for the HCV program, life-threatening deficiencies must be resolved before the HAP contract is executed and the family moves into the unit.

#### **LHA Policy**

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the LHA for good cause. The LHA will reinspect the unit within five business days of the date the owner notifies the LHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any LHA-approved extension) has elapsed, or the unit fails at the time of the reinspection, the LHA will notify the owner

and the family that the unit has been rejected and that the family must search for another unit. The LHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

## **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

### **LHA Policy**

Utility service must be available for testing at the time of the initial inspection.

## **Appliances**

### **LHA Policy**

If the family is responsible for supplying the stove and/or refrigerator, the LHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the LHA. The LHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

## **8-II.C. ANNUAL/BIENNIAL INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]**

HUD requires the PHA to inspect each unit under HAP contract at least biennially (or triennially for small rural PHAs), to confirm that the unit still meets NSPIRE standards. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.

### **LHA Policy**

Each unit under HAP contract must be inspected biennially within 24 months of the last full inspection. The LHA reserves the right to require annual inspections of any unit or owner at any time.

The PHA will not rely on alternative inspection standards.

## **Scheduling the Inspection**

### **LHA Policy**

If an adult cannot be present on the scheduled date, the family should request that the LHA reschedule the inspection. The LHA and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The LHA may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the LHA will automatically schedule a second inspection. If the family misses two scheduled inspections without LHA approval, the LHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

#### **8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]**

If a participant family or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

##### **LHA Policy**

During a special inspection, the LHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual/biennial inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the LHA may elect to conduct a full annual/biennial inspection.

#### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); 24 CFR 985.3(e); HCV GB, p. 10-32]**

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the NSPIRE standards.

The unit sample must include only units that have been inspected within the preceding three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

#### **8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

##### **Correction Timeframes**

Each deficiency is identified in the NPSIRE standards as either life-threatening, severe, moderate, or low.

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a PHA-approved extension) after notice has been provided. If low deficiencies are present in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

##### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies deficiencies, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

### **LHA Policy**

When life-threatening deficiencies are identified, the LHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the LHA's notice.

When failures that are severe or moderate are identified, the LHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any LHA-approved extension), the owner's HAP will be abated in accordance with LHA policy (see 8-II.G.).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any LHA-approved extension, if applicable) the family's assistance will be terminated in accordance with LHA policy (see Chapter 12).

### **Extensions**

For life-threatening deficiencies, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are severe or moderate, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate.

### **LHA Policy**

Extensions will be granted in cases where the LHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

### **Reinspections**

### **LHA Policy**

The LHA will conduct a reinspection immediately following the end of the corrective period, or any LHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the LHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with LHA policies. If the LHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the LHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

The LHA will not accept self-certification of repairs. Photos or other documentation of repairs will not be accepted in lieu of a reinspection.

## **8-II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with NSPIRE standards, the PHA must take prompt and vigorous action to enforce the owner obligations.

### **HAP Abatement**

If an owner fails to correct deficiencies by the time specified by the PHA, HUD requires the PHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of deficiencies that are the family's responsibility.

#### **LHA Policy**

The LHA will make all HAP abatements effective the first of the month following the expiration of the LHA specified correction period (including any extension).

The LHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

### **HAP Contract Termination**

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### **LHA Policy**

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the LHA before the termination date of the HAP contract, the LHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the LHA is 30 days.

### **8-II.H. ENFORCING FAMILY COMPLIANCE [24 CFR 982.404(b)]**

Families are responsible for correcting any deficiencies listed in paragraph 8-I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.



## **PART III: RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### **PHA-Owned Units [24 CFR 982.352(b)]**

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

#### **Owner-Initiated Rent Determinations**

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the PHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent inspection have been corrected.

#### **LHA Policy**

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease and state law. For rent increase requests after initial lease-up, the LHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the LHA will consider unit size and length of tenancy in the other units.

The LHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the LHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **PHA and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

#### **LHA Policy**

In addition to the instances described above, the LHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the LHA determines that the initial rent reasonableness determination was in error or (2) the LHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

### **LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

## **Units that Must Not Be Used as Comparables**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

*Note:* Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit.

## **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

## **8-III.D. PHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

#### **LHA Policy**

The LHA will collect and maintain data on market rents in the LHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

### **How Rents Are Determined**

#### **LHA Policy**

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The LHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the LHA may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows:  $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \$488$ .

The LHA will notify the owner of the rent the LHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The LHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the LHA's request for information or the owner's request to submit information.

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| <b>EXHIBIT 8-1: AFFIRMATIVE HABITABILITY REQUIREMENTS</b> |
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| <b>Affirmative Habitability Requirements: Inside</b> |
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| Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property. |
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| Must meet or exceed the carbon monoxide detection standards set by the Secretary through <i>Federal Register</i> notification. |
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| Any outlet installed within 6 feet of a water source must be GFCI protected. |
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| Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically. |
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| Must have permanently mounted light fixtures in any kitchens and each bathroom. |
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| May not contain unvented space heaters that burn gas, oil or kerosene. |
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| <b>Affirmative Habitability Requirements: Outside</b> |
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| Any outlet installed within 6 feet of a water source must be GFCI-protected. |
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| Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically. |
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| <b>Affirmative Habitability Requirements: Unit</b>   |
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| Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.   |
| Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.   |
| Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations: <ul style="list-style-type: none"> <li>• On each level of the unit AND</li> <li>• Inside each bedroom or sleeping area AND</li> <li>• With 21 feet of any door to a bedroom measured along a path of travel AND</li> <li>• Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.</li> </ul> |
| If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.   |
| Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.  |
| Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.  |
| Must have a permanently mounted light fixture in each bathroom and in the kitchen.   |
| Outlets within 6 feet of water source must be GFCI-protected.  |
| Must have permanently installed heating source.  |
| No units may contain unvented space heaters that burn gas, oil or kerosene.  |
| Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.  |
| Must have at least one bedroom or living/sleeping room for each two persons.   |