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## Title 24 —Housing and Urban Development

### Subtitle A —Office of the Secretary, Department of Housing and Urban Development

#### Part 5 —General HUD Program Requirements; Waivers

**Authority:** 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.*; 34 U.S.C. 12471 *et seq.*; Sec. 327, Pub. L. 109-115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

**Source:** 61 FR 5202, Feb. 9, 1996, unless otherwise noted.

#### Subpart G Physical Inspection of Real Estate

§ 5.701 Applicability.

§ 5.703 National standards for the condition of HUD housing.

§ 5.705 Inspection requirements.

§ 5.707 Uniform self-inspection requirement and report.

§ 5.709 Administrative process for defining and revising inspection criteria.

§ 5.711 Scoring, ranking criteria, and appeals.

§ 5.713 Second- and third-party rights.

**Editorial Note:** Nomenclature changes to part 5 appear at 65 FR 16715, Mar. 29, 2000.

#### Subpart G—Physical Inspection of Real Estate

**Source:** 88 FR 30490, May 11, 2023, unless otherwise noted.

##### § 5.701 Applicability.

(a) **Scope.** This subpart applies the national standards for the physical inspection of real estate standards to the following HUD programs:

- (1) All Public Housing programs (programs for housing assisted under the U.S. Housing Act of 1937 other than section 8 of the Act);
- (2) The Housing Choice Voucher program under section 8(o) of the U.S. Housing Act of 1937, part 982 of this title and the Project-Based Voucher program under section 8(o)(13) of the Act and the regulations at 24 CFR part 983 (referred to in this part as the HCV and PBV programs, or HCV and PBV housing);
- (3) All project-based Section 8 programs;
- (4) Section 202 Supportive Housing for the Elderly (Capital Advances);
- (5) Section 811 Supportive Housing for Persons with Disabilities (Capital Advances);
- (6) Section 202 direct loan program for projects for the elderly and persons with disabilities as it existed before October 1, 1991 (including 202/8 projects and 202/162 projects); and

- (7) Housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the following authorities:
  - (i) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);
  - (ii) Section 213 of the NHA (Cooperative Housing Insurance);
  - (iii) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);
  - (iv) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) program);
  - (v) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) program);
  - (vi) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);
  - (vii) Section 231 of the NHA (Housing for Elderly Persons);
  - (viii) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);
  - (ix) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);
  - (x) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);
  - (xi) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and
  - (xii) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing program).
- (b) **Conflicts.** The regulations in this subpart may be supplemented by the specific regulations for the HUD-assisted programs listed in paragraph (a) of this section. The program-specific regulations may address the frequency of inspections, who performs the inspections and whether alternative inspections are available given the statutory and regulatory framework for the program. When there is a conflict between the regulations of this subpart and the program-specific regulations, the program-specific regulations govern.
- (c) **HUD housing.** For purposes of this subpart, the term “HUD housing” means the types of housing listed in paragraph (a) of this section.

### § 5.703 National standards for the condition of HUD housing.

- (a) **General.** To ensure that all residents live in safe, habitable dwellings, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards. The standards under this section apply to all HUD housing. HUD housing under the HCV, PBV, and Moderate Rehabilitation programs shall be subject to these standards only for:
  - (1) The subsidized unit itself; and
  - (2) Items and components within the primary and secondary means of egress from a unit's entry door(s) to the public way, those common features related to the residential use of the building (e.g., the laundry room, community room, mail room), and the systems equipment that directly services the subsidized unit.

- (b) **Inside.** Inside of HUD housing (or “inside areas”) refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of “inside” common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services. The inside area must meet the following affirmative requirements:
- (1) The inside area must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property. The Secretary may establish additional standards through FEDERAL REGISTER notification;
  - (2) Except for housing subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the inside area must meet or exceed the carbon monoxide detection standards set by the Secretary through FEDERAL REGISTER notification;
  - (3) For the inside area, any outlet installed within 6 feet of a water source must be ground-fault circuit interrupter (GFCI) protected;
  - (4) The inside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically;
  - (5) The inside area must have permanently mounted light fixtures in any kitchens and each bathroom; and
  - (6) The inside area may not contain unvented space heaters that burn gas, oil, or kerosene.
- (c) **Outside.** Outside of HUD housing (or “outside areas”) refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of “outside” components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows. The outside area must meet the following affirmative requirements:
- (1) For the outside area, outlets within 6 feet of a water source must be GFCI protected; and
  - (2) The outside area must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
- (d) **Units.** A unit (or “dwelling unit”) of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows. The unit must also meet the following affirmative requirements:
- (1) The unit must have hot and cold running water in both the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen;

- (2) The unit 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;
- (3)
  - (i) The unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations:
    - (A) On each level of the unit;
    - (B) Inside each bedroom;
    - (C) Within 21 feet of any door to a bedroom measured along a path of travel; and
    - (D) Where a smoke detector installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed on the living area side of the door.
  - (ii) If the unit is occupied by any hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons;
  - (iii) The Secretary may establish additional standards through FEDERAL REGISTER notification;
  - (iv) Following the specifications of National Fire Protection Association Standard (NFPA) 72 satisfies the requirements of this paragraph (d)(3);
- (4) The unit must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area;
- (5) For units assisted under the HCV or PBV program, the unit must have at least one bedroom or living/sleeping room for each two persons;
- (6) Except for units subject to this subpart only through § 5.701(a)(6) or (7), or housing otherwise exempt from this requirement as provided elsewhere in this title, the unit must meet or exceed the carbon monoxide detection standards set by HUD through FEDERAL REGISTER notification;
- (7) The unit must have two working outlets or one working outlet and a permanent light within all habitable rooms;
- (8) Outlets within 6 feet of a water source must be GFCI protected;
- (9) For climate zones designated by the Secretary through notice, the unit must have a permanently installed heating source. No units may contain unvented space heaters that burn gas, oil, or kerosene;
- (10) The unit must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically; and
- (11) The unit must have a permanently mounted light fixture in the kitchen and each bathroom.

(e) **Health and safety concerns** —

- (1) **General.** 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.

- (2) **Lead-based paint.** HUD housing must comply with all requirements related to the evaluation and control of lead-based paint hazards and have available proper documentation of such (see 24 CFR part 35). The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and the applicable regulations at 24 CFR part 35 apply.
- (f) **Compliance with State and local codes.**
  - (1) The standards for the condition of HUD housing in this section do not supersede State and local housing codes (such as fire, mechanical, plumbing, carbon monoxide, property maintenance, or residential code requirements).
  - (2) All HUD housing other than units assisted under the HCV and PBV programs must comply with State or local housing codes in order to comply with this subpart.
  - (3) State and local code compliance is not part of the determination of whether a unit passes the standards for the condition of HUD housing under this section for the HCV and PBV programs (except in accordance with § 5.705(a)(3)).
- (g) **Use of an alternative inspection or additional standard for HCV and PBV programs.** A PHA is not subject to the standards set by this section when the PHA is relying on an alternative inspection in accordance with 24 CFR 982.406. PHAs may also elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement to enter into a HAP Contract or HAP Contract as provided in 24 CFR part 983.
- (h) **Special housing types in the HCV, PBV and Moderate Rehabilitation programs.** Part 982, subpart M, of this title identifies special housing types which require standards unique to special types of housing. Unless modified by program-specific regulations, NSPIRE Standards will apply for these special housing types.

## § 5.705 Inspection requirements.

- (a) **Procedures —**
  - (1) **General.** Any entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart, must inspect and score such HUD housing in accordance with the standards and procedures for identifying safe, habitable housing set out by the Secretary and published in the FEDERAL REGISTER as described in § 5.711. The entity conducting the inspection shall identify each deficiency as “Life Threatening”, “Severe,” “Moderate”, or “Low.”
  - (2) **Inspection scope.** The inspection requirement for HUD housing generally requires the inside, outside and unit to be inspected, in accordance with § 5.703. The inspection requirement for the tenant-based HCV program and the unit inspection for the PBV and Moderate Rehabilitation programs only applies to units occupied or to be occupied by HCV, PBV, and Moderate Rehabilitation participants, and common areas and exterior areas which either service or are associated with such units.
  - (3) **HCV and PBV variant inspection standards.**
    - (i) HUD may approve inspection criteria variations for the following purposes:
      - (A) Variations which apply standards in local housing codes or other codes adopted by the PHA; or
      - (B) Variations because of local climatic or geographic conditions.

- (ii) Acceptability criteria variations may only be approved by HUD pursuant to paragraph (a)(3)(i) of this section if such variations either:
    - (A) Meet or exceed the performance requirements; or
    - (B) Significantly expand affordable housing opportunities for families assisted under the program.
  - (iii) HUD will not approve any inspection criteria variation if HUD believes that such variation is likely to adversely affect the health or safety of participant families, or severely restrict housing choice.
  - (iv) Approved variations must be added to the Administrative Plan as described in 24 CFR 982.54(d)(21).
- (b) **Entity conducting inspections.** HUD housing must be inspected by the appropriate entity as described in paragraph (b)(1) of this section, except as described in paragraph (b)(2) of this section.
- (1) **General.** The owner, lender, contract administrator, or HUD is the entity responsible for performing inspections of HUD housing as provided in this title, or a regulatory agreement or contract. For properties with more than one HUD-insured loan, only the first mortgage lender is required to conduct the inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.
  - (2) **Exception.** Under the HCV and PBV programs, the Public Housing Agency is responsible for inspecting HUD housing under those programs, unless another entity is assigned the inspection by the program regulations governing the housing, regulatory agreements or contracts. A PHA-owned unit receiving assistance under section 8(o) of the 1937 act must be inspected by an independent entity as specified in 24 CFR parts 982 and 983. Under the Moderate Rehabilitation program, the PHA is responsible for inspecting the HUD housing unless the PHA is managing units on which it is also administering the HAP Contract in accordance with 24 CFR 882.412, in which case HUD is responsible for the inspections in accordance with 24 CFR 882.516(d).
- (c) **Timing of inspections –**
- (1) **Generally.** A property must be inspected before the property is approved for participation in any of the HUD housing programs under this part unless there is a program specific exception to this requirement. An entity responsible for conducting an inspection of HUD housing to determine compliance with this subpart must inspect such housing annually unless specified otherwise below. An inspection shall be conducted no earlier than 3 months before and no later than 3 months after the date marking the anniversary of the previous inspection, except that inspections due on or before July 1, 2024, shall be conducted no earlier than 6 months before and no later than 6 months after the date marking the anniversary of the previous inspection. HUD may approve requests by an owner or PHA for extensions of the deadline for an inspection for good cause as determined by HUD and HUD may extend inspection deadlines without owner request, as deemed necessary by the Secretary.
  - (2) **Extended inspection cycle.** HUD housing, except as specified below, shall be scored and ranked in accordance with the methodology provided through FEDERAL REGISTER notification.
    - (i) **Standard 1 performing property.** If a property receives a score of 90 points or higher on its physical condition inspection, the property will be designated a standard 1 performing property. Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.

- (ii) **Standard 2 performing property.** If a property receives a score of 80 points or higher but less than 90 on its physical condition inspection, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.
  - (iii) **Standard 3 performing property.** If a property receives a score of less than 80 points, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.
- (3) **Triennial cycle for small rural PHAs.** Small rural PHAs as defined in 24 CFR 902.101 shall be assessed in accordance with part 902, subpart H of this title.
- (4) **Triennial cycle for small PHAs.** Small PHAs as defined in 24 CFR 902.13(a) shall be assessed in accordance with 24 CFR 902.13(a).
- (5) **Housing choice vouchers.** PHAs must inspect units subject to part 982 of this title in accordance with the frequency described in 24 CFR 982.405.
- (6) **Project based vouchers.** PHAs must inspect units subject to 24 CFR part 983 in accordance with the frequency described in 24 CFR 983.103.
- (7) **FHA insured mortgages section 232 facilities.** HUD may exempt assisted-living facilities, board and care facilities, and intermediate care facilities from physical inspections under this part if HUD determines that the State or local government has a reliable and adequate inspection system in place, with the results of the inspection being readily and timely available to HUD. For any other section 232 facilities, the inspection will be conducted only when and if HUD determines, on the basis of information received, such as through a complaint, site inspection, or referral by a State agency, on a case-by-case basis, that inspection of a particular facility is needed to assure protection of the residents or the adequate preservation of the project.
- (8) **Section 8 Moderate Rehabilitation program.** PHAs must inspect units subject to the Moderate Rehabilitation program under 24 CFR part 882 in accordance with the frequency described in 24 CFR 882.516.
- (d) **Inspection costs.** The cost of an inspection shall be the responsibility of the entity responsible for the inspection as identified in paragraph (a) of this section, except that a reasonable fee may be required of the owner of a property for a reinspection if an owner notifies the entity responsible for the inspection that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing was not corrected. No fee may be passed along to the household residing in the unit or units.
- (e) **Access to property for inspection.** Nothing in this subpart shall restrict the right of HUD, or an entity contracted by HUD, to inspect a property. All owners and PHAs are required to provide HUD or its representative with full and free access to all HUD-assisted properties. All owners and PHAs are required to provide HUD or its representative with access to all units and appurtenances in order to permit physical inspections, monitoring reviews, and quality assurance reviews under this part. Access to the units shall be provided whether or not the resident is home or has installed additional locks for which the owner or PHA did not obtain keys. In the event that an owner or PHA fails to provide access as required by HUD or its representative, the owner or PHA shall be given a physical condition score of zero for the project or projects involved. A score of zero for an owner or PHA shall be used to calculate the physical condition indicator score and the overall assessment score for that owner or PHA.

- (f) **Tenant involvement in inspections.** HUD will establish, through notice, a procedure for tenants to recommend to HUD particular units which HUD may choose to inspect either during or separate from its standard inspection. HUD will evaluate the condition of these units and issue a report on findings, but they will not be included in the official score unless they were randomly selected independent of the tenant's recommendation. The owner or PHA is required to correct any deficiency HUD identifies within the timeframes HUD has established for the identified deficiency.

### **§ 5.707 Uniform self-inspection requirement and report.**

All PHAs and owners of HUD housing subject to an assistance contract, other than owners participating in the HCV, PBV, and Moderate Rehabilitation programs, are required to annually self-inspect their properties, including all units, to ensure the units are maintained in accordance with the standards in § 5.703. The owner or PHA must maintain the results of such self-inspections for three years and must provide the results to HUD upon request. This self-inspection is independent of other HUD inspections discussed in § 5.705. The owner or PHA may choose to conduct this inspection after a HUD inspection to satisfy this requirement and the post-report survey requirement at § 5.711(c)(2) simultaneously.

### **§ 5.709 Administrative process for defining and revising inspection criteria.**

- (a) **Inspection standards and scoring methodology.** The Secretary will publish in the FEDERAL REGISTER, following notice and the opportunity to comment, a standards notification with a list of deficiencies and the relative severity of these deficiencies to use for inspecting HUD housing. This FEDERAL REGISTER document will also include the factors for determining if an HCV, PBV, or Moderate Rehabilitation unit passes or fails the inspection. The Secretary will also publish in the FEDERAL REGISTER, following notice and opportunity to comment, a scoring notification containing the methodologies to use for scoring and ranking HUD housing. After considering the public comments received on these FEDERAL REGISTER documents, the Secretary will publish documents announcing the new inspections standards and scoring methodologies, and the date on which these notifications become effective.
  - (1) **Revisions.** The Secretary will issue a notification in the FEDERAL REGISTER published for at least 30 days of public comment making any revisions to the inspection and scoring procedures HUD deems necessary, at least once every three years, or three years after the most recent revision, whichever is later.
  - (2) **Emergency revisions.** The Secretary may publish a notification without 30 days of public comment in the case of an emergency to protect Federal financial resources or the health or safety of residents of HUD housing, after HUD makes a documented determination that such action is warranted due to:
    - (i) A Life-Threatening deficiency or Severe deficiency and other significant risks to safety as outlined in § 5.703;
    - (ii) A new safety concern due to changing construction technology; or
    - (iii) Other events as determined by the Secretary.

- (b) [Reserved]

### **§ 5.711 Scoring, ranking criteria, and appeals.**

- (a) **Applicability.** Administrative process for scoring and ranking the physical condition of HUD housing properties under this section does not apply to the HCV, PBV or Moderate Rehabilitation programs. PHAs administering HCV and PBV programs will be assessed under the Section 8 Management Assessment



Program ("SEMAP") or the small rural PHA assessment in accordance with 24 CFR part 985, and PHAs administering the Moderate Rehabilitation programs are subject to HUD review in accordance with 24 CFR 882.517.

(b) **Scoring and ranking of HUD housing –**

- (1) **General.** HUD's Real Estate Assessment Center (REAC), or the appropriate entity either as described in § 5.705(b), or as identified in the regulator agreement or contract for the property as described in § 5.705(b)(1), will score and rank the physical condition of HUD housing properties in accordance with the procedures set out by the Secretary in § 5.709.
- (2) **Public housing programs.** PHAs operating public housing will be scored and ranked under the Public Housing Assessment System ("PHAS") outlined in part 902 of this title.

(c) **Inspection report requirements.**

- (1) **Life-Threatening deficiencies and Severe deficiencies.** Upon completion of an inspection, or at the end of each day on a multiple-day inspection, REAC, or the appropriate party as described in § 5.705(b), will provide the owner or PHA or owner's representative, a notice of any items classified as Life-Threatening or Severe deficiencies. All Life-Threatening items must be corrected within 24 hours of receipt of notice of these items, unless HUD approves a variation. All Severe items must be corrected within 24 hours of receipt of notice, unless indicated otherwise within the individual inspection standards published in the FEDERAL REGISTER with notice and the opportunity for comment, or HUD approves a variation. The owner or PHA or owner's representative must electronically certify and provide supporting evidence within 2 business days after the deadline to correct the Life-Threatening and Severe items that the items have been resolved or sufficiently corrected such that they no longer pose a severe health or safety risk to residents of the property, or that the hazard is blocked until permanent repairs can be completed. If permanent repair will take longer than the allowable time in the relevant standard for the deficiency, the owner or PHA must provide HUD a timeframe for completing permanent repairs for HUD approval.
- (2) **Post-report inspection.** The owner or PHA must carefully review the inspection report and is responsible for conducting its own survey of the total property. Moderate deficiencies must be corrected within thirty days and Low deficiencies must be corrected within sixty days, unless indicated otherwise within the individual inspection standards published in the FEDERAL REGISTER with notice and the opportunity for comment or within such other reasonable time prescribed by a HUD notice to the owner or PHA. For properties that scored at or above 60, the survey may be limited to inspecting for deficiencies based on the inspecting entity's inspection findings. For properties that scored below 60, the owner or PHA must conduct a survey of the entire project, including all units, inside areas, and outside areas, for any deficiency, and must electronically submit a copy of the results of the survey to HUD.

(d) **Technical review of inspection results –**

- (1) **Timing.** A request for a technical review of inspection results must be submitted electronically and must be received by the inspecting entity no later than the 45th calendar day following the day the inspection report is provided to the owner or PHA.
- (2) **Request for technical review.** The request must be accompanied by the owner's or PHA's relevant evidence that an objectively verifiable and material error occurred or adverse conditions beyond the owner or PHA's control occurred, which if corrected will result in a significant improvement in the overall score of the property. A technical review of the inspection results will not be conducted based

on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner or PHA, the REAC will review the inspection and the evidence. If the REAC review determines that an objectively verifiable and material error (or errors) or adverse condition(s) beyond the owner's or PHA's control has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions:

- (i) Undertake a new inspection;
  - (ii) Correct the original inspection; or
  - (iii) Issue a new physical condition score.
- (3) **Burden of proof that error or adverse conditions occurred rests with owner or PHA.** The burden of proof rests with the owner or PHA to demonstrate that an objectively verifiable and material error (or errors) or adverse conditions occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. The REAC will apply a rebuttable presumption that the inspection was conducted accurately. To support its request for a technical review of the physical inspection results, the owner or PHA may submit photographic evidence, written material from an objective source with subject matter expertise that pertains to the item being reviewed such as a local fire marshal, building code official, registered architect, or professional engineer, or other similar evidence.
- (4) **Basis for technical review.** An objectively verifiable material error must be present, or an adjustment to the score must be necessary, to allow for a technical review of inspection results. The basis for a technical review must not be due to the fault of the owner or PHA and must exhibit specific characteristics and meet specific thresholds. The applicable types of material errors and bases for adjustment are as follows.
- (i) **Building data error.** A building data error occurs if the inspector inspected the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect data due to the failure of an owner or PHA to ensure HUD's systems of records are updated cannot form the basis of a review. Incorrect building data that does not affect the score, such as the address and building name would not be considered material.
  - (ii) **Unit count error.** A unit count error occurs if the total number of units considered in scoring is incorrect due to the fault of HUD. Since scoring uses total units, REAC will examine instances where the participant can provide evidence that the total units used was incorrect and that the results were not representative of the condition of the property.
  - (iii) **A non-existent deficiency error.** A non-existent deficiency error occurs if the inspection records an observed deficiency that does not satisfy or does not meet a reasonable interpretation of the definition of that deficiency as defined by inspection procedures.
  - (iv) **Adjustments for factors not reflected or inappropriately reflected in physical condition score.** HUD may determine it is appropriate to review the results of a property's physical inspection if facts and circumstances affecting the owner's or PHA's property are not reflected in the inspection or are reflected inappropriately in the inspection. The circumstances addressed in this may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions that are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical

condition protocol; or the project or PHA having been scored for elements (e.g., roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining.

(v) ***Adjustments for adverse conditions beyond the control of the owner or PHA.*** HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the project were caused by circumstances beyond the control of the owner or PHA. The correction of these conditions, however, remains the responsibility of the owner or PHA. The circumstances addressed by this paragraph may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a Public Housing project that results in damage to the project) or natural disasters.

(vi) ***Adjustments for modernization work in progress.*** HUD may determine that occupied dwelling units or other areas of a property, which are subject to physical inspection, and which are undergoing modernization work, require an adjustment to the physical condition score. An occupied dwelling unit or other areas of an owner's or PHA's property undergoing modernization are subject to physical inspection; the unit(s) and other areas of the property are not exempt from physical inspection. All elements of the unit or of the other areas of the owner or PHA's project that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the property that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the owner or PHA may request adjustment of the physical condition score as a result of current modernization or rehab work in progress.

(5) ***Significant improvement.*** Significant improvement in the project's overall score refers to an increase in a score for the owner or PHA such that the new score crosses an administratively significant threshold.

(6) ***Reinspection.*** If HUD determines that a reinspection is appropriate, it will arrange for a complete reinspection of the project(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final inspection for the project, and HUD will issue a new inspection report (the final inspection report).

(e) ***Independent HUD review.*** Under certain circumstances, HUD may find it appropriate absent an owner or PHA request for technical review to review the results of an inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection.

(f) ***Responsibility for the cost of a new inspection.*** If a new inspection is undertaken by the inspecting party and the new inspection score results in a significant improvement in the property's overall score, then the entity responsible for the inspection shall bear the expense of the new inspection. If no significant improvement occurs, then the owner or PHA responsible for the property must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner or PHA, is not an eligible project operating expense. The new inspection score will be considered the final score.

(g) ***Issuance of final score and publication of score.***

(1) The score of the property is the final score if the owner or PHA files no request for technical review, as provided in paragraph (d) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner or PHA files a request for technical review

or score adjustments in accordance with paragraphs (d), or there is a HUD review under paragraph (e) of this section, the final inspection score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.

- (2) HUD will make public the final scores of the properties of the owners and PHAs through posting on HUD's internet site, or other appropriate means.

(h) ***Responsibility to notify residents of inspection; and availability of documents to residents —***

- (1) ***Notification to residents.*** An owner or PHA must notify its residents of any planned inspections of their units or the housing development generally.

- (2) ***Availability of documents for review.***

- (i) Once a final score has been issued the owner or PHA must make the physical inspection report and all related documents available to residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's or PHA's survey plan, plan of correction, certification, and related correspondence.
- (ii) Once the owner's final inspection score is issued and published, the owner or PHA must make any additional information, such as the results of any reinspection or appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.
- (iii) The owner or PHA must maintain the documents related to the inspection of the property, as described in paragraphs (h)(2)(i) and (ii) of this section, for review by residents for a period of 60 days from the date HUD provides the inspection score for the property in which the residents reside.

- (3) ***Posting on the availability of materials.*** The owner or PHA must post a notice to the residents in the owner's or PHA's management office and on any bulletin boards in all common areas on the date of submission to the owner of the inspection score for the property in which the resident resides that advises residents of the availability of the materials described in this section. The notice must be translated into other languages if necessary to provide meaningful access for limited English proficient (LEP) individuals. The notice should include, where applicable, the name, address, and telephone number of the HUD field office contact.

- (4) Residents are encouraged to comment on this information provided by the owner or PHA and submit any comments directly to the applicable HUD field office or responsible entity. Should residents discover the owner or PHA provided HUD with a false certification during the review, they are encouraged to notify the applicable HUD field office where appropriate inquiry and action will be taken.

- (i) ***Administrative review of properties.*** The file of a property that receives a score of 30 points or less, or two successive scores under 60, on its inspection will be subject to additional administrative review. Properties that receive two successive scores under 60 may be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. Properties that receive a score of 30 points or less shall be automatically referred to the DEC for evaluation.

- (1) ***Notification to owner of submission of property file to the DEC.*** Upon referral to the DEC, the Department will provide for notification to the PHA or owner that the file on the owner's property is being submitted to the DEC for evaluation. The notification will be provided at the time the REAC issues the inspection report to the owner or at such other time as a referral occurs.

- (2) **Evaluation of the property.** During the DEC's evaluation period, the DEC will perform an analysis of the property, which may include input from tenants, HUD officials, elected officials, maintenance staff and others as may be appropriate. Although program offices will assist with the evaluation, the DEC will have primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph. The DEC's evaluation may include a site visit to the PHA's or owner's property.
- (3) **Continuing responsibilities of HUD program offices and mortgagee.** During the period of DEC evaluation, HUD's program offices continue to be responsible for routine business, oversight, and monitoring. In addition, during this period of evaluation, the mortgagee, as applicable, shall continue to carry out its duties and responsibilities with respect to the mortgage.
- (4) **Enforcement action.** Except as otherwise provided by statute, if, based on the DEC's evaluation and in consultation with HUD program offices, the DEC determines that enforcement actions are appropriate, it may take those actions for which the DEC has delegated authority and/or make recommendations to HUD program office with respect to resolving identified physical deficiencies and owner or PHA noncompliance.
- (j) **No limitation on existing enforcement authority.** The administrative process provided in this section does not prohibit HUD from taking whatever action may be necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts, grant agreements or other documents, to protect HUD's interests in HUD housing properties and to protect the residents of these properties.

### § 5.713 Second- and third-party rights.

Nothing in this subpart is intended to create any right of the family residing in HUD Housing or any party, other than HUD or a PHA, to require enforcement of the standards required by this subpart or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the standards.