

§ 200.850**Subpart P—Physical Condition of Multifamily Properties**

SOURCE: 65 FR 77240, Dec. 8, 2000, unless otherwise noted.

§ 200.850 Purpose.

The purpose of this subpart is to establish the physical conditions standards and physical inspection requirements that are applicable to certain multifamily housing properties.

§ 200.853 Applicability.

This subpart applies to:

(a) Housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. “Project-based assistance” means Section 8 assistance that is attached to the structure (see 24 CFR 982.1(b)(1) regarding the distinction between “project-based” and “tenant-based” assistance);

(2) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(3) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances); and

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) Housing with mortgages insured or held by HUD, or housing that is receiving insurance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

(5) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);

(6) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(7) Section 231 of the NHA (Housing for Elderly Persons);

(8) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Inter-

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mediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(9) Section 234(d) of the NHA (Rental (Mortgage Insurance for Condominiums));

(10) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(11) 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

(12) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

§ 200.855 Physical condition standards and physical inspection requirements.

(a) *Applicable standards and requirements.* The physical condition standards and physical inspection requirements in 24 CFR part 5, subpart G, are applicable to the properties assisted or insured that are listed in § 200.853.

(b) *Entity responsible for inspection of property.* The regulations that govern the programs listed in § 200.853, or regulatory agreements or contracts, identify the entity responsible for conducting the physical inspection of the property which is HUD, the lender or the owner. For properties with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.

(c) *Timing of inspections.* (1) For a property subject to an annual inspection under this subpart, the inspection shall be conducted no earlier than 9 months and no later than 15 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the one year anniversary date of the last required inspection.

(2) For a property subject to an inspection every two years under this subpart, the inspection shall be conducted no earlier than 21 months and

no later than 27 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the two year anniversary date of the last required inspection.

(3) For a property subject to an inspection every three years under this subpart, the inspection shall be conducted no earlier than 33 months and no later than 39 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the three year anniversary date of the last required inspection.

(4) For a newly endorsed multifamily property, the first inspection required under this subpart will be conducted no earlier than 21 months but not later than 27 months from the date of final endorsement. In no event, however, shall the inspection be conducted after the end of the calendar year following the two year anniversary date of final endorsement.

(5)(i) For assisted-living facilities, board and care facilities, and intermediate care facilities, the initial inspection required under this subpart will be conducted within the same time restrictions set forth in paragraph (c)(4) of this section, and any further inspections will be conducted at a frequency determined consistent with § 200.857, except that HUD may exempt such 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; and

(ii) 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.

[65 FR 77240, Dec. 8, 2000, as amended at 77 FR 55135, Sept. 7, 2012]

§ 200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

(a) *Scoring and ranking of the physical condition of multifamily housing properties.* (1) HUD's Real Estate Assessment Center (REAC) will score and rank the physical condition of certain multifamily housing insured properties listed in § 200.853 in accordance with the procedures described in this section. The physical condition inspection of the property, upon which REAC bases its score and ranking, is conducted by the responsible entity in accordance with § 200.855.

(2) Depending upon the results of its physical condition inspection, a multifamily housing property will be assigned one of three designations—standard 1 performing, standard 2 performing and standard 3 performing—in accordance with the ranking process described in paragraph (b) of this section.

(b) *Methodology for Ranking.* (1) Multifamily housing properties will be ranked in accordance with the methodology provided in this paragraph (b). Multifamily housing properties are scored on the basis of a 100 point scale. Because scores may include fractions, a score that includes a fraction below one half point will be rounded to the next lower full point and a score that includes a fraction of one half point or higher will be rounded to the next higher full point (*e.g.*, 89.4 will be rounded to 89, 89.5 will be rounded to 90).

(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.

(2) Owners of multifamily housing properties scoring in a standard 1 or standard 2 range which have been cited by the REAC as having a Exigent Health and Safety (EHS) deficiency(s) must resolve the deficiency(s), as required by paragraph (c)(2) of this section, to be classified as standard 1 and standard 2 properties.

(3) Regardless of the performance designation assigned to an owner's property, an owner is obligated to maintain its property in accordance with HUD's uniform physical condition standards as required by 24 CFR part 5, subpart G, the Regulatory Agreement and/or the Housing Assistance Payment (HAP) Contract. Good management principles require an owner to conduct routine inspections of its projects, develop improvement plans, and again, maintain its property to meet the standard of decent, safe, sanitary and in good repair.

(c) *Owner's review of physical inspection report and identification of objectively verifiable and material error.* (1) Upon completion of a physical inspection of a multifamily housing property, the REAC will provide the owner or owner's representative, on the date of the physical inspection, notice of any items classified as EHS deficiencies. REAC also will provide the owner with the entire physical inspection report (electronically through the internet or by mail approximately 10 working days from the date of the report), which provides the physical inspection results and other information relevant to the inspection, including any items classified as EHS deficiencies and already provided to the owner, on the date of the inspection (EHS deficiencies are relayed by the inspector on the date of the inspection).

(2) The owner must carefully review the physical inspection report, particu-

larly those items classified as EHS. The owner is also responsible for conducting its own survey of the total project based on the REAC's physical inspection findings. The owner must mitigate all EHS items immediately, and the owner must file a written report with the applicable Multifamily Hub Director within 3 business days of the date of the inspection, which is the date the owner was provided with the EHS notice. The report filed by the owner must provide a certification and reasonable evidence that the EHS items have been resolved.

(3) If, following review of the physical inspection results and score, the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection, which, if corrected, will result in a significant improvement in the property's overall score ("significant improvement" is defined in paragraph (d)(4) of this section), the owner may submit a written request for a technical review. The technical review request must be received in writing no later than 30 calendar days (as established by the postmark, if applicable) from the date the physical inspection results are transmitted to the owner by REAC, whether the results and score are transmitted to the owner via the Internet or by hard copy via certified mail.

(d) *Technical review of physical inspection results.* A request for a technical review of physical inspection results must be submitted in writing to REAC and must be received by REAC no later than the 30th calendar day, as applicable under paragraph (c)(3) of this section, following submission of the physical inspection report to the owner, as provided in paragraph (c)(1) of this section.

(1) *Request for technical review.* The request must be accompanied by the owner's reasonable evidence that an objectively verifiable and material error (or errors) occurred which if corrected will result in a significant improvement in the overall score of the owner's property. A technical review of physical inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner, the REAC will review

the physical inspection and the owner's evidence. If the REAC's review determines that an objectively verifiable and material error (or errors) 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: undertake a new inspection; correct the original inspection; or issue a new physical condition score.

(2) *Burden of proof that error occurred rests with owner.* The burden of proof rests with the owner to demonstrate that an objectively verifiable and material error (or errors) 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. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence.

(3) *Material errors.* An objectively verifiable material error must be present to allow for a technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

(i) *Building data error.* A building data error occurs if the inspection includes 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 building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(4) *Significant improvement.* Significant improvement refers to the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing), or to result in an increase of 10 points or more.

(5) *Determining whether material error occurred and what action is warranted.* Upon receipt of the owner's request for technical review of a property's physical inspection results, the REAC will evaluate the owner's property file and the evidence provided by the owner that an objectively verifiable and material error occurred which, if corrected, would result in a significant improvement in the property's overall score. If the REAC's evaluation determines that an objectively verifiable and material error (or errors) has been reasonably documented by the owner and if corrected would result in a significant improvement in the property's overall score, then the REAC shall take one or a combination of the following actions:

- (i) Undertake a new inspection;
- (ii) Correct the inspection report; or
- (iii) Issue a new physical condition score.

(6) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the REAC and the new inspection score results in a significant improvement in the property's overall score, then HUD shall bear the expense of the new inspection. If no significant improvement occurs, then the owner must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(e) *Adjustment of physical condition score based on considerations other than technical review and reinspection.* (1) Under certain circumstances, HUD may find it appropriate to review the results of a physical 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. These circumstances include, but are not necessarily limited to, inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the HUD physical condition protocol; or cases where the owner has 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.

(2) To seek a score adjustment on the basis of these circumstances as provided in paragraph (e) of this section, the owner must submit a request for an adjustment to REAC with appropriate proof of the circumstances that resulted in the incorrect physical conditions results. This process may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(3) An owner may submit the request for this adjustment to REAC either prior to or after the physical inspection has been concluded. If the owner submits a request for adjustment after the physical inspection has been concluded, the owner must submit its request to REAC within 45 days following the submission of the physical inspection report, as provided in paragraph (c)(1) of this section. HUD may, but is not required to review a request made after this period has expired.

(4) This adjustment process, provided in this paragraph (g), may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(f) *Issuance of final score and publication of score.* (1) The physical condition score of the property is the final score if the owner files no request for technical review, as provided in paragraph (c) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner files a request for technical review or score adjustments

in accordance with paragraphs (c) and (e) of this section, the final physical condition 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 owners through posting on HUD's internet site, or through FEDERAL REGISTER publication or other appropriate means.

(g) *Owner's responsibility to notify residents of inspection; and availability of documents to residents—*(1) *Notification to residents.* An owner must notify its residents of any planned physical inspections of their units or the housing development generally.

(2) *Availability of documents for review.* Once the technical review and database adjustment periods have expired, as provided in paragraphs (d) and (e) of this section, respectively, the owner must make its physical inspection report and all related documents available to its residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's survey plan, plan of correction, certification and related correspondence.

(i) Once the owner's final physical condition score is issued and published, the owner must make any additional information, such as the results of any reinspection, appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.

(ii) The owner must maintain the documents related to the physical inspection of the property, as described in this paragraph (g)(2), available for review by residents for a period of 60 days from the date of submission to the owner of the physical condition score for the property in which the residents reside.

(3) The owner must post a notice to the residents in the owner's management office and on any bulletin boards in all common areas that advises residents of the availability of the materials described in paragraphs (g)(2) of this section. The notice should include the name, address and telephone number of the HUD Project Manager.

(4) Residents are encouraged to comment on this information provided by

the owners and submit any comments directly to the applicable Field Office. Should residents discover the owner provided HUD with a false certification during the review they are encouraged to notify the Hub or Program Center where appropriate inquiry and action will be taken.

(h) *Administrative review of properties.* The file of a multifamily property that receives a score of 30 points or less on its physical condition inspection will be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. The files of any of the multifamily housing properties may be submitted to the DEC or to the appropriate HUD Multifamily Hub Director (MFD) for evaluation, or both, at the discretion of the Office of Housing.

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

(2) *30-Day period for owner to provide the DEC with supporting and relevant information and documentation.* The owner has 30 calendar days, from the date of the REAC notification to the owner, to provide comments, proposals, or any other information to the DEC which will assist the MFD and DEC in conducting a comprehensive evaluation of the property. A proposal provided by an owner may include the owner's plan to correct deficiencies (corrective action plan). During the 30-day response time available to the owner, the DEC may encourage the owner to submit a corrective action plan. The corrective action plan, if timely submitted during the 30-day period (whether on the owner's initiative or at the request of the DEC), may serve as additional information for the DEC to consider in determining appropriate action to take at the conclusion of the evaluation period. If not submitted during the 30-day response time, a corrective action plan may be required of the owner at the conclusion of the DEC's evaluation of the property.

(3) *Evaluation of the property.* During the evaluation period, the DEC will perform an analysis of the multifamily housing property, which may include input from tenants, HUD multifamily officials, elected officials, and others as may be appropriate. Although the MFD will assist with the evaluation, for insured mortgages, 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 (h)(2). The DEC's evaluation may include a site visit to the owner's property.

(4) *Continuing responsibilities of HUD Multifamily Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's multifamily program offices continue to be responsible for routine asset management tasks on properties and all servicing actions (e.g., rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

(i) *Enforcement action.* If, at the conclusion of the evaluation period, the DEC determines that enforcement action is appropriate, the DEC will provide notification to the owner of the DEC's decision to formally accept the property for enforcement purposes.

(1) *DEC Owner Compliance Plan.* (i) After notification to the owner of the DEC's decision, the DEC will produce a proposed action plan (DEC Compliance Plan), the purpose of which is to improve the physical condition of the owner's property, and correct any other known violations by the owner of its legal obligations. The DEC Compliance Plan will describe:

(A) The actions that will be required of the owner to correct, mitigate or eliminate identified property deficiencies, problems, hazards, and/or correct any other known violations by the owner;

(B) The period of time within which these actions must be completed; and

(C) The compliance responsibilities of the owner.

(ii) The DEC Compliance Plan will be submitted to the MFD for review and

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concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

(iii) Following submission of the DEC Compliance Plan to the owner, the owner will be provided a period of 30 calendar days to review and accept the DEC Compliance Plan. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter compliance plan proposal by owner.* The owner may submit an acceptable counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-cooperation and Non-compliance by owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan, or to present a counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit the Office of Housing, the DEC, or HUD generally, to take what-

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ever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(j) *Limitations on material alteration of physical inspection software.* HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

[65 FR 77240, Dec. 8, 2000, as amended at 72 FR 54517, Sept. 25, 2007]

Subpart R [Reserved]

Subpart S—Minimum Property Standards

§ 200.925 Applicability of minimum property standards.

All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD Minimum Property Standards, except that this requirement shall be applicable to manufactured homes eligible for insurance pursuant to §203.43f of this chapter only to the extent provided therein. The Minimum Property Standards may be waived to the same extent as the other regulatory requirements for eligibility for insurance under the specific mortgage insurance program involved.

[58 FR 60248, Nov. 15, 1993]

§ 200.925a Multifamily and care-type minimum property standards.

(a) *Construction standards.* Multifamily or care-type properties shall comply with the minimum property standards contained in the handbook identified in §200.929(b)(2). In addition, each such property shall, for the Department's purposes, comply with:

(1) The applicable State of local building code, if the property is located within a jurisdiction which has a building code accepted by the Secretary under §200.925a(d); or

(2)(i) The applicable State or local building code, and

(ii) Those portions of the codes identified in §200.295c which are designated