

New HQS Provisions from HOTMA Implementation Guidance, January 18, 2017

Overview

On January 18, 2017, HUD published a notice in the *Federal Register* to implement several provisions from the Housing Opportunity Through Modernization Act of 2016 (HOTMA), two of which apply to HQS.

- The first provision involves allowing PHAs to adopt a policy to approve tenancy, execute the HAP contract, and make payments for units that fail the initial HQS inspection if the deficiencies are not “life-threatening.”
- The second provision would allow PHAs to adopt a policy to permit occupancy prior to HQS inspection if the unit has passed an “alternative inspection” within the last 24 months.

With respect to the first provision regarding approving tenancy, executing the HAP contract, and making payments for units that fail with deficiencies that are not “life-threatening”:

- *Non-life-threatening conditions* defined as any conditions that would fail to meet the housing quality standards under 24 CFR 982.401 and do not meet the definition of *life-threatening* as defined above.
- *Life-threatening conditions* are defined as:
 - Natural or LP gas or fuel oil leaks
 - A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled
 - Any electrical problem or condition that could result in shock or fire
 - A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed
 - A light fixture is hanging by its wires
 - A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit
 - A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed
 - An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses
 - A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections
 - Any nicks, abrasions, or fraying of the insulation that exposes conducting wire
 - Exposed bare wires or electrical connections
 - Any condition that results in openings in electrical panels or electrical control device enclosures
 - Water leaking or ponding near any electrical device
 - Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition
 - Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
 - Any components that affect the function of the fire escape are missing or damaged
 - Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency
 - The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency
- Absence of a functioning toilet in the unit
- Inoperable or missing smoke detectors
- Missing or inoperable carbon monoxide detector
- Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)
- Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting
 - The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases
 - A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside
 - A fuel-fired space heater is not properly vented or lacks available combustion air
 - A non-vented space heater is present
 - Safety devices on a fuel-fired space heater are missing or damaged
 - The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas
- Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit
- There is a 30-day timeline for correcting "fail items" after notice to the owner under this option.
- HAP must be withheld with the unit cannot pass HQS after 30 days.
 - The maximum abatement period is determined by PHA policy but cannot exceed 180 days.
 - The contract would be terminated and a voucher would be issued.

With regard to the second provision, permitting occupancy prior to HQS inspection if the unit has passed an “alternative inspection” in the last 24 months:

- Acceptable alternative inspections would be HOME, LIHTC, or inspections performed by HUD. Other alternatives would require HUD approval.
- Under this option, if the unit passed the alternative inspection within the previous 24 months, the PHA “authorizes tenancy” in response to the request for tenancy approval (RFTA) and the HAP contract would be effective prior to inspection.
- The PHA must still inspect the unit within 15 days of receiving the RFTA.
 - If the unit fails, no HAP can be paid until deficiencies are corrected.
 - Life-threatening deficiencies must be corrected within 24 hours, non-life-threatening within 30 days.

PHAs that adopt either one of these two new optional policies under HOTMA must notify owners and families, and must provide the family with a list of life-threatening deficiencies.

PHAs must also notify HUD at least 30 days before adopting these policies, and must amend their administrative plans.

The currently scheduled effective date for implementation is April 18, 2017.

Pros and Cons

Pros of conditional approvals include:

- Helping tenants get units faster
- Enticing owners to participate in the HCV program
- Providing more affordable housing to our clients
- Helping PHA achieve goals

Cons of conditional approvals:

- Once in the units, tenants may not cooperate on the NLT repairs
- Once the unit is leased up, the owner may not cooperate on making the NLT repairs
- Additional work load for the PHA doing LT HQS inspections followed up by doing NLT HQS inspections

Pros of alternative inspections:

- HUD is trying to collapse all inspections under the umbrella of REAC to where we will have UPCS for PBV and UPCS-V for HCV. HUD recently conducted an interagency pilot program to study using UPCS protocol for all types of inspections. So the advantage of the alternative inspection is to stream line the inspections to UPCS OR UPCS-V. For example if a REAC inspection took place within 24 months, the results could be used in place of the initial HQS inspection. Again this would stream line the inspection process.

Cons of the alternative inspections:

- Unless it is UPCS or UPCS-V, to get another alternative inspection (e.g., an ASHI home inspection), it will be very time-consuming getting HUD approval and just may not be worth it.