

IHCDA Compliance Updates

Indiana Housing Conference 9/27/23

Presented by Matt Rayburn

AGENDA

- NSPIRE
- HOTMA
- Q&A



DISCLAIMER!

NSPIRE and HOTMA are evolving topics with additional HUD guidance required or expected

This material is provided for discussion purposes only:

- Subject to change with additional HUD guidance
- This presentation is not official final IHCDA policy- IHCDA will issue updated compliance manuals and forms Q4 of 2023
- Not a comprehensive list of all changes

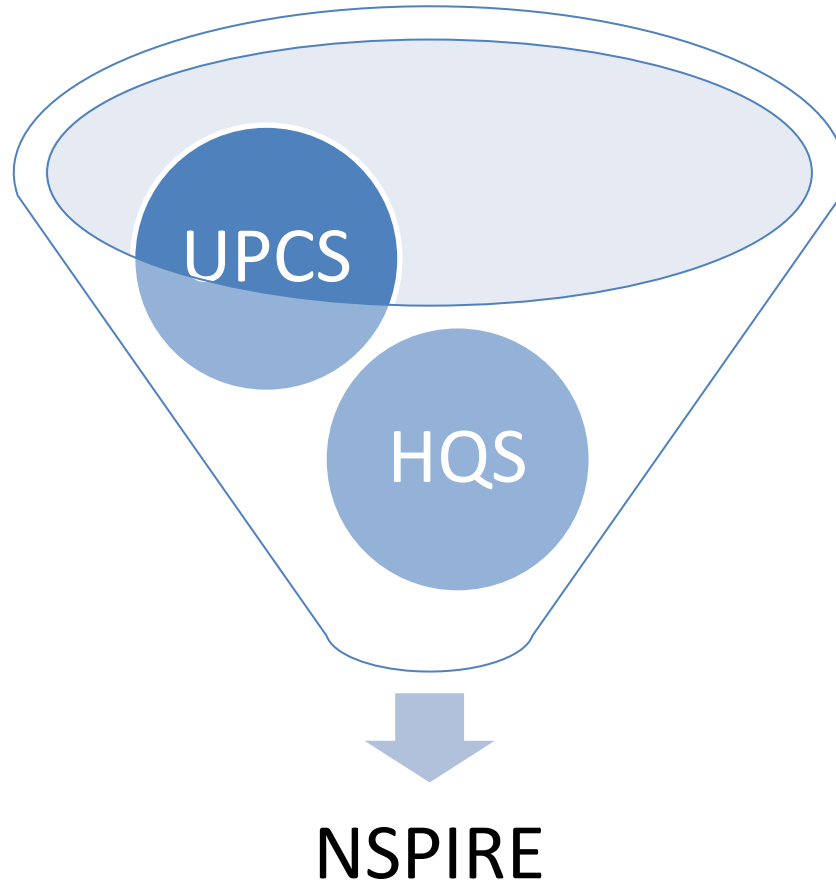
NSPIRE

WHAT IS NSPIRE?

National Standards for the Physical Inspection of Real Estate

New HUD inspection standard and scoring system

Purpose = align and consolidate inspections across programs



NSPIRE APPLICABILITY

Applies to HUD Multifamily, PIH, and CPD programs as well as LIHTC

Effective 7/1/23 for Public Housing, 10/1/23 for other programs

EXCEPTION: HUD CPD delayed implementation via notice issued 9/18/23

- HOME, HTF, HOPWA, ESG, & CoC
- Extended deadline to 10/1/24
- HUD will publish HOME & HTF specific list of deficiencies in the Federal Register
- HUD will publish a separate HOPWA/ESG/CoC NSPIRE notice
- PJs/Grantees must then develop rehab and ongoing property standards
- May choose to implement immediately but must adjust policy when additional HUD CPD guidance is released.
- IHCD will continue to use UPCS on HOME & HTF until further guidance

GUIDANCE IN HAND

Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (“NSPIRE FINAL RULE”)

RIN: 2577-AD05

Published 5/11/23

Inspection Standards Notice (“Subordinate Notice”)

FR-6086-N-05

Published 6/22/23

Final Standards

6092-N-05

Administrative Procedures for HUD Multifamily & PIH

PIH-2023-16 / H-2023-07

Published 6/30/23

Scoring Notice for Public and Multifamily Housing

FR-6086-N-06

Published 7/7/23

https://www.hud.gov/program_offices/public_indian_housing/react/nspire/notices

MISSING GUIDANCE

HUD CPD

- Expect 2 separate notices: 1 for HOME & HTF, 1 for HOPWA, ESG, & CoC

IRS/Treasury?

- Will we receive NSPIRE guidance specific to LIHTC?
- Unknown

WHAT DO WE KNOW FROM LIHTC SIDE?

Treasury Regulation 1-42.5(d)(2)(ii)

The agency must determine:

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under section 42 must continue to satisfy these codes and, if the Agency becomes aware of any violation of these codes, the Agency must report the violation to the Service. However, provided the Agency determines by inspection that the HUD standards are met, the Agency is not required under this paragraph (d)(2)(ii) to determine by inspection whether the project meets local health, safety, and building codes.

24 CFR 5.703 is now NSPIRE

NSPIRE INSPECTION FOCUS

Old mantra:

“Decent, safe, sanitary, and in good repair”

New mantra:

“Functionally adequate, operable, and free of health and safety hazards”

Priorities = function + safety, especially within unit
Less emphasis on appearance/cosmetic issues

NSPIRE INSPECTABLE AREAS



Photos By: HUD Flickr



Indiana Housing & Community Development Authority

NSPIRE INSPECTABLE AREAS

UNIT



The interior components of an individual dwelling where the resident lives

Components include- bathroom, call-for aid, carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC, kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.

NSPIRE INSPECTABLE AREAS

UNIT



AFFIRMATIVE REQUIREMENTS:

1. Hot and cold running water in both bathroom and kitchen, including adequate source of safe drinking water in the bathroom and kitchen
2. Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and flushable toilet
3. At least 1 battery-operated or hard-wired smoke detector
 - On each level of the unit
 - Inside each bedroom
 - Within 21' of any door to a bedroom measured along a path of travel; and
 - Where a smoke detector installed outside a bedroom is separated from an adjacent living area by a door, also installed on the living area side of the door.

NSPIRE INSPECTABLE AREAS

UNIT



AFFIRMATIVE REQUIREMENTS:

4. Living room and a kitchen area with a sink, cooking appliance, refrigerator, food prep area, and food storage area
5. For HCV/PBV, at least 1 bedroom or living/sleeping room for each 2 ppl
6. Meet carbon monoxide detection standards established through Federal Register notice
7. 2 working outlets or 1 working outlet and a permanent light within all habitable rooms
8. Outlets within 6' of a water source must be GFCI protected

NSPIRE INSPECTABLE AREAS

UNIT



AFFIRMATIVE REQUIREMENTS:

9. For climate zones designated by HUD through notice, must contain permanently installed heating source. Units may not contain unvented space heaters that burn gas, oil, or kerosene.
10. Must have a guardrail when there is an elevated walking surface drop off of 30” or more measured vertically
11. Permanently mounted light fixture in the kitchen and each bathroom

NSPIRE INSPECTABLE AREAS

INSIDE



The common areas and building systems within the building interior that are not inside a unit.

E.g., 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/patios/balconies, and trash collection areas. Systems include water, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

NSPIRE INSPECTABLE AREAS

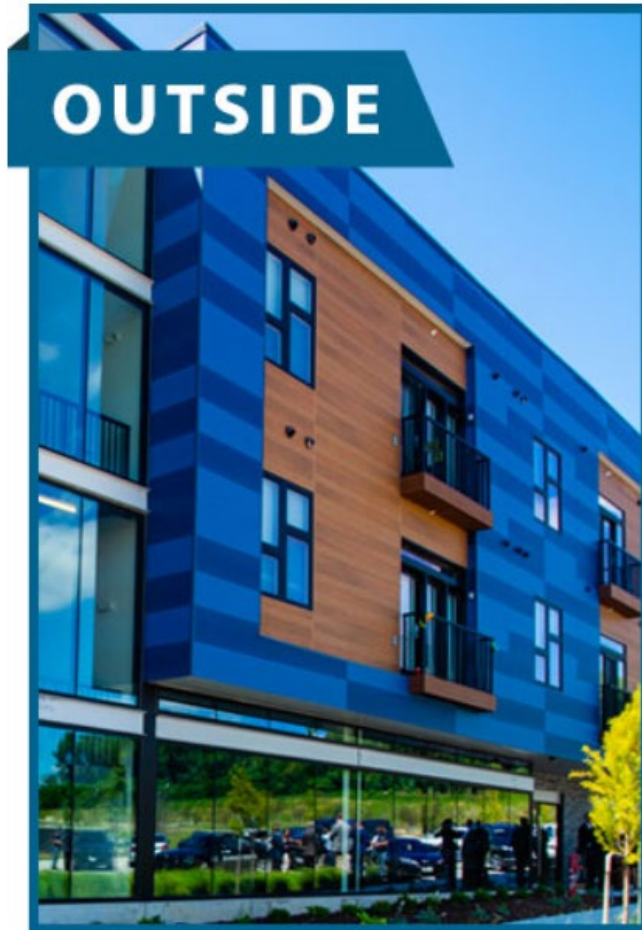
INSIDE



AFFIRMATIVE REQUIREMENTS:

1. At least 1 battery-operated or hard-wired smoke detector on each level
2. Meet carbon monoxide detection standards established through Federal Register notice
3. Outlets within 6' of a water source must be GFCI protected
4. Must have a guardrail when there is an elevated walking surface drop off of 30" or more measured vertically
5. Permanently mounted light fixtures in any kitchens and each bathroom
6. May not contain unvented space heaters that burn gas, oil, or kerosene

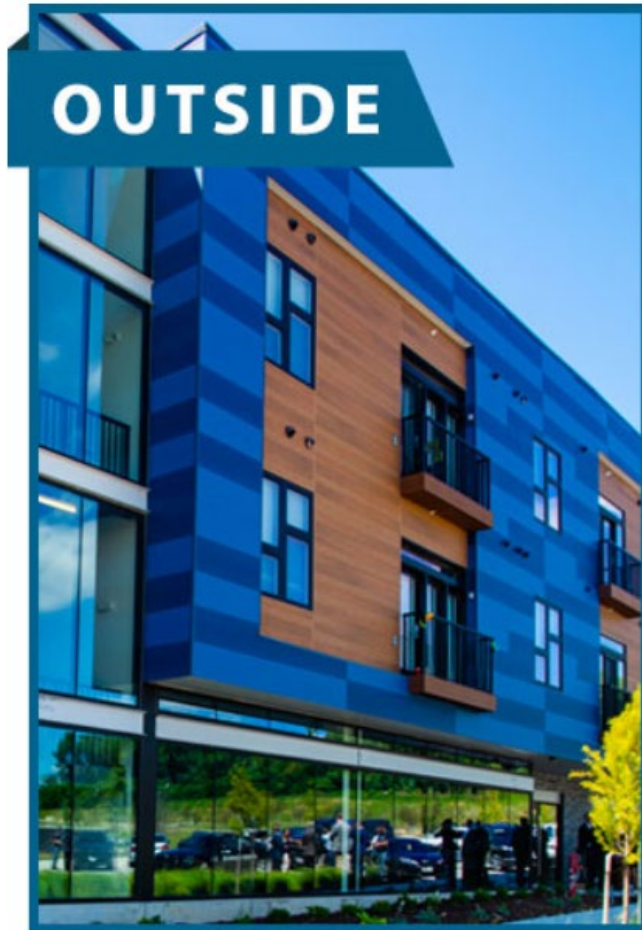
NSPIRE INSPECTABLE AREAS



Building site, building exterior components, and any building systems located outside of the building or unit.

E.g., fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garages or carports, driveways, playgrounds, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components include attached porches/ patios/ balconies, carports, fire escapes, foundations, lighting, roofs, walls, and windows.

NSPIRE INSPECTABLE AREAS



AFFIRMATIVE REQUIREMENTS:

1. Outlets within 6' of a water source must be GFCI protected
2. Must have a guardrail when there is an elevated walking surface drop off of 30" or more measured vertically

HEALTH & SAFETY SEVERITY LEVELS



Life-Threatening	The Life-Threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death to a resident.
Severe	The Severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.
Moderate	The Moderate Health and Safety category includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.
Low	Deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.

Source: final NSPIRE standards, 6092-N-05

HOTMA

WHAT IS HOTMA?

The Housing Opportunity Through Modernization Act of 2016

Final Rule published 2/14/23

- **Section 102** addresses income reviews, including the frequency of income reviews and revises the definitions of income and assets.
- **Section 103** establishes over-income rules for Public Housing
- **Section 104** sets asset limits for the Section 8 and Public Housing programs.

Section 102 impacts LIHTC, HOME, and NHTF

HOTMA IMPLEMENTATION

Sections 102 and 104 are effective 1/1/24

Section 103 was effective 3/16/23

EXCEPTION: Through written notice to PHA Executive Directors, HUD PIH delayed the implementation deadline to 1/1/25

“PHAs must bring their programs into compliance with the HOTMA final rule as quickly as possible, but no later than January 1, 2025. Compliance means administering all aspects of the affected programs in accordance with the HOTMA final rule”

WHAT DO WE KNOW FROM LIHTC SIDE?

The IRS has not provided any statement about HOTMA

No indication IRS guidance is coming

Treasury Regulation 1-42.5(b)(vii)

Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 (“Section 8”), not in accordance with the determination of gross income for federal income tax liability.

INCOME VERIFIED FOR RENTAL ASSISTANCE HOME & HTF

Project Based Rental Assistance (e.g., PBV, PBRA)

- Income determinations by a state or federal rental assistance program MUST be used for HOME & NHTF purposes

Tenant Based Rental Assistance (e.g., HCV)

- Income determinations by a state or federal rental assistance MAY be used for HOME purposes if PJ requires use in its policy
 - **IHCDA will adopt this requirement**
- Income determinations by a state or federal rental assistance program MUST be used for NHTF purposes

INCOME VERIFIED FOR RENTAL ASSISTANCE HOME & HTF

The PHA or program administrator must provide a statement that either:

- Indicates the household size and annual income; or
- Indicates the current applicable program income limit and affirms the household's annual income does not exceed the limit

IHCDA will provide a new sample form for verification

INCOME VERIFIED FOR RENTAL ASSISTANCE LIHTC

No specific HOTMA Change, existing regulation still applies

Treasury Regulation 1-42.5(b)(vii)

In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42 (g).

USE OF OTHER INCOME DETERMINATION

PHA or Owner may rely on the income determination completed for another “means-tested” form of federal public assistance within previous 12-month period:

- Temporary Assistance for Needy Families (“TANF”)
- Medicaid
- Supplemental Nutrition Assistance Program (“SNAP”)
- Earned Income Tax Credit (“EITC”)
- Low Income Housing Tax Credit (“LIHTC”)
- Supplemental Nutrition Program for Women, Infants, & Children (“WIC”)
- Supplemental Security Income (“SSI”)
- Other programs determined by HUD

USE OF OTHER INCOME DETERMINATION

Must obtain a third-party verification from the applicable program administrator that meets the following requirements:

- Indicates household size and annual income
- Meets applicable program requirements on length of time permitted before verification is considered out-of-date

If third-party verification is not available or household disputes, then the PHA or owner must conduct an income calculation

HOUSEHOLD MEMBER DEFINITION

Foster children and foster adults are no longer counted as household members

- Do not count in household size for income limit purposes
- Do not include their income and assets
- Consider in occupancy size standards
- Treat similar to live-in aide

KEY INCOME ISSUES

- Student financial assistance no longer applies only to households receiving Section 8 assistance and rule is completely changed. Stay tuned for more.
- Provides new definitions of “day laborer” and “independent contractor” and clarifies these are included income sources
- Clarifies nonrecurring income that will not be repeated in coming year is excluded and provides examples:
 - Payments from Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment
 - Direct federal or state payments for economic stimulus or recovery
 - State refundable tax credits or tax refunds
 - Gifts for holidays, birthdays, or other significant life events/milestones
 - Non-monetary, in-kind donations such as food, clothing, or toiletries received from a food bank or similar organization
 - Lump sum additions to assets, including lottery or contest winnings

KEY ASSET ISSUES

Personal Property

- “Necessary items of personal property” are excluded
- “Non-necessary items of personal property” are excluded if the combined total value does not exceed \$50,000*
- More HUD guidance expected

Retirement accounts

- Never count as assets
- Count distribution of periodic payments as income, if applicable

Imputing Assets

- Impute when net household assets > \$50,000*
- Only impute for specific assets where actual returns cannot be calculated
- No longer impute on total asset value

Self-certification of assets

- If net household assets \leq \$50,000* may accept self-cert at move-in and recert-exception = full verification every 3 years
- Some debate on LIHTC applicability- stay tuned

*Adjusted with inflation to be announced by HUD

ASSET LIMITATIONS (NOT APPLICABLE TO LIHTC, HOME, NHTF)

Asset limitations applicable to HUD PIH and Multifamily programs deny eligibility for households that:

- Own assets exceeding \$100,000; and/or
- Own real estate that is suitable for occupancy by the household
 - EXCEPTIONS:
 - Property for which family is receiving assistance under public housing manufactured home provisions or under the homeownership option of HCV
 - Property jointly owned by a member of the family and at least one non-household member who does not live with the family if the non-household member resides at the jointly owned property
 - Survivor of domestic violence, dating violence, sexual assault, or stalking
 - If property is offered for sale
 - NOT SUITABLE FOR OCCUPANCY:
 - Does not meet disability-related accessibility needs
 - Insufficient size for the family
 - Location hardship
 - Unsafe physical condition that cannot be “easily remedied”
 - Non-residential per local or state laws

WHAT'S NEXT FROM IHCDA?

IHCDA items for update:

- Updated Tax Credit Compliance Manual
- Updated Federal Programs Ongoing Rental Compliance Manual
- HCV Administrative Plan amendments and implementation date
- Tenant Income Certification (TIC)
- Income Questionnaire
- PHA/rental assistance income verification form
- Asset self-certification form

New IHCDA items:

- Income verification form for other means-tested programs
- Student financial assistance form & flowchart

QUESTIONS / COMMENTS

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