



August 1, 2022

Office of the General Counsel
Regulations Division
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410

RE: Docket No. 6086-N-02, Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols

Thank you for the continued opportunity to provide additional comments on new and enhanced standards proposed under the National Standards for the Physical Inspection of Real Estate (NSPIRE) (Docket No. 6086-N-02). As the leading voice for aging in America, we support the agency's thoughtful approach to comprehensively overhauling oversight of the HUD-assisted housing portfolio's physical condition; we commend HUD for striving for the highest quality of life for households with low incomes, including for older adults aging independently in HUD-assisted senior housing, and we look forward to implementing strong but appropriate physical inspection standards under NSPIRE.

On behalf of our nationwide membership of affordable senior housing providers and the many older adults they serve, we urge the agency to consider the following recommendations to achieve a robust, yet feasible physical condition oversight protocol.

About LeadingAge

LeadingAge represents more than 5,000 aging services providers, including non-profit owners and managers of federally-subsidized senior housing properties. Alongside our members and 38 state partners, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the continuum of services for people as they age, including those with disabilities. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home.

NSPIRE: Enhanced Safety Standards

As HUD develops and tests a new set of standards for inspections of housing communities, HUD is seeking additional public review and comment. After years under the UPCS standards, which are in some cases out of date and not at the highest quality level for renter households, LeadingAge strongly supports many of the material enhancements related to health and safety proposed by HUD.

- 1. Fire Safety** A key area of focus in HUD's proposed NSPIRE standards is fire safety. LeadingAge fully supports the proposed adjusted smoke and CO detection standards to bring requirements up to the National Fire Protection and the International Fire Code standards. The additional requirements for smoke detectors on every unit floor and in every sleeping area is a much-needed fire safety feature; similarly, CO detection in units with a combustible fuel source is necessary to avoid preventable and yet often severe health hazards related to CO poisoning.

It is LeadingAge's understanding that HUD's decision to avoid requiring hardwired or ten-year sealed batteries for smoke and CO detection systems under NSPIRE, as is the case under a number of current fire codes, is a result of HUD's analysis of the infeasibility of new requirements that require electrical and other installation that may trigger lead hazard remediation and raise the cost and tenant burden. We urge HUD to consider a gradual phase-in of tamper-proof alarms and other types of requirements and to work with Congress to establish pilots and make funding available to help the HUD-assisted portfolio shift toward higher fire safety thresholds.

In addition, while the proposed standards include deficiency criteria for fire labeled doors *where present*, HUD has not proposed to establish a new requirement for self-closing doors at unit entry and at hallway entrances. As seen during a recent catastrophic fire in a HUD-assisted property, the presence of properly functioning self-closing doors is critical to preventing deaths resulting from smoke inhalation during a building fire. We encourage HUD to consider adding this new requirement as the next step in achieving fire safety at properties.

- 2. *Mold-Like Substance*** LeadingAge supports HUD's proposed inclusion of standard deficiencies based on observed conditions, as well as a ventilation and/or dehumidification requirement in bathrooms to reduce the risk of mold growth. As described below, we urge HUD to implement the deficiency for discreet, observed mold conditions, as opposed to inspecting for the risk of mold based on moisture levels, which is often determined by tenant behavior and in many climates would result in constant and inaccurate deficiencies. In addition the requirement for ventilation systems in bathrooms would help steer tenant behavior toward safer moisture reduction practices.

As with other new standards that require significant work at the property (installing ventilation systems into all bathrooms), we urge HUD to establish a graduated phase-in for the requirement, and to work with Congress to make funds available to support implementation.

NSPIRE: Additional Safety Standards

In addition to the draft standards that HUD has shared publicly and discussed transparently with stakeholders, HUD in its June 17 request for comments seeks responses regarding additional changes which have not yet been proposed in draft form in the standards.

- 1. *Limit Reach and Provide Additional Opportunity for Comment*** The concepts for additional standards in some cases significantly broaden the scope and reach of HUD's physical inspection oversight. Overall, we caution against several of the proposed new standards as reaching beyond the scope of what a housing provider can and should control in terms of a tenant's living conditions in their own home. We also strongly urge HUD to provide an additional opportunity for public comments if and when the conceptionally-proposed standards are fully developed, prior to imposing new standards onto the HUD-assisted housing portfolio.
- 2. *Question for Comment #1: Mold-Risk*** HUD is considering amending the proposed "Mold-Like Substance Standard" to include a Deficiency or Deficiency Criteria related to mold risk. This amended Deficiency would help identify sources of moisture conducive to potential mold or mold-like substances. The amended Deficiency would outline the required use of moisture meters and moisture levels and establish the threshold for such a Deficiency. The amended Deficiency would also recommend, but not require, the use of infrared cameras to detect moisture intrusion. HUD seeks

input on this proposed requirement, the use of appropriate equipment, and what would be an appropriate correction timeframe.

In many climates across the country, moisture levels are chronically high due to humidity levels, and yet the moisture does not manifest as mold and is not in itself a hazard. Because of the variability in climates across the country and change in weather patterns over time and in a given year, HUD's proposal to establish acceptable moisture levels and thresholds would not result in an appropriate reflection of risk, nor would it create a consistent, fair application of oversight.

Another element to the proposed mold-risk standard is that much of the moisture in unit walls and ceilings is a result of tenant behavior – notably, the varying use of vents, fans, air conditioners to reduce moisture and humidity. Inspecting for the presence of moisture in units could result in an overreach into controlling tenant behavior and an infeasible operational difficulty in terms of what a property's management team can and can't control related to tenant actions.

Further, HUD's proposal to recommend but not require the use of infrared cameras inevitably results in inconsistent application of any new standard related to moisture levels and risk. It is unclear from HUD's proposal whether the housing provider or the housing quality inspector would be utilizing the infrared camera; overall, mold and moisture detection and mitigation tools require extensive training, which should be taken into consideration when establishing new requirements that could create unreasonable expectations on the inspection process. Housing providers also report that moisture meters can often record a variance in temperature inside the wall as moisture where there is none, again leading to inconsistency.

In addition, shifting from inspecting for hazards to inspecting for hazard-risks would lead to many other infeasible changes to the scope of HUD's inspections (for example, assigning a deficiency for the mere *risk* of pests due to the presence of pests in the surrounding neighborhood, or for the *risk* of water damage due to regular rainfall in the area). Therefore, HUD's quality of life emphasis should be on good practices of moisture mitigation and mold remediation, rather than on penalties for the presence of moisture in geographic and physical property locations where it is largely out of the control of property owners.

In summary, while we support HUD's efforts to reduce instances of mold-like substances throughout the HUD-assisted housing stock, we caution against a physical inspection emphasis on the *risk* for mold rather than on the actual presence of mold. Instead of augmenting the current mold-like substance standard, we urge HUD to utilize education campaigns (targeted at owners and residents), resource materials, and capacity support to assist owners with mold-risk and moisture mitigation.

In limited instances or in a mere observation capacity, HUD could consider inspections for a property's reaction to water damage, as well as for regular or acute practices that remediate moisture and mold, where a property submits water damage reports and remediation efforts to inspectors. Similarly, HUD's proposed safety standard enhancements related to mold-like substances (see above), which would establish a ventilation or dehumidification requirement for bathrooms, is a more appropriate route for HUD oversight of mold-risk than is an attempt to control tenant behavior or geographic variance.

Overall, support and education would more effectively limit mold risk than for REAC to punitively respond to the presence of moisture, especially given the various ways in which moisture levels are out of the control of the property owners.

- 3. Question for Comment #2: “Safe” Drinking Water** HUD is considering adding the term “safe” to the regulations at [24 CFR 5.703\(d\)](#) addressing drinking water. This addition would cover situations where the public water supply system has identified drinking water contamination and notified customers of the hazard. This change would not require a new standard. The NSPIRE inspector would collect information from the property manager or owner on the following: (1) any current local water alerts for the jurisdiction where the housing is located; and (2) the name of the public water supply system that serves the property. For the building information collection, the property manager or owner would advise if the property is known to be serviced by a lead service line. If this information is not known for the portion of the pipe on the property, the owner or manager would be asked to identify the water service point of entry into the building and the inspector would conduct a visual evaluation. Details on the process would be published in a subsequent notice. HUD seeks comment on the advisability of adding new requirements for the PHA submission of information performed in advance or as part of the physical inspection.

Safe drinking water is critical to equitable quality of life across the United States. In fact, practices of unsafe drinking water sourcing, management, and delivery have resulted in devastating health outcomes among underserved communities, including among low-income households and among racial and ethnic minority groups, all of which are overrepresented in HUD-assisted housing.

LeadingAge fully supports the role of the federal government in remediating water quality through partnerships with private property owners. The unique nature of privately-owned, publicly subsidized housing results in shared responsibility to ensure the safety of drinking water. That said, much of water quality is determined by the sourcing system, which is managed outside of the property owner’s responsibility by local and state water authorities. HUD’s proposed addition of the term “safe” to existing drinking water standards has the potential to drastically change the scope of current inspection methods and owner responsibility at HUD-assisted properties.

We caution HUD against implementing requirements that fall outside the scope of a private property vs a municipal entity. In order to feasibly improve the quality of drinking water throughout the HUD-assisted portfolio, we recommend that HUD make a clear distinction between the source (generally public water systems) and the delivery (a building’s water infrastructure) when addressing drinking water safety through REAC protocol.

HUD states that the proposed additional term “safe” would cover situations where the public water supply system has identified water contamination, and it would require owners to provide information to the inspector regarding current water alerts. It is unclear from HUD’s proposed standard adjustment how this would result in safer drinking water for residents of the property, and what an associated deficiency would be. Although HUD’s language references PHAs, it is also unclear on if this encompasses MFH providers, as well. Further, because water contamination at the source often cannot necessarily be “filtered out” or remediated at the delivery level (lead contamination cannot be filtered out through simple faucet filters, for example), individual households should be notified directly by the local water authority about the need for temporarily boiling water or purchasing bottled water, both of which occur outside the scope of the owner’s control.

Additionally, HUD's proposal speaks to a visual evaluation of the property's water service point of entry into the building, but it is unclear what the evaluation would be for and what would constitute a deficiency. Again, HUD should make clear distinctions regarding municipal responsibility for water service into the building in terms of lead services lines, as opposed to the property's maintenance and rehab of the building's piping and water delivery infrastructure.

Overall, we support efforts by the federal government to improve water infrastructure, and we encourage HUD to focus any drinking water standard enhancements to elements that fall within an owner's control, such as the status and functionality of a property's water delivery system, as opposed to the status of the public water supply or a household's water use practices.

- 4. Question for Comment #4: Amended severity level deficiencies for units with observed temperatures below 68 degrees (severe non-life-threatening) and 64 degrees (life-threatening)**
HUD is considering amending the deficiency titled "A permanently installed heating source is damaged, inoperable, missing, or not installed and the outside temperature is below 68 degrees Fahrenheit" to have two distinct severity levels. The proposed deficiency would be amended to require properties to be maintained at a minimum unit temperature of 64 degrees Fahrenheit. A new severe non-life-threatening deficiency would be added for properties with observed unit temperatures between 64- and 67.9-degrees Fahrenheit. HUD seeks input on the advisability of creating two levels of severity for the minimum temperature deficiency.

Appropriate temperature is not only a critical component of quality of life, but it is also a key determinant for fire safety. For example, when a unit is not able to be adequately heated to safe and comfortable levels, tenants will necessarily utilize other, often more dangerous means to heat their homes, including using CO-producing space heaters or using the oven/stove unsafely to heat the unit. LeadingAge fully supports HUD's efforts to improve fire safety in effective, feasible ways through NSPIRE.

LeadingAge supports efforts to enhance the NSPIRE standards to require functional heat sources, and LeadingAge is supportive of creating two levels of severity for the minimum temperature deficiency; however, we strongly caution against applying the minimum temperature standard to the maintained in-unit temperature, as opposed to the outside temperature.

The ambient in-unit temperature is sometimes determined by a lack of functionality of heating and cooling systems, and it is sometimes determined by resident actions. For example, a unit's heat source may be fully functional and capable of reaching appropriate temperature levels, and yet the ambient room temperature may be below the minimum temperature standard because the resident chooses to live with open windows for fresh air. Similarly, a resident may choose not to utilize their fully functioning air conditioning system.

Because HUD physical property inspection is not intended to monitor and oversee the behavior of tenants in their own homes, any inspection standard adjustment by HUD should make a clear distinction between a deficiency that results from the heating/cooling source *functionality*, which is provided and controlled by the property, and any consequences in temperature that results from the heating/cooling system *use*, which is controlled by the resident.

Monitoring the chosen temperature inside an individual's home is not only an inaccurate reflection of the property's HVAC system functionality, it is also a clear overreach into tenant choice and

preference, and it is equally infeasible for owners to control. Instead, the standard should focus on the functionality of the heating and cooling system centrally and in unit, rather than the application of heat or AC, or the use of fans and opening windows, resulting in a temperature and comfort level as chosen by the individual tenant.

Therefore, LeadingAge would support HUD's creation of two temperature-related severity levels, but we request that HUD avoid basing the deficiency on the observed in-unit temperature, and focus instead on the functionality of heating and cooling systems.

5. Question for Comment #6: Ambient temperature requirements and inspection methods

HUD is considering amending the deficiency "A permanently installed heating source is damaged, inoperable, missing, or not installed and the outside temperature is below 68 degrees Fahrenheit" in the HVAC standard to include measurement by an ambient temperature thermometer provided by the inspector to determine whether the heating source is properly functioning. The amended deficiency would also outline inspection protocols required for using the thermometer. HUD seeks input on this proposed equipment requirement for the minimum temperature deficiency in the HVAC standard.

Similar to the above response to question #4, we urge HUD to emphasize heat source functionality over in-unit temperature monitoring. We are supportive of HUD's proposal for inspectors to determine heating source functionality; however, we once again urge against the practice of determining heat source functionality based on in-unit temperatures, because resident actions and choice will significantly impact the in-unit conditions.

It is not clear from HUD's proposal what type of ambient temperature monitoring would occur – if this would be an average temperature across unit samples, in certain parts of the property, in a single unit, and in certain parts of the unit (by the window, by the entry door, etc.), all of which will impact how an unsafe temperature level is recorded and an inaccurate reflection of risk determined. Instead, we strongly recommend that HUD propose alternate ways for an inspector to determine heat source functionality.

6. Question for Comment #8: A new deficiency for certain types of space heaters *HUD previously requested public comments in the NSPIRE proposed rule regarding a new deficiency under the HVAC standard for the requirement of permanently installed heating sources. HUD recognizes there may be extreme cold weather conditions when supplemental heating units may be needed to maintain a safe level of heat. HUD is considering amending the HVAC standard to create a new deficiency for the presence of unvented, fuel-burning space heaters due to the associated fire and carbon monoxide risk. HUD seeks input on this proposed deficiency for unvented, fuel-burning space heaters.*

LeadingAge strongly supports the creation of a new deficiency under the HVAC standard for the presence of unvented, fuel-burning space heaters. The associated fire and carbon monoxide risk is unconscionable, and many housing providers already disallow these types of space heaters in their house rules and lease agreements. That said, we urge HUD to narrowly adjust the standard so that other types of space heaters are still allowed, should there be instances of extreme cold weather where supplemental heat is needed for resident comfort.

7. Question for Comment #11: Adjusted correction timeframe for severe non-life-threatening deficiencies where a corrective action is not technically feasible within 24 hours *HUD is considering*

amending the correction timeframes for standards and deficiencies categorized as “Severe Non-Life Threatening” where a corrective action may not be technically feasible within 24 hours. The statutory repair timeframes required under HOTMA prevent changes to correction timeframes to properties in the HCV or PBV programs. The amendment HUD is considering would continue to require that the Health or Safety risk to the resident be removed within 24 hours, but the correction timeframe would be extended. HUD recognizes that not all severe conditions can be repaired within 24 hours as they may require building permits or engaging the services of an appropriate contractor. HUD seeks specific input on whether this proposed change in correction timeframes should be addressed within the standards or through an administrative process where HUD makes an adjustment within its database to reflect an extended timeframe of repair. HUD also seeks specific input on which standards and deficiencies would benefit from this proposed approach to corrections.

We strongly support HUD’s proposed approach to severe non-threatening deficiencies where a corrective action is not feasible within the 24-hour timeframe. Supply chain issues, labor shortages, and other general feasibility constraints often restrict the ability of properties to fully correct a deficiency in a 24-window. For example, while an immediate risk, like an exposed electrical wire, can be removed immediately by building maintenance, it can take several days to get an electrician to a property for a full-scale, all-unit project to adjust a property’s wiring. Similarly, HUD should not penalize owners when several hundreds of corrective parts are not able to be obtained within a matter of hours, such as GFIs for outlets in every unit.

While we support HUD’s efforts to match the timeframe requirements to the technical feasibility for deficiency correction, we recommend that HUD implement specific parameters for correction so that owners are incentivized to urgently make the needed repair. In response to HUD’s questions regarding the process, the additional time could be added to HUD’s internal database only if the information is still publicly accessible and consistently applied, otherwise it should be added to the official standards.

Implementation

- 1. *Scoring and Impact of Standard Enhancements*** While LeadingAge and our membership have done our best to view HUD’s proposed standards objectively, it is critical that housing stakeholders are given the full context for the new standards as scored during an inspection. HUD has yet to release new scoring methodology overall or in relation to the specific proposed standards.

Without knowing the impact of a new standards based on its scored value at the property, housing providers will not be able to full provide feedback to HUD on the effectiveness of new or adjusted standards. We urge HUD to release new approaches for scoring, and make the scoring and final set of NSPIRE standards available for public comment prior to NSPIRE implementation.

- 2. *Cyclical Review of Standards*** In order to maintain more up-to-date standards, HUD has proposed to review NSPIRE standards no less than every three years and to adjust or update the standards with the opportunity for public feedback.

We commend the agency for its efforts at transparency and maintenance. However, we caution against repeated adjustments to major changes of the standards that will incur new cost and disruption for housing communities and residents every five years. For example, many housing providers are installing new or additional smoke/CO detectors now, as a result of the adjusted

NSPIRE standard – this is costing housing communities significant sums in parts and labor. However, if in three years HUD again changes the standard to require tamper proof (ten-year sealed battery or hardwired detectors), properties would have to redo significant labor while also potentially disrupting resident life. We urge HUD to be forward thinking in its current iteration of standards and to be conservative in its future updates that result in major disruption.

Again, thank you for your review and consideration of these comments, and thank you for your ongoing partnership with affordable housing stakeholders in implementing robust physical property oversight. Preserving the affordable housing stock is critical to the Administration's goal of addressing housing access across the country, and it is critical to allowing older adults to age in their communities.

In addition to our above comments, we point HUD to our comments submitted to the agency on the NSPIRE proposed rule in March, 2021 for a fuller picture of our response to HUD's NSPIRE implementation, and we welcome the chance to participate in ongoing stakeholder feedback processes with REAC to feasibly and effectively improve safety conditions at HUD-assisted properties.

We look forward to working together to advance quality, affordable, service-enriched housing options for older adults. Please address any questions to Juliana Bilowich (jbilowich@leadingage.org).

Sincerely,

Juliana Bilowich
Director, Housing Operations and Policy