

## National Standards for the Physical Inspection of Real Estate: What HUD's Inspection Overhaul Means for Senior Housing Providers

On January 19, HUD published a proposed rule to begin implementation of sweeping changes to its physical inspection protocol and standard, called the National Standards for the Physical Inspection of Real Estate (NSPIRE). The proposed changes will affect senior housing residents, staff, and owners for decades to come, and LeadingAge continues to advocate with HUD for a robust yet feasible oversight model.

### 1. NSPIRE: Creating a Unified Housing Assessment and Reprioritizing Health and Safety

HUD's January 19 NSPIRE proposed rule is part of a broader effort within the agency to revise the way that HUD-assisted housing is inspected and evaluated. According to the proposed rule, NSPIRE has two goals:

- Reduce regulatory inefficiencies, and
- Improve HUD oversight.

In particular, NSPIRE aims to consolidate and align various inspection regulations that are used to evaluate HUD housing, including differing standards, protocols, or inspection frequencies of the Uniform Physical Condition Standards (UPCS) and Housing Quality Standards (HQS). NSPIRE would bring the various inspection approaches under one unified assessment.

In addition, HUD felt that the approaches currently used to evaluate HUD housing (HQS and UPSC) produced inaccurate and inconsistent results and lacked a mechanism for continual update. From the housing owner perspective, the current inspection practices frustratingly emphasized community appearance or "curb appeal" over the actual condition of the physical property, and despite tedious and often inconsistent physical inspection standards, failed to reflect the quality of life for residents at the community and the true status of the property.

#### ***Trustworthy, Manageable, and Good for the Community***

Both parties – HUD and the private owners of HUD-subsidized housing – value an oversight mechanism that is trustworthy, that is manageable for properties, and that promotes the health and safety of residents.

As LeadingAge weighs in with the agency on behalf of our senior housing provider members, we continue to advocate for a robust yet feasible HUD oversight structure, accompanied by adequate supports and resources for housing communities; with the help of the new LeadingAge HUD Oversight Workgroup, LeadingAge will continue to provide detailed input to HUD at every stage of the inspection overhaul.

#### ***First NSPIRE Efforts: Testing and Evaluating New Standards and Approaches***

HUD initially launched the NSPIRE effort a two-year voluntary demonstration program in 2019 to evaluate and test the new inspection protocol and standards, which will then be rolled out to the broader portfolio on a non-voluntary basis. So far, HUD has enrolled over 5,000 properties (public

housing, multifamily housing, and office of healthcare program properties), including many LeadingAge members.

Throughout the ongoing demonstration program, HUD intended to inspect the voluntary participants through an alternate protocol and under new, draft standards that do not result in an official score. However, COVID-19 has largely prevented HUD from conducting fieldwork to test the NSPIRE standards and scoring. Instead, participants and stakeholders have provided feedback to HUD on published draft standards that appear problematic or aspects of the protocol that raise concerns, and HUD has continued to regularly update the draft components of NSPIRE on its website.

A current list of the draft standards is available [here](#) (version 1.3); HUD is continuing to accept feedback as they refine the standards and will next publish a more official version (2.0) of the NSPIRE standards in the Federal Register.

### ***Establishing NSPIRE Next Steps and COVID-19 Adjustments***

As a key next step for NSPIRE, HUD has now published the January 19 proposed rule establishing the method HUD will use for implementing specific NSPIRE standards, scoring, and processes through notices in the Federal Register. The demonstration continues parallel to the changes proposed in the January 19 rule and will serve to further refine HUD's physical inspection model.

While the rule proposes a number of substantive changes for HUD-assisted rental housing, the proposed rule mainly sets the foundation for changes to come. More specific programmatic provisions of NSPIRE will be published for public comment in the future, including:

- Specific standards
- Updated scoring
- Adjusted protocols

HUD previously announced its intention launch NSPIRE beyond the demonstration program (for the broader rental housing portfolio, including Multifamily Housing programs not currently participating in the demonstration) on a non-voluntary basis by the end of 2021. However, HUD has the ability – and will likely use it to accommodate COVID-19 timeline disruptions – to extend the demonstration period, expand the cap on properties in the demonstration, and push out implementation of NSPIRE for the broader portfolio.

## **2. Significant Proposed Changes Impacting HUD-Assisted Senior Housing**

The January 19 rule proposes significant changes, including adjustments to core definitions and approaches of HUD physical inspections. **LeadingAge is compiling comments on these proposed changes and welcomes feedback from members to [jbilowich@leadingage.org](mailto:jbilowich@leadingage.org); the comments are due to LeadingAge by March 8 and to HUD by March 15.** LeadingAge is also convening a workgroup of senior housing provider members to [inform HUD's changing approach to portfolio oversight](#).

While the [rule](#) also proposes a number of changes related to inspections for small PHAs, tenant-based housing, Continuum of Care (CoC), and other housing programs, the following changes would most impact providers of project-based senior housing.

### ***I. Definitions and Applicability***

One of the key proposed changes under the January 19 rule is to create identifiable habitability requirements and inspections limits that are comparable across housing programs, even programs that differ significantly from one another, like tenant- and project-based housing.

HUD proposes to consolidate various housing quality definitions, shifting them toward a single definition of “safe, habitable dwelling.” The proposed rule also expands the current inspection requirements and standards to include Housing Choice Vouchers, Project Based Vouchers, HOPWA, the HOME Program, Emergency Solutions Grants, and Continuum of Care programs.<sup>i</sup>

## **II. *Affirmative Safety Standards***

Throughout the NSPIRE demonstration program, HUD continues to test new standards and scoring, which will be officially and transparently implemented by HUD later. Because of this, the proposed rule covers only a few standards changes, including affirmative requirements, meaning that the owner would need to not only make sure existing features are working, but also proactively add certain features.

Among other affirmative safety standards, HUD is considering requiring a certain number of working outlets and permanent lights in all habitable rooms; a permanently mounted light fixture in the kitchen or bathroom; electrical wiring (GCFI) protection within 6 feet of sinks, tubs, and showers; a permanently installed heating source; and guardrails when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.<sup>ii</sup>

HUD is also requesting feedback on other safety standards related to measuring safe drinking water and setting broad minimum habitability standards for residential units, such as requiring a kitchen and then further defining what that the kitchen or bathroom should include.<sup>iii</sup>

Lastly, the proposed rule also states HUD’s intention to require carbon monoxide detectors through separate rulemaking. This is supported by Congress and already practice by many owners.<sup>iv</sup>

## **III. *Risk-Based Inspection Schedules, Reinspection Fees, and Tenant Feedback***

Current inspection schedules for both public housing and multifamily programs are risk-based, with frequencies ranging from annually to once every three years. The proposed rule would maintain risk-based inspection requirements but would expand this time period to between 2 and 5 years; the exact criteria would be described in a future Federal Register Notice (with opportunity for public comment) and continue to be based on a risk assessment.<sup>v</sup>

The proposed rule would allow (but not require) the inspector to charge a property owner or PHA a reasonable “reinspection fee” in cases where the inspector reinspects the property but finds that the required or reported repairs were not made.<sup>vi</sup>

Lastly, HUD is also considering ways to involve tenants in helping to identify poor performing properties. For example, the agency is considering allowing tenants to rate their units, or to recommend their units for inspection (separate from the sample selected by HUD).<sup>vii</sup>

## **IV. *Mechanism for Continual Updates, Public Comment, and Agency Transparency***

Although industry standards continue to evolve, there is no current official (and transparent) mechanism for HUD to update its physical standards. The January 19 proposed rule would require HUD to update inspection standards in the Federal Register at least once every three years, which would force regular updates and provide opportunities for public comment and increased transparency. This would also encourage the inclusion of evolving industry best practices, foster consistency across the regions, and allow HUD to be more responsive to changing portfolio needs. In the case of an emergency, the public comment period could be waived.<sup>viii</sup>

## **V. *Inspectable Areas and Tenant-Induced Damage***

Currently, there are five categories used to define which areas are inspected in HUD housing. The proposed rule reflects the NSPIRE concept of just three inspectable area categories:

- Inside the building
- Outside the building
- Within the units of HUD housing

The change significantly elevates the importance of residents' units, which HUD deems necessary for health and safety oversight but which also places a majority of the compliance emphasis outside much of the owner's control.<sup>ix</sup>

Because of this shift in emphasis, the proposed rule requests feedback on tenant-induced damages. Specifically, HUD is soliciting comments on how to approach tenant-induced damages in a way that will improve property conditions but that is fair to the owner, including through the use of incentives or disincentives.<sup>x</sup>

## **VI. *Self-Inspection and Reporting Requirements***

Although stated in the management handbook, HUD rules do not explicitly or uniformly require annual self-inspections by the Multifamily Housing provider of all units. The proposed rule would add an explicit requirement for annual self-inspections of 100% of units, believing this to further encourage regular, preventative maintenance at communities. The agency is specifically looking for feedback on the impacts of this requirement, including any advantages, disadvantages, and alternative options.<sup>xi</sup>

The rule also proposes to add a new electronic reporting requirement for self-inspections. HUD believes that technological advances have made it possible – and practical – to collect this type of property data electronically and aims to rely heavily on the resulting self-reporting. The specific procedures for this type of reporting will be outlined in a future notice with the opportunity for public comment.

## **VII. *Owner Responsibilities After Inspection***

By aligning and streamlining existing rules governing standards and scoring, including scoring, ranking, and appeals processes, the proposed rule intends to create a standardized set of expectations for owners and for properties. In particular, the rule proposes to replace the term “exigent health and safety,” which has been associated with more than one definition, with the term “severe health and safety” to describe the most serious deficiencies.<sup>xii</sup>

Because current regulations and recent laws are inconsistent, the proposed rule would establish a singular provision for the correction of SHS deficiencies at a default timeframe of 24 hours. The rule would also require the correction of non-SHS health or safety deficiencies within 30 days, for all programs.

The rule also proposes to align the process for appeals and technical reviews across HUD programs. For enforcement, HUD is requesting feedback on the scoring threshold that should be used to refer a property to the Departmental Enforcement Center (DEC), which factors should be considered, and whether it should be a stationary or updated threshold.<sup>xiii</sup>

## **VIII. Streamlining Requirements in Mixed Finance Properties**

In order to reduce the “regulatory footprint” of inspection standards and protocols across HUD housing programs, the rule aims to bring various oversight approaches within HUD under one regulatory roof and make requirements clear, easily accessible, and comparable across HUD programs.

Mixed financing is a good example of overlapping physical condition requirements: Currently, mixed finance properties are subject to multiple inspection standards by the nature of their financing, which leads to complex and sometimes contradictory compliance burdens; a similar challenge is faced by PHAs and owners whose portfolio includes multiple HUD program types or that convert from one funding stream to another, such as through the Rental Assistance Demonstration (RAD) program.<sup>xiv</sup>

In particular, HUD is asking for feedback on minimum standards and other inspection approaches for housing funded through the HOME<sup>xv</sup> or Housing Trust Fund (HTF) program, which could impact project-based senior housing providers utilizing these multiple financing sources for rehabilitation, acquisition, etc.<sup>xvi</sup>

The rule also discusses the relationship between HUD requirements and local codes.<sup>xvii</sup>

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<sup>i</sup> 2585 <https://www.federalregister.gov/d/2021-00098/p-51>

<sup>ii</sup> 2586 Question #13 <https://www.federalregister.gov/d/2021-00098/p-74>

<sup>iii</sup> 2585 <https://www.federalregister.gov/d/2021-00098/p-53>

<sup>iv</sup> 2591 <https://www.federalregister.gov/d/2021-00098/p-152>

<sup>v</sup> 2587 Question #14 <https://www.federalregister.gov/d/2021-00098/p-84>

<sup>vi</sup> 2587 <https://www.federalregister.gov/d/2021-00098/p-86>

<sup>vii</sup> 2587 Question #15 <https://www.federalregister.gov/d/2021-00098/p-91>

<sup>viii</sup> 2588 <https://www.federalregister.gov/d/2021-00098/p-99>

<sup>ix</sup> 2585 <https://www.federalregister.gov/d/2021-00098/p-51>

<sup>x</sup> 2588 Question #19 <https://www.federalregister.gov/d/2021-00098/p-112>

<sup>xi</sup> 2587 Questions #16-17 <https://www.federalregister.gov/d/2021-00098/p-92>

<sup>xii</sup> 2588 <https://www.federalregister.gov/d/2021-00098/p-108>

<sup>xiii</sup> 2588 Question #20 <https://www.federalregister.gov/d/2021-00098/p-113>

<sup>xiv</sup> 2583 <https://www.federalregister.gov/d/2021-00098/p-23>

<sup>xv</sup> 2588 <https://www.federalregister.gov/d/2021-00098/p-146>

<sup>xvi</sup> 2589 <https://www.federalregister.gov/d/2021-00098/p-65>

<sup>xvii</sup> 2585 <https://www.federalregister.gov/d/2021-00098/p-55>