

March 15, 2021

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

Docket No. FR-6086-P-01

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

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Dear Mr. Weese and Mr. Franco:

Thank you for the opportunity to comment on the Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) (Docket No. [HUD-2021-0005](#)). We support the agency's efforts to comprehensively overhaul oversight of the assisted portfolio's physical condition and commend HUD for striving for the highest quality of life for households with low incomes.

On behalf of our nationwide members 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 mechanism.

About LeadingAge

We represent more than 5,000 nonprofit aging services providers, including affordable senior housing providers and other mission-minded organizations that touch millions of lives every day. 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. For more information visit [leadingage.org](#).

General Feedback

We agree with HUD that, as stated in the Proposed Rule, HUD's current inspection models "can sometimes provide inaccurate and inconsistent results that can prevent HUD from effectively evaluating housing across programs," and we welcome HUD's efforts to overhaul the inspection model and approach through implementation of NSPIRE.

Throughout the implementation, we urge HUD to commit to building a robust oversight mechanism with reliable and accurate data, while at the same time maintain feasibility and practicality of the inspections process. Please consider the following principles for the broader physical inspection overhaul:

- **Streamlining**

Overhauling physical inspections presents a valuable opportunity for streamlining redundancies and inefficiencies. Some streamlining efforts are already incorporated in the proposed rule, such as aligning inspections models for various HUD programs under one roof and eliminating the need for separate protocols throughout the assisted portfolio. We urge the agency to further emphasize streamlining and efficiency wherever possible, for example by incorporating more electronic means of inspecting and communicating, while keeping in mind the technological capacity of both communities and constituencies in HUD housing.

- **Incentivizing Performance and Relieving Excessive Administrative Work**

We share HUD's priority of ensuring robust oversight mechanisms, in particular with strong, reliable data that accurately reflects the condition of the portfolio. Over recent years, highly-troubled HUD-assisted properties have been featured in news media and in Congressional hearings, casting a shadow on the entire portfolio.

Even one property with poor living conditions is one too many; we urge HUD to "catch-up" on the backlog of inspections and focus resources on the lowest performing properties. To do so, we recommend building in tiered systems as much as possible to incentivize performance. Enhancing the risk-based inspection schedule is one good example of this approach and should be expanded to Management and Occupancy Reviews (MORs) and other HUD approaches. Tiered approaches not only incentivize performance, but also relieve excessive administrative work on HUD, on third-party inspectors, and on properties with limited staffing capacity.

- **Designing Robust, Feasible Systems**

Robust data is critical for HUD, Congress, residents, and stakeholders to gain an accurate and real-time understanding of the physical state of the portfolio. To build robust oversight systems, HUD should consider accountability and feasibility at every turn: Accountability keeps performance high, and feasibility sets forward a path to do so. Key feasibility concerns when making changes to the inspection protocol include the cost and time impacts of newly required technical/building upgrades; the breadth and scope of inspections, paired with the staffing capacity at HUD and at HUD-assisted communities; and the impact on residents' lives and private living spaces.

- **Innovating and Adapting to COVID-19**

COVID-19 has changed the landscape of health and housing in every aspect of life. In the physical inspection overhaul, we urge the agency to build in lessons learned where appropriate. For example, in place of field work as part of the NSPIRE demonstration, HUD has largely relied on remote listening sessions to gather stakeholder feedback. We recommend that the agency continue these listening sessions to stay connected to the needs and input of the portfolio, including both owners and managers and residents served throughout HUD's programs. HUD has also implemented Video Remote Inspections in Public Housing but has not yet done so in Multifamily Housing; we urge HUD to embark on a concerted effort to test the reasonableness of this approach and to discuss with MF stakeholders the benefits and impacts of this and other innovations. Lastly, COVID-19 has shown the value of proper ventilation and other pandemic retrofits. We encourage HUD to review these adaptations and consider incorporating them into physical condition standards for HUD-assisted housing.

- **Incorporating Recommendations from the GAO**

As HUD seeks to improve its physical inspection protocol, we urge the agency to utilize the opportunity to address key weaknesses in the current approach, including the recommendations put forth by the Government Accountability Office in their 2019 report titled “Real Estate Assessment Center: HUD Should Improve Physical Inspection Process and Oversight of Inspectors” (GAO-19-254).

The report includes 14 recommendations, many of which address issues of training, quality assurance, and oversight of inspectors. The quality of the inspection protocol can only be as high as the quality of the inspectors; we therefore urge the agency to urgently adopt the GAO recommendations and improve the overall quality of HUD’s oversight process.

Specific Feedback

- **Support Consolidating Definitions and Aligning Inspection Approaches Across Programs**

We support the agency’s effort to consolidate and align inspection standards and approaches across programs wherever possible and reasonable. In particular, we anticipate a positive impact for properties with mixed financing or subsidy layering, as this will eliminate the need to conform (and subject residents) to multiple, separate oversight mechanisms.

- **Support Enhanced Risk-Based Inspection Schedule**

We strongly support an enhanced risk-based inspection schedule and urge the agency to leverage self-inspection reporting to require onsite inspector presence less often. Enhancing the risk-based schedule will incentivize property performance by rewarding good scores; it will also help HUD “catch-up” on the backlog of inspections that has only been exacerbated by the pandemic. At the same time, HUD should maintain portfolio data through self-inspections that can continue to insulate against criticism of the condition of the portfolio.

- **Need Clarity Around New Self-Inspection Reporting Requirement**

As annual unit self-inspections are common practice and included in the management handbook, we support HUD’s effort to formalize this requirement, and to expand it to other HUD programs.

Regarding the submission requirement, housing stakeholders need very clear parameters around expectations. For example, owners currently inspect very different components of the unit during self-inspections, and flexibilities for COVID-19 have further adjusted self-inspection techniques. Will HUD standardize what is expected to be self-inspected?

Further, the submission requirement has the potential to result in significant additional and excessive work from both HUD and for property owners and managers. HUD will need to weigh the benefits of a standardized approach, which would supply data to the agency and allow HUD to compare “apples to apples” in terms of the state of the portfolio, vs. the ease of submission or completion of this requirement, where HUD “meets owners where they are” by allowing them to use the systems and processes they currently use.

Related to electronic submission, HUD should supply or facilitate the software needed for electronic submission (or help owners defray costs incurred) or allow owners to simply document the inspections and workorders in the file, instead of requiring the actual submission. HUD should also be very clear in their guidance that the self-inspections can take place at any point throughout the year (rather than all at once).

Lastly, HUD should make very clear in guidance that any submitted results of self-inspections do not have any bearing on a property's official property inspection score. HUD should also be transparent about what the submitted data/information will be used for and how it will be handled by the agency.

- **Need Clarity Around New Reinspection Fees**

Reinspections under the current protocol are reserved for Health and Safety deficiency scenarios. While we do not see any issues with the ability for a reinspection fee to increase accountability, we urge HUD to be very clear that it is not establishing a *new* reinspection protocol, only the ability for a fee to be associated with it if the work that was reported complete is not, in fact complete. We also urge the agency to establish and maintain caps or benchmarks on the fee to encourage reasonableness and standardization. HUD should also clarify if the fee is authorized for Video Remote Inspections, or only for onsite inspections.

- **Support Fair Approaches to Tenant-Induced Damage**

As described below, we support high quality conditions in-unit, but we are concerned with the impacts of an increased scored weight on the portions of the property that the owners have the least control over. We have recommended fair and reasonable approaches for HUD to help offset this shift in scoring.

- **Support Broad, Representative, and Verifiable Avenues for Tenant Input in Inspection Process**

We urge HUD to use the tools currently under its authority to use information collected from physical, management and occupancy, current tenant input channels, and other means to ensure quality housing. If HUD does expand avenues for tenant input, these should be broad, representative, and verifiable, meaning all residents should be asked to submit feedback or rate their units prior to an inspection, rather than HUD asking residents to voluntarily submit their units for special inspection, outside of the regular sampling size during an inspection. Any results of tenant feedback should be verified before impacting a property's score or rating.

- **Support Continual Updates while being Mindful of Impact on Housing Systems**

While we support the transparency behind continual updates to standards on a 3-year cycle, we are concerned about the impact on building systems. It is critical for standards to remain up-to-date, and COVID-19 has shown the value of applying lessons learned, but we urge the agency to be mindful of costs and impacts on housing owners, managers, and tenants caused by significant updates and changes. To help offset these impacts, HUD should adopt advisory scores and transition times for major changes to standards.

- **Have Concerns around Affirmative Safety Standards and Property Responsibilities**

Several of HUD's proposed affirmative safety standards would exceed local building codes and create significant costs for housing stakeholders. HUD should be mindful of these impacts and help owners defray costs, while allowing transition times or the possibility to "earn" extra points, rather than lose points, for new affirmative safety standards. HUD should also be mindful of what is under owners' control; for example, the area of safe drinking water often lies in systems far outside the actual property, and HUD should partner with other agencies (the Environmental Protection Agency, for example) to address these concerns on a broader scale rather than the individual property scale.

- **Support Transparent NSPIRE Implementation with Future Options for Public Input**

We support the opportunity to continue input into the NSPIRE implementation, in particular by commenting on standards and scoring approaches proposed by HUD. We also urge the agency to push back the timeline for full NSPIRE implementation; due to COVID-19, HUD has not been able to

conduct critical fieldwork to test the NSPIRE scoring. While HUD has made many efforts to conduct remote listening sessions to gather stakeholder input (and should continue to do so), these remote efforts cannot replace the fieldwork needed to test the proposed changes. Therefore, HUD should delay implementation until the NSPIRE demonstration is fully complete and HUD has collected the data it needs to implement its comprehensive inspection overhaul.

Responses to Proposed Rule Questions

- 1) Question for Comment #13 – Affirmative Safety Standards:** HUD is considering adding certain affirmative requirements at the final rule stage. Currently under consideration are related to ground-fault circuit interrupter (GFCI), an arc-fault circuit interrupter (AFCI); Heating, ventilation, and air conditioning (HVAC); Guardrail; and Lighting-Interior. In alignment with HUD's prioritization of resident safety, HUD welcomes public comment on all issues, but is specifically seeking feedback regarding implementing affirmative safety standards related to electrical outlets and switches, GCFI and AFCI, HVAC, and interior lighting.

While we commend HUD for consider the implementation of affirmative safety standards, we also urge the agency to consider the impact on building systems; in some cases, the proposed changes represent very significant upgrades or overhauls. We therefore urge the agency to either defer to local building codes, or to slowly phase in the above-mentioned affirmative safety standards, and to consider approving additional project funds to cover the costs of these upgrades. HUD could also implement a temporary stage in which properties could “earn” extra points for the affirmative safety standards, instead of losing points if they lack them in this transitional phase.

In addition, we strongly urge HUD to reconsider the draft standard under NSPIRE to require a fire extinguisher in every unit, replacing it with a requirement to install them regularly at a certain measure throughout the hallways of properties. Having a fire extinguisher in the unit will increase the likelihood that a resident will remain in the unit in the case of the fire and try to extinguish it, instead of exiting the unit as quickly as possible. Older adult residents should make every effort to escape the location of the fire, and they are not likely to be trained or able to use the fire extinguisher.

- 2) Question for Comment #14 – Risk-Based Inspection Schedule:** HUD is soliciting comment on the risk-based annual inspection requirement expansion from 2 to 5 years. Is a different range merited? If so, what should HUD consider in setting and adjusting the ranges?

We strongly support enhancing the risk-based annual inspection requirement from 2-5 years. Paired with the annual self-inspection requirement, a risk-based inspection schedule would provide adequate oversight over the portfolio. As is current practice, we recommend that the agency set ranges based on previous REAC score performance; 5-year inspection cycles, for example, should be reserved only for the highest-performing properties (90-100), with the inspection frequency increasing as the score drops by every 10 points. Further, we suggest that the agency maintain overrides to the risk-based inspection schedule; for example, if significant tenant-input to HUD seems to indicate a poor building quality, HUD would immediately override the risk-based inspection schedule or request a Video Remote Inspection at the regular notice period, disregarding the risk-based schedule.

- 3) Question for Comment #15 – Tenant Involvement in Identifying Poor Performing Properties:** HUD is soliciting comment on how to involve tenants in helping REAC identify poor performing properties.

For example, could tenants provide a “1-5 rating” of their units with “1” being “poor” and “5” being “excellent?” Could tenants recommend their units for inspection separate from the statistical sample for scoring purposes to inform HUD's risk analysis of the property?

We understand and support the need for both owner and tenant input in the physical conditions of properties that so many call home. HUD already has avenues for tenants to provide input; for example, tenants currently have avenues for bypassing property management to report poor living conditions by calling HUD directly. HUD could require owners and agents to make tenants aware of these options, for example by requiring the phone number(s) to be posted or distributed with lease documents.

If HUD expands tenant input methods, we support fair, representative, and verifiable increased tenant input. In terms of tenant input during the inspection process itself, we strongly encourage HUD to decline offering tenants the option to recommend their units for inspection separate from the statistical sample for scoring purpose, or any other option that elevates only the conditions of a purposeful, non-randomized selection; instead, *all tenants* could be asked to rate their units prior to the onsite inspection, through a process that goes directly from tenant to HUD, bypassing management. For example, surveys could be submitted directly to the inspector for review. For the purpose of HUD's risk analysis of the property, the results of an all-tenant rating would be more likely to be representative of the whole building's risk level. Any survey of this kind should be non-technical in nature to ensure low-barrier resident participation and should not be used to generate an actual score for the property; instead, the tenant surveys could be used to flag a property for Quality Assurance by HUD if there is a significant discrepancy between the property's inspection score and the tenant rating results are very low.

4) Question for Comment #16 – Impact of Self-Inspections: *HUD is soliciting comment on how the clarification to self-inspect all HUD housing units in certain programs to ensure that units are being maintained in accordance with HUD housing quality standards will impact the operations of PHAs, owners and agents?*

We support the proposed clarification to self-inspect all HUD housing units. Not only is this already common practice for units in the project-based programs that our members predominantly participate in, but it is also a critical tool for ensuring quality housing standards for residents. It will also allow HUD to conduct agency inspections less frequently and insulate against criticism of the portfolio.

While the self-inspection protocol itself will not strongly impact HUD communities, any new requirements around the self-inspection process and in particular the reporting has the potential for significant impacts. As described above, we urge the agency to provide further details regarding the submission methods and self-inspection criteria that will be expected of PHAs and project-based owners and agents, and we urge HUD to carefully consider the feasibility of the new reporting requirements.

5) Question for Comment #17 – Alternatives to Self-Inspection Protocol: *Is there an alternative to the self-inspection protocol (§ 5.707 Uniform self-inspection requirement and report) that would allow HUD to achieve the objective that families live in safe and habitable units, and what are the risks and benefits of that alternative?*

While we support the annual self-inspection requirement, the reporting has the potential to be highly impractical, time-consuming, and expensive for owners; if the entire portfolio submits their annual unit inspection results to HUD, the process will also very quickly become unmanageable for

HUD to oversee, let alone practically utilize. We therefore urge HUD to consider the following alternative: Maintain (and formalize) the annual self-inspection requirement, but instead of requiring automatic electronic reporting of all results, simply mandate the retention of the results in the properties' files, and mandate HUD access to the results electronically at any time upon agency request. The properties would complete their annual self-inspections on their usual schedule and could include resident and/or manager signatures on the results; these would then be added to files, which could be reviewed during the Management and Occupancy Review (MOR) process or accessed by HUD electronically as needed. This alternative approach would save HUD from establishing new processes for electronic submission that could cope with the scale of *all* unit inspection results simultaneously but would still allow HUD to have access to the results when needed. Owners and PHAs would still be strongly incentivized to continue annual self-inspections because the results could be requested at any time, as well as reviewed during MORs.

6) Question for Comment #18 – Kitchen and Sanitary Facilities: *In alignment with HUD's desire to increase clarity and decrease ambiguity, HUD is considering definitions for kitchens and sanitary facilities. HUD seeks public input on the following:*

a) Kitchens: *Should HUD define what constitutes a kitchen and its related components required for functional adequacy (e.g., cooking appliance, means of refrigeration, food preparation and storage)?*

LeadingAge recommends that HUD decline from specifically defining what constitutes a kitchen; we believe this is already adequately represented by local building codes; further, any effort to standardize these definitions nationally could result in a discrepancy between HUD's definitions and state or local approaches, increasing (rather than decreasing) clarity and ambiguity.

b) Sanitary Facilities: *Should HUD define what constitutes a sanitary facility and its related components required for functional adequacy (e.g., bathtub or shower, toilet, ventilation, sink)?*

Again, LeadingAge recommends that HUD decline from adopting specific definitions for sanitary facilities and related components, for the reasons outlined above.

7) Question for Comment #19 – Tenant-Induced Damage: *HUD is soliciting comment on how to fairly approach tenant-induced damage to units and properties in such a way that it will have a positive impact on HUD-assisted properties. What could be used as incentives or disincentives to discourage tenant-induced damage?*

We value HUD's attention to this important issue. With HUD's intended update to inspectable areas, the weight of in-unit scoring has the potential to increase significantly from previous HUD inspection protocol. While in-unit conditions are an important factor in determining quality of life for residents, they are also the part of the inspection that owners and agents have the least control over. We recommend that HUD consider scoring in-unit conditions through an advisory approach that would allow properties to remove deficiencies for superficial damage that is likely to have occurred in the days immediately preceding the inspections; if the owner submits work orders showing the repairs within a certain number of days following the inspection, the score would be updated to reflect the removed deficiencies. With regard to incentives and disincentives to discourage tenant-induced, a possible change to the inspection scoring process is that instead of properties simply losing points for every deficiency, properties could *either lose or gain points* based on the condition of the property. For example, properties with pristine in-unit conditions could have the option to earn back points on the score.

We recommend that HUD conduct listening sessions with both tenant and owner stakeholders on this topic to determine the best path forward.

8) Question for Comment #20 – DEC Referrals: *HUD seeks input on the scoring threshold that should be used to refer a property to the Departmental Enforcement Center (DEC): What factors should be considered by HUD in setting the threshold, and whether this should be a stationary threshold or one that is updated periodically?*

We recommend that HUD keep the DEC threshold as stable as possible and recommend maintaining the 30-point automatic referral and the 31-59 optional referral, paired with the additional requirements of owners below the 60-point threshold. Within the optional referral point range, referral decisions should be primarily based on the nature of deficiencies, rather than a specific point value: The decision should be based on Health and Safety violations, not issues that may be very costly to repair but little to zero relevance on maintaining a safe living environment.

In addition, we urge the agency to adopt the recommendations put forth by the Government Accountability Office in their 2019 report titled “Real Estate Assessment Center: HUD Should Improve Physical Inspection Process and Oversight of Inspectors” (GAO-19-254). In particular, the 2019 report calls attention to the discrepancy between the 2017 and 2018 Consolidated Appropriations Acts (which stipulate that HUD must provide a notice to owners of properties that score 60 or below on the REAC physical inspection), and current and long-standing HUD practice (which is to send notices at scores 59 and below). The report also discusses the sampling margin of error, in particular instances in which the longer range of the margin could encompass scores of 59 or below, and yet because the score itself is above 60, no administrative consequence results. Importantly, the report states that “If REAC were to resume reporting on sampling errors and develop a process to address properties that fall below certain cutoff scores when the sampling error is taken into account, it would have the information it needs to identify properties that may require more frequent inspections or enforcement actions” (pg. 70). We continue to recommend that HUD adopt these and other recommendations in the report to strengthen its oversight mechanisms and ensure adequate quality of life in HUD-assisted communities.

Again, we are grateful for the opportunity to comment on HUD’s physical inspection overhaul efforts. We look forward to commenting on outstanding aspects of the overhaul, including new scoring and standards.

LeadingAge values the partnership with HUD and the Real Estate Assessment Center and look forward to continuing our work together to advance and preserve senior affordable housing across the country. Please do not hesitate to reach out with questions to jbilowich@leadingage.org.

Sincerely,

Juliana Bilowich, Director of Housing Operations and Policy