

March 15, 2021

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

Submitted via <http://www.regulations.gov>

**RE: FR-6086-P-01 Economic Growth Regulatory Relief and Consumer Protection Act:
Implementation of National Standards for the Physical Inspection of Real Estate
(NSPIRE)**

To whom it may concern:

The undersigned national associations represent for-profit and non-profit multifamily property owners, developers, managers, housing cooperatives, lenders and housing agencies involved in providing affordable rental and cooperative housing to millions of American families. We appreciate this opportunity to comment on the proposed rule, “Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE).” We agree that It is in the best interest of all stakeholders to have a credible physical inspection program for FHA-insured and HUD-assisted multifamily properties. On behalf of our collective organizations, we offer the following general comments on the proposed NSPIRE rule, followed by answers to several specific questions posed by the Department.

BACKGROUND

Through NSPIRE, HUD hopes to consolidate and align the physical inspection regulations used to evaluate FHA-insured and HUD-assisted rental housing across multiple programs administered by the Offices of Housing, Public and Indian Housing and Community Planning and Development.

HUD’s goal is to create a unified assessment of housing quality across its different programs by reducing the current regulatory footprint and removing unnecessary discrepancies. These regulations are meant to convey clear expectations of housing quality and maintenance requirements across HUD programs, ensuring residents have a shared expectation of safe, habitable housing regardless of program type.

NSPIRE also changes the inspection protocols, processes, and procedures for HUD-conducted inspections of public housing and the Office of Housing’s multifamily programs. Public housing agencies and multifamily housing providers whose properties are FHA-insured or assisted through the covered programs under the Office of Housing are subject to a new annual inspection requirement. All units in these properties must be inspected to ensure they are safe, habitable housing. Results of these inspections must be electronically reported to HUD.

The emphasis of NSPIRE inspections is to be health and safety of residents rather than the property's cosmetic appearance. For instance, the proposed rule seeks to apply a "safe, habitable dwellings" standard. It reduces the categories of current inspectable areas for physical condition standards for covered housing programs from five to three. It adds the aforementioned annual self-inspection and reporting requirement for certain HUD housing. Going forward, NSPIRE will establish an administrative process for the treatment of health and safety deficiencies. Finally, this proposed rule incorporates provisions of the Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act that will reduce administrative burden on small rural PHAs.

GENERAL COMMENTS

Our comments will focus on NSPIRE provisions applicable to the FHA-insured multifamily mortgage programs and the HUD-assisted programs administered by the Office of Housing.

This proposed rule describes the general framework for the new NSPIRE program, but major elements (i.e., the new scoring standards, scoring methodologies and deficiencies, and specific substantive and reporting requirements of the annual self-inspection) are still under development. We applaud HUD's commitment to provide notice and comment opportunities on these important elements of NSPIRE prior to their implementation, and we look forward to sharing our feedback. Nevertheless, the absence of these important details does limit our ability to comment on NSPIRE's potential effectiveness to improve oversight of its portfolio's physical condition, ensure safe habitable dwellings for tenants and reduce costs or administrative burdens for housing providers.

The Department should continue testing proposed new standards and processes before mandating them. Multifamily industry stakeholders welcomed HUD's announcement that it would test new physical inspection standards and self-inspection methodologies & reporting through a demonstration program before finalizing a new NSPIRE rule. Unfortunately, due to the COVID-19 pandemic, HUD was unable to conduct physical inspections for an extended period to test new standards in the NSPIRE demonstration program. We strongly urge HUD to continue testing the NSPIRE physical inspection standards, reporting requirements and processes through the Demonstration program before implementing the final rule.

It is critical that NSPIRE strikes an appropriate balance between the need to ensure HUD housing is safe and habitable with the need to attract and retain housing providers' participation in the rental assistance programs. HUD should guard against mission creep and refrain from using NSPIRE to expand its regulatory authority on environmental issues or to penalize housing providers for environmental conditions they cannot control. We will detail our concerns on these points in response to Questions 2 and 3. We also urge officials to carefully consider how the new standards, deficiencies, scoring and protocols will affect older properties. Much of HUD's project-based portfolio is aging. Even housing providers with well-maintained older properties report it is incredibly time consuming and expensive to ensure compliance with HUD's standards. HUD should consider making adjustments for property age, building type, amount of common area amenities, maintenance staffing, maintenance expenditures, work order completion and/or timeliness, etc. Otherwise, the new thresholds could push older properties out of HUD-related

programs at a time when affordable housing is desperately needed. HUD should also consider changes in the inspection and scoring processes to account for resident-caused damages. Deficiencies where the resident bears responsibility should not impact the property scoring negatively and could be accounted for separately.

HUD's SPECIFIC QUESTIONS FOR COMMENT

Question 2: HUD has the following questions regarding water safety:

- a. How can HUD best define what is meant by safe or potable water?**
- b. Should "safe" mean water provided by a public water system that is in compliance with the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) as implemented by the EPA?**
- c. How should HUD monitor whether water is safe?**
- d. What elements should be reviewed during the physical inspection to determine water safety?**
- e. Should inspectors verify that a municipal water supply authority is in compliance with EPA's Safe Drinking Water Act? How would they best do this?**

HUD has requested comments on amending the requirement that properties have "potable" water by adding the word "safe." While safe drinking water should be expected in any residential or commercial facility, we do not believe that it is HUD's responsibility to test for water safety as part of a physical inspection.

EPA regulates drinking water quality under the Safe Drinking Water Act 42 USC 3001 *et seq.* Entities which treat and sell water are required to comply with the regulations that specify how water is to be tested and the permissible level of contaminants ranging from disinfectant by-products to levels of metals like lead and copper. Most properties are connected to municipal water systems and, as such, are not responsible for drinking water quality. Lack of public investment in municipal water infrastructure has been widely reported, but it is beyond the scope of the property owner to address the larger issue. HUD should take this issue to the President's Task Force on Environmental Health Risks and Safety Risks to Children (Task Force), the focal point for federal collaboration to promote and protect children's environmental health.¹

We urge HUD to reconsider the addition of the word "safe" before "potable" and/or clarify that the quality of the drinking water provided by the municipality or other public utility is not the responsibility of the owner.

Question 3: HUD is specifically seeking comment on whether the site and neighborhood standards as found in 24 CFR 982.401(I), should be included in the regulation or only in the inspection standards? HUD also seeks comments on whether all of the explicit standards should be included or if there are certain site and neighborhood standards that HUD should consider changing?

¹Please also see [The Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts](#) (Action Plan).

The Housing Quality Standards' requirements for site and neighborhood "must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants." Likewise, the site and neighborhood may not be subject to serious adverse natural or manmade environmental conditions "such as dangerous walks or steps; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards."

It is appropriate for the Department to ensure that HUD-insured and HUD-assisted properties provide safe living conditions for residents. At the same time, if HUD is considering adding these HQS requirements as inspection standards, HUD must also balance its goals against consideration of mitigating circumstances beyond the housing provider's control. For example, HUD performs environmental reviews when an application is submitted for FHA multifamily mortgage insurance, but neighborhoods change over time. Imposing noise, vibrations or traffic conditions as inspection items on older properties could be particularly prejudicial to older housing stock, as well as transit-oriented properties. Similarly, fire hazards, garbage and infestations can be the result of tenant behaviors within their units, common areas or the site grounds.

Question 13: 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 the following:

- a. **Electrical Outlet and Switch**—HUD is considering adding a deficiency under the Electrical Outlet and Switch Standard regarding an inadequate number of outlets (*i.e.*, either 2 working outlets or 1 working outlet and a permanent light) within all habitable rooms due to potential safety hazards, usability barriers, and inadequate illumination.
- b. **GFCI & AFCI**—HUD is considering adding a deficiency under the GFCI & AFCI Standard regarding the lack of GFCI protection where required (*e.g.*, within 6 feet of sinks, tubs, showers; or exterior, garage, or unfinished basement areas) due to potential safety hazards, such as shock or electrocution.
- c. **HVAC**—HUD is considering adding a deficiency under the HVAC Standard regarding the lack of a permanently installed heating source due to potential health safety hazards, such as fire or carbon monoxide exposure.
- d. **Guardrail**—HUD is considering adding a deficiency under the Guardrail Standard to require a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
- e. **Lighting—Interior**—HUD is considering adding a deficiency under the Lighting—Interior Standard regarding the absence of a permanently mounted light fixture in the kitchen or bathroom due to potential safety hazards and inadequate illumination.

We strongly urge HUD to defer to the local code requirements applicable to the properties. The Department should follow its precedent to grandfather older properties that complied with the existing codes to which they were built unless the property undergoes substantial rehabilitation.

Question 14: 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 support the concept of expanding the time between risk-based inspections from two to five years. Since HUD is adding an annual self-inspection requirement for its insured multifamily properties, project-based assisted properties and public housing portfolio this change is appropriate. Expanding the time between risk-based physical inspections will reward high-performing properties, alleviate administrative burdens associated with inspections, minimize disruptions to residents and allow HUD to focus its resources on lower scoring properties that may require more oversight.

Question 15: 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 are skeptical of these ideas. We do not have the context to know how HUD would factor the results of any such ratings into the property’s score, nor do we know what consequences (either positive or negative) housing providers would face as a result of tenant-recommended inspections. Similarly, we do not believe ratings or inspection recommendations from tenants will produce the results HUD is seeking. First, it is important to note that the residents have considerable control over their units’ condition. Therefore, responses are likely to be skewed and influenced by other factors such as interactions with property staff or neighbors. Therefore, the findings would likely be subject to adverse selection. Moreover, tenants already have considerable protection under landlord-tenant laws and HUD policies.

If HUD does proceed with these ideas, tenants should only be allowed to recommend their own units, which should be kept out of the statistical sample for scoring purposes. More information is also necessary about how HUD would reward or penalize the owner as a result of these initiatives, and HUD must describe how it will account for selection bias.

Question 16: 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? What advantages and disadvantages would arise from extending this self-inspection requirement to the programs that do not explicitly require an annual self-inspection of all units (such as HCV, PBV, Moderate Rehabilitation, and CPD programs)?

We anticipate that the self-inspection requirement will increase administrative burdens on property staff for HUD-insured and assisted multifamily properties. It is difficult to estimate the extent of the additional burden because the proposed rule does not specify the scope of the annual self-inspections or electronic reporting requirements. The feasibility of these

requirements will depend on the specific information HUD requires from properties and how that information is to be submitted. Housing providers are concerned that an expansive scope for annual self-inspections will result in an increased workload for maintenance staff, and the associated reporting requirement will demand a significant time commitment for data input into the HUD system.

HUD must identify the data points for the self-inspections and work closely with the vendors who will develop the software to make electronic reporting of the required reports. Clear communication and ongoing cooperation are necessary to make the self-inspections as cost-effective and as administratively feasible as possible.

We are also unclear as to how HUD will use information gathered from the self-inspections, what penalties housing providers could face as a result of the information obtained, or even whether HUD has sufficient staff to review annual submissions from all covered properties.

The preamble has already listed several valid reasons that annual self-inspections won't be required for units in the Housing Choice Voucher (HCV), Project-Based Voucher, Moderate Rehabilitation and HUD-Community Planning and Development Programs. At a time when HUD needs to attract and retain housing providers' involvement in the HCV program, adding additional costs and administrative burdens would discourage the participation of housing providers—particularly small Mom and Pop landlords. It is also infeasible to require annual self-inspections in the HOME program, which has a significantly different regulatory framework than the covered programs.

Question 17: 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?

One alternative could limit the reporting requirement so that properties will only report on the Health and Safety Risks identified and corrected at property within a given year. The proposed rule states that types of health and safety concerns include, but are not limited to carbon monoxide, mold, flammable materials or other fire hazards, electrical hazards, garbage and debris, handrail hazards, infestation, and lead-based paint. A narrower scope will ensure that the NSPIRE requirements are practicable while providing HUD with data on each property's most critical maintenance activities.

Question 18: 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. **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)?**
- b. **Should HUD define what constitutes a sanitary facility and its related components required for functional adequacy (e.g., bathtub or shower, toilet, ventilation, sink)?**

It is appropriate for HUD to develop these definitions, and we look forward to commenting on the standards once they are proposed.

Question 19: 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?

Tenants should be required to pay for self-induced damages beyond normal wear and tear. Repeated problems should be treated as lease violations for which tenants should face good-cause eviction and lose their subsidy.

Question 20: 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 should this be a stationary threshold or one that is updated periodically?

Based on our review of the proposed rule, it appears to retain a scale of 1 to 100 for physical inspection scores. We support the current policy of reserving automatic referrals to DEC for properties that score 30 points or less on the physical inspections.

CONCLUSION

Thank you again for considering our joint comments. Please direct any questions about our letter to Michelle Kitchen, National Association of Home Builders Director of Multifamily Finance, at mkitchen@nahb.org.

Sincerely,

CCIM Institute

Council for Affordable and Rural Housing

Institute of Real Estate Management

Mortgage Bankers Association

National Affordable Housing Management Association

National Apartment Association

National Association of Home Builders

National Association of Housing Cooperatives

National Leased Housing Association

National Multifamily Housing Council