

Summary of Proposed National Physical Inspection Standards

Ed Gramlich, National Low Income Housing Coalition, January 13, 2021

General Summary

HUD published a [proposed rule](#) in the *Federal Register* on January 13 that presents a new approach to defining and assessing housing quality among HUD programs. HUD has termed this approach the National Standards for the Physical Inspection of Real Estate (NSPIRE). The intent of the proposed rule, along with the existing NSPIRE demonstration (see *Memo*, [8/26/19](#)), is to improve HUD oversight by aligning and consolidating the physical inspection regulations used to evaluate HUD-assisted housing across multiple HUD programs, creating a unified assessment of housing quality. Currently the various HUD programs evaluate housing quality using different inspection standards, protocols, and frequencies. Comments are due March 15.

The proposed rule would establish a method HUD will use to implement specific NSPIRE standards, scoring, and processes through *Federal Register* notices. In addition, the proposed rule seeks to: apply a “safe, habitable dwellings” standard; reduce the categories of current inspectable areas for physical condition standards from five to three; implement a new annual self-inspection and reporting requirement for certain HUD-assisted housing; establish an administrative process for the treatment of health and safety deficiencies; and incorporate provisions of the “Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act” that will reduce administrative burden on small, rural public housing agencies (PHAs).

During the NSPIRE demonstration implementation and parallel with formal rulemaking, HUD plans to draft *Federal Register* notices that would outline specific physical inspection standards, scoring, and protocols under NSPIRE. All updated standards and scoring methodologies would be published, as required by the proposed rule, through a *Federal Register* notice at least once every three years, with the opportunity for public comment prior to implementation.

The Need for the Proposed Rule

There are currently two inspection models used across the majority of HUD housing programs: Housing Quality Standards (HQS) developed in the 1970s, which apply to the Housing Choice Voucher (voucher) and the Project-Based Voucher (PBV) programs; and Uniform Physical Condition Standards (UPCS) developed in the 1990s, which apply to public housing and private housing assisted with the multifamily project-based Section 8 programs. HUD found that both inspection models sometimes provide inaccurate and inconsistent results. NLIHC notes that advocates have found some properties in very bad condition receive passing physical condition scores (Real Estate Inspection Center, REAC scores) while other properties in good condition receive low scores.

HUD has also identified a disproportionate emphasis in physical inspections around the appearance of items that are otherwise safe and functional, while inadequate attention is paid to the health and safety conditions. HUD concluded that existing housing standards need to focus on habitability and the residential use of structures, and most importantly, the health and safety of residents.

NSPIRE Background

HUD sought PHAs and owners of private HUD-assisted multifamily properties in 2019 to volunteer for its Real Estate Inspection Center (REAC) pilot project named National Standards for the Physical Inspection of Real Estate ([NSPIRE](#)). According to a [Federal Register notice](#), on August 21, 2019, over the course of two years HUD sought to inspect 4,500 properties willing to voluntarily adopt NSPIRE model (see *Memo*, [8/26/19](#)). A list of properties approved to participate in NSPIRE as of October 2, 2020 is at: <https://bit.ly/3q9ai1k>

The NSPIRE model has three major components:

- Three types of inspections: 1) self-inspections by PHAs and owners and agents of private, HUD-assisted multifamily housing, 2) inspections conducted by contractors and/or federal inspectors, and 3) inspections conducted solely by federal inspectors. HUD will inspect participating properties at least once during the demonstration using the NSPIRE standards.
- Three categories of physical deficiencies: 1) health and safety, 2) function and operability, and 3) condition and appearance. HUD states that ideally each category could result in emergency work orders, routine work orders, and other maintenance.
- Three inspectable areas: 1) inside (common areas and building systems), 2) outside (building site and building envelope), and 3) units (the interior of an individual home).

REAC posted two new features on the INSPIRE demonstration [Resident Engagement webpage](#). The National Alliance of HUD Tenants (NAHT) had been advocating for these two provisions, among others, for many years. House Financial Services Committee Chair Maxine Waters (D-CA) and Representatives Rashida Tlaib (D-MI) and Ayanna Pressley (D-MA) sent a letter to HUD Secretary Ben Carson on November 18, 2019 urging HUD to better incorporate tenant perspectives in the NSPIRE demonstration (see *Memo*, [11/25/19](#)). They claimed HUD was not following through on its promise to engage with a diverse group of stakeholders (see *Memo*, [2/25/19](#)). The letter noted that HUD had spoken only to HUD officials, PHAs, and property owners and agents, leaving tenants out of the discussion altogether.

The preamble to the proposed rule explains that HUD began building updated physical inspection standards, procedures, and scoring methodologies that will be refined through the multistage NSPIRE demonstration. NSPIRE will test and HUD will further refine the physical inspection model to best serve residents. NSPIRE program provisions will be published in the *Federal Register* and will provide an opportunity for public comment. The improvements being refined through the NSPIRE demonstration are intended to occur in parallel to the changes in the proposed rule in order to support and reinforce the rule.

Highlights of the Proposed Rule

Housing quality regulations across HUD programs would be consolidated into one location at 24 CFR part 5. However, where different statutory requirements or public policy considerations prevent alignment with 24 CFR part 5, those program-specific requirements would be maintained in their respective program regulations and would supersede or supplement 24 CFR part 5. The majority of the alignment of inspection protocols, processes, and procedures that

HUD proposes involve the public housing and multifamily programs (including project-based Section 8, Section 202 Supportive Housing for the Elderly, and Section 811 Supportive Housing for Persons with Disabilities).

The proposed rule has aligned the Housing Choice Voucher (HCV) program (including the Project Based Voucher (PBV) and Tenant Based Voucher (TBV) programs) with other HUD programs, particularly those administered by HUD's Office of Community Planning and Development (CPD) to the maximum extent possible. Those CPD programs include HOME Investment Partnerships (HOME), the national Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), Housing for Persons with AIDS (HOPWA), and Continuum of Care (CoC).

Summary of Specific Proposed NSPIRE Provisions (Non-Small, Rural PHAs)

The following is based on the preamble to the [proposed rule](#) published in the *Federal Register* on January 13, 2021. If NLIHC later identifies text in the proposed rule itself that is contradictory to the preamble or that is not clear or even missing, NLIHC will refer to such shortcomings in comments to the proposed rule.

Section 5.701, Applicability

HUD proposes to amend Section 5.701 of the HUD regulations (at 24 CFR part 5) by extending the applicability of the current rule beyond public housing, project-based Section 8 programs (including Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities), and housing with mortgages insured or held by HUD or receiving insurance from HUD. The extended applicability would include the Housing Choice Voucher (HCV) and Project-Based Voucher (PBV) programs. Housing programs administered by HUD's Office of Community Planning and Development (CPD) would adopt these standards by reference in the applicable CPD program regulations to include: HOME Investment Partnerships Program (HOME), national Housing Trust Fund (HTF), Housing Opportunities for Persons with AIDS (HOPWA), Emergency Solutions Grants (ESG), and Continuum of Care (CoC).

Section 5.703, National Standards for the Condition of HUD Housing

The "Housing Act of 1937" (as amended) requires HUD to establish quality standards that ensure housing is safe and habitable, typically referred to as "decent, safe, and sanitary." The proposed rule would create a new definition, "safe, habitable dwellings." Safe, habitable dwellings would be those for which "the items and components located inside the building, outside the building, and within the units of HUD housing...[are] functionally adequate, operable, and free of health and safety hazards."

HUD explains that the terms "functionally adequate" and "operable" may be defined based on universal habitability requirements and design specifications for an item or component. In contrast, "decent," is a highly subjective term. The terms "health" and "safety" can also be measured universally and quantitatively by using standard public health and safety metrics

related to morbidity and mortality. “Health” as used in the proposed rule would be inclusive of “sanitary.” HUD adds that the term “health” would be more useful for an assessment of a broader range of impacts. HUD intends the new description to make clear that the built environment’s effect on the health and safety of residents is more important than any building damage that is strictly cosmetic in nature.

Section 5.703(a)

Proposed Section 5.703(a) would limit the ways in which the housing quality requirements apply to units occupied by HCV and PBV households, as well as common areas and exterior areas which either service or are associated with such units. HUD notes that the HCV and PBV statutes apply to housing quality standards for *units*, not *projects* as with public housing or multifamily housing.

Section 5.703(d)

HUD also proposes to consolidate into Section 5.703(d), several provisions currently found in one section of the regulations but implied in others. For example, the proposed rule would make it clear that certain unit features, such as having a kitchen area, are minimum habitability requirements across programs. Similarly, HUD would add the word “safe” to the current requirement that units have an adequate source of potable water. “Safe” in this context would be defined by HUD through future rulemaking after receiving public comments.

This portion of the rule would also incorporate requirements currently described more clearly by the HCV regulations for smoke detectors, including those for hearing impaired persons and the requirement for hot and cold running water.

Section 5.705, Inspection Requirements

Current Section 5.705 states that entities must inspect HUD-assisted housing annually according to HUD-prescribed physical condition standards, unless program regulations or HUD provide otherwise. HUD proposes to amend and expand Section 5.705.

Section 5.705(c)(1)

Current inspection requirements for public housing and multifamily programs call for inspection frequency ranging from annually to once every three years. The proposed rule would expand this to between two and five years. The criteria under which a PHA or owner/agent may qualify for a longer inspection cycle would be described in a future *Federal Register* notice and will be based on a risk assessment. Small, rural public housing agencies (PHAs) would be exempted from the annual inspection requirement; they would instead follow provisions of the “Economic Growth and Recovery Act” (discussed below).

Section 5.707, Uniform Self-Inspection Requirement and Report

While the Housing Act of 1937 requires each PHA inspect all public housing projects annually, current regulations governing other HUD housing programs, such as those for Multifamily Housing, do not explicitly require an annual self-inspection of all units. The proposed rule would

add a new regulation at Section 5.707 that would explicitly require annual self-inspections of all units in a project and would add a new electronic reporting requirement.

HUD adds that self-inspections are a key component of ensuring that properties are maintained year-round and that encourage regular, preventative maintenance rather than “just in time” repairs ahead of HUD-conducted inspections. Discussing the proposal at Section 5.705(c)(1) to consider an inspection frequency as long as once every five years, HUD comments that it believes that submission of self-inspection results and status of repair would mitigate the risk associated with longer inspection frequencies.

Section 5.709, Administrative Process for Defining and Revising Inspection Criteria

The proposed rule would add Section 5.709 that would require HUD to establish an administrative process for regularly receiving, through *Federal Register* notices, public comments on scoring and ranking criteria. New paragraph (a)(1) would establish a timeframe for revising standards every three years, or every three years after the most recent revision, whichever is later.

New paragraph (a)(2) would allow HUD to publish a notice without 30 days of public comment in the case of an emergency. An emergency would be defined as a significant health hazard, a new safety concern due to changing construction technology, or another event as determined by the Secretary.

Section 5.711, Scoring, Ranking Criteria, and Appeals

The proposed rule would add a new Section 5.711 that would incorporate existing regulations governing the scoring and ranking of covered properties, chiefly multifamily and public housing properties. It would also include the responsibilities of PHAs and owner/agents after an inspection and outline the process for appealing inspection results.

New paragraph (a) would exempt the HCV and PBV programs that would continue to be assessed under the Section Eight Management Assessment Program (SEMAP). It would also exempt small, rural PHAs, which would be assessed under new subpart D of 24 CFR part 985 (discussed below).

New paragraph (b)(2) would clarify that public housing would continue to be scored and ranked under the Public Housing Assessment System (PHAS) outlined in 24 CFR part 902.

New paragraph (c)(1) would introduce the new category of “severe health or safety” (SHS) deficiencies, which are the most serious types of conditions that can be cited as violations of Section 5.703. This would replace the current “exigent health and safety” (EH&S) category of deficiencies. HUD explains that the term “exigent health and safety” has been associated with more than one definition in the past and has been confused with the term “life-threatening.” All SHS deficiencies would have to be mitigated within 24 continuous hours of receipt of a notice, and the owner or PHA must electronically certify and provide supporting evidence within three business days after the SHS deficiencies have been resolved or sufficiently abated.

HUD would identify in the *Federal Register* notice described in Section 5.709, which of the SHS deficiencies are life threatening and which are non-life threatening. Section 5.711 would also require correction of non-SHS health or safety deficiencies within 30 days.

Summary of Small, Rural PHA Proposed NSPIRE Provisions

The “Economic Growth and Recovery, Regulatory Relief and Consumer Protection Act” (“Economic Growth Act”) was signed into law on May 24, 2018. Section 209 made several amendments to the “Housing Act of 1937” pertaining to small, rural public housing agencies (PHAs). HUD published a notice in the *Federal Register* on February 27, 2020 explaining how HUD designates small, rural PHAs. The proposed rule would implement this definition of small, rural PHA as well as a new assessment system for their public housing and Housing Choice Voucher (HCV) programs. HUD states that the Economic Growth Act’s focus on inspections, and the legislation’s directive to follow the same standards for small, rural public housing as those for projects assisted under the Multifamily project-based Section 8 program, makes the inclusion of the act’s provisions in this rule a logical fit.

The proposed rule would create new a Subpart H under the current 24 CFR part 902 regulations for HUD’s physical assessment of public housing, the Public Housing Assessment System (PHAS). Section 209(a)(2) of the Economic Growth Act defined “small public housing agency” and directed HUD to use the existing definition of “rural area” contained in the regulations governing the Consumer Financial Protection Bureau (CFPB). In the February 27, 2020 notice, HUD further refined this definition by defining PHAs that “predominantly operate in a rural area” and clarifying that these PHAs would be referred to as “small, rural PHAs” to avoid confusion with other small PHA designations used by HUD.

Changes to 24 CFR part 902

Section 902.101, Definition of Small, Rural PHA

Section 902.101 defines a small, rural PHA as one that administers 550 or fewer combined public housing and HCV units, and either has a primary administrative building with a physical address in a rural area or that has more than 50% of its combined public housing and voucher units in rural areas. HUD must make a determination whether a PHA is a “small, rural PHA” once every three years.

Section 902.103(b), Frequency of Inspections

The proposed rule would exempt small, rural PHAs from the public housing performance indicator system, Public Housing Assessment System (PHAS), instead implementing an alternative performance indicator and rating system. Proposed Section 902.103(b) would establish an assessment frequency of no more than once every three years, as required by the Economic Growth Act. However, a troubled small, rural PHA would be subject to an annual assessment.

Section 902.105, Troubled Small, Rural PHA Designation

A small, rural PHA's public housing program would be designated as troubled if:

- The weighted average score of all property inspections is less than 70% of the total available points; or
- If a PHA has a weighted average score between 70% and 80% of the total available points and has at least one property that receives fewer than 70% of the total available points.

“Troubled” small, rural PHAs would be referred to their local HUD field office or other designated HUD office(s) for remedial action, oversight, and monitoring. HUD would negotiate and develop a Corrective Action Agreement (CAA) as described in Section 902.105(c) within 30 days of the PHA's notification of its designation as troubled. Section 902.105(c) through (i) would outline the requirements and process for the CAA.

Section 902.107, When HUD May Withhold, Deny, or Rescind a Troubled Designation

Proposed Section 902.107 would describe the situation under which HUD may withhold, deny, or rescind a troubled designation. Conditions for appealing troubled designations are outlined in proposed Section 902.109. Sanctions for small, rural PHAs that remain troubled as well as incentives for small, rural PHAs that are high performers would remain the same as those currently described in the PHAS regulations.

Changes to 24 CFR part 985

The Economic Growth Act allows HUD to designate a small, rural PHA as a “troubled PHA” with respect to its HCV program if HUD determines the PHA has failed to comply with HCV inspection requirements. HUD proposes to add a new subpart D to 24 CFR part 985, specifically for small, rural PHAs.

Section 985.201, No Longer Subject to SEMAP

Under proposed Section 985.201, small, rural PHAs would no longer be subject to the Section 8 Management Assessment Program (SEMAP) requirements. Instead, they would be assessed on the basis of the performance indicators and rating system under subpart D. In assessing whether a small, rural PHA's HCV program is a high performer, standard performer, or troubled, HUD would consider four indicators, all of which are related to a small, rural PHA's compliance with the inspection requirements. Each indicator would be scored on a pass/fail basis.

Section 985.203, Inspection Indicators, see next page

Section 985.203, Inspection Indicators

The proposed inspection indicators include:

- *Inspection standards* confirming that a PHA is applying the applicable NSPIRE standards to HCV- or PBV-assisted units or a HUD-approved variation under § 5.703. A PHA would pass the indicator if all HCV and PBV units were inspected using the correct standards;
- *Initial unit inspections* validating that a PHA is conducting initial inspections within the appropriate timeframes. A PHA would pass the indicator if at least 98% of newly leased units passed inspection prior to the beginning of assistance;
- *Frequency of Housing Quality Standards (HQS) inspections* verifying that a PHA inspects tenant-based units under a Housing Assistance Payment (HAP) contract and the required sample of PBV units at least once during the three-year period from the last PHA inspection. A PHA would pass the indicator if at least 98% of the units were inspected; and
- *Unit condition enforcement* confirming that a PHA is taking corrective action as required if an owner fails to correct an identified unit deficiency according to HUD requirements. A PHA would pass the indicator if 98% of inspections with identified life-threatening or other deficiencies were corrected within the required timeframe.

Section 985.205(a), High Performer Small, Rural PHAs

Proposed Section 985.205(a) states that for a PHA to be designated as a high performer, the PHA must:

- Either utilize at least 98% of its HCV budget authority for the most recent calendar year, or the percent of HCV units leased by renters for the most recent calendar year must be at least 98%;
- Not end the calendar year with excess HAP reserves; and
- Not end the calendar year in a funding shortfall or receive shortfall prevention funding from HUD.

If a small, rural PHA passes all four inspection indicators and meets the funding criteria listed above, the PHA is designated as a “high performer.” If a PHA passes all four inspection indicators but does not meet the funding criteria listed above, the PHA will be designated as a “standard performer.” If a small, rural PHA fails any one of the four inspection indicators, regardless of whether it meets the funding requirements, the PHA is designated as “troubled.”

Section 985.207, Inspection Frequency

In accordance with statutory requirements in the Economic Growth Act, proposed Section 985.207 would establish an assessment frequency of no more than once every three years, except that a troubled small rural PHA would be subject to an annual assessment in accordance with the current Section 985.204.

The NSPIRE webpage is at: <https://bit.ly/2MQ9Lmr>

The NSPIRE Resident Engagement webpage is at: <https://bit.ly/3nD70BT>

The *Federal Register* version of the proposed rule is at: <https://bit.ly/3nI3dmJ>

An easier to read version of the proposed rule is at: <https://bit.ly/39pzYQw>

More information about public housing is on [page 4-30](#) of NLIHC's *2020 Advocates' Guide*.

More information about multifamily housing is on [page 4-61](#) of NLIHC's *2020 Advocates' Guide*.

More information about vouchers is on [page 4-1](#) of NLIHC's *2020 Advocates' Guide*.

More information about Project-Based Vouchers is on [page 4-8](#) of NLIHC's *2020 Advocates' Guide*.