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March 15, 2021

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

Re: Docket No. FR-6086-P-01
Economic Growth Regulatory Relief and Consumer Protection Act:
Implementation of National Standards for the Physical Inspection of Real
Estate (NSPIRE)

Submitted via www.regulations.gov

The National Low Income Housing Coalition (NLIHC) is an organization whose members include state and local affordable housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, faith-based organizations, public housing agencies, private developers and property owners, local and state government agencies, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we work on behalf of and with low-income people who receive and those who are in need of federal housing assistance, especially extremely low-income people and people who are homeless.

NLIHC welcomed HUD's NSPIRE demonstration, which has a goal of designing a new, simplified inspection system more focused on physical conditions within housing units and to place a greater emphasis on lead-based paint hazards and mold. NLIHC also welcomes the proposed rule changes that seek to better align and consolidate the physical inspection regulations across various HUD housing programs. NLIHC offers the following comments to enhance protections for residents of all HUD-assisted housing and prevent public housing agencies (PHAs) and owners/managers from evading their obligations to provide safe, habitable housing. In particular, there are a number of areas in the proposed rule that the final rule must address in order to provide: better notice to residents, means for residents to challenge a PHA's or owner's claims, and far greater engagement of residents throughout the physical inspection process.

§5.703 National Standards for the Condition of HUD Housing

§5.703(b) Inside

The final rule should add text requiring common areas to be ADA compliant.

§5.703(c) Outside

The final rule should add text requiring certain components such as mailboxes, parking lots, play areas, refuse disposal, and walkways to be ADA compliant.

§5.703(d) Units

The opening paragraph of (d) lists examples of unit components. NLIHC understands that HUD will provide much more detailed guidance regarding unit components, the final rule ought to refine the characteristics of some of the components listed. For example, the final rule should specify that there must be: adequate heat (and cooling where appropriate) directly or indirectly in each room; well-functioning windows and doors with functioning locks; and an adequate number of electrical outlets and built-in lighting fixtures.

(d)(2) should specify that “adequate for personal hygiene” includes a bathtub and/or shower and a sink, both with hot and cold running water.

(d)(3) must include carbon monoxide detectors.

(d)(4) should specify that at a minimum a kitchen area must contain a sink with hot and cold running water, garbage disposal, stove and oven with an overhead vent fan, and a refrigerator.

(d)(5) should not count living rooms as a bedroom. In addition, this provision should be modified to include public housing and Multifamily housing. The (old) *Public Housing Occupancy Guide* and the Multifamily Handbook 4350.3 provide general principles that echo the text of (d)(5) but do not include living rooms. The final rule at (d)(5) should codify the public housing and Multifamily guidance while deleting living rooms as acceptable sleeping spaces.

§5.703(f) Compliance with State and Local Codes

Paragraph (1) should be amended to state that HUD standards supersede local or state codes when HUD standards exceed local or state codes.

Paragraph (2) should be amended require HCV and PBV units (not just public housing and Multifamily housing) to meet state and local standards that are greater than those established by HUD in order to comply with the subpart. Making this amendment requires deleting paragraph (3).

§5.705 Inspection Requirements

§5.705(c)(2) Extended Inspection Cycle

NLIHC strongly opposes the new option of allowing an extended inspection cycle beyond three years to five years. NLIHC does not accept the rationale HUD posits in the preamble to the proposed rule, that the provisions of §5.707 requiring PHAs and owner/managers to conduct annual self-inspections would mitigate the risk associated with longer inspection frequencies. This is allowing the proverbial fox to guard the chicken coup. Anecdotally, residents at both public housing and Multifamily housing properties point to extremely poor physical conditions in their units and buildings that are not addressed. Media reports frequently demonstrate in photos and video such poor conditions.

§5.705(e)(2) Access to Property for Inspection; Public Housing Projects

The opening paragraph of (e) refers to HUD inspections of “HUD housing,” yet (e)(2) provides important details – but only for public housing. Paragraph (e)(2) should be written to apply to all HUD housing.

Response to Question #15 How Tenants Can Help REAC Identify Poor Performing Properties

NLIHC strongly endorses the suggestions that the resident leaders of the National Alliance of HUD Tenants (NAHT) have proposed to HUD since the late 1990s and augmented in comments specifically about the NSPIRE demonstration. NAHT’s perspective is that of tenants of Multifamily housing, but could reasonably mirror that of public housing and voucher tenants. Tenant associations or resident councils can help HUD in its asset management oversight role by marshalling residents to serve as direct “eyes and ears” for HUD. REAC inspectors have been trained to not engage with residents in any way when visiting properties, putatively because it was feared that such engagement would bias the results. Consequently, REAC has missed a primary source of information about property conditions.

NLIHC repeats NAHT’s key suggestions here:

1. Owners (and PHAs) should notify tenants about REAC inspections, reports, and appeals. REAC scores are rarely posted at properties, and REAC reports are rarely provided when requested by tenants or legal services attorneys working with residents. To Multifamily’s credit, it responded to NAHT’s concerns with a good memorandum on July 8, 2019 reminding owners of these requirements. That memorandum added that owners would be required to post notices of how tenants could appeal unrealistic REAC scores (legal services attorneys note that properties with substandard conditions sometimes receive passing scores while some properties in good conditions receive lower-than-warranted scores). The Multifamily memorandum also encouraged tenants to submit photo or video documentation of substandard conditions and/or owner self-certifications purporting to certify that REAC deficiencies have been addressed. NLIHC strongly recommends that the provisions of that memorandum be codified in the final regulation. The final regulation should also formally establish the same notice and comment appeal right for tenants that are afforded owners.

2. HUD should restore the tenant survey of a sample of REAC-inspected properties (and/or the Resident Satisfaction Survey in public housing as part of PHAS). The survey should not be exclusively an online survey because many residents do not have the necessary equipment or are not comfortable responding online. HUD should ask residents of the sample units whether they prefer a paper or electronic form of the survey. The survey should be updated to reflect questions about water leaks, mold, bedbugs, lead-based paint, smoke detectors, carbon monoxide detectors, and other environmental hazards. The survey should also include questions about management performance and treatment of tenants regarding their rights, including the right to organize.
3. The final regulation should offer tenants the opportunity to trigger a REAC inspection when at least 25% of the residents request one. A REAC inspection should also be triggered if a local government requests one.
4. The final regulation should promote tenant participation in REAC inspections by:
 - Requiring a meeting between a REAC inspector and any legitimate tenant organization before starting inspections.
 - Allowing a representative of any legitimate tenant organization to accompany an inspector if a tenant organization requests. Of course, a tenant representative should not enter individual units unless invited by a tenant.
 - Adding five units to REAC's random selection if requested by a tenant organization.
5. REAC inspectors should access, either electronically or by site inspection, summary work order reports that many management companies maintain that record and date tenants' requests for repairs, identify when repairs were conducted, and note tenant satisfaction with the results. If conducted before a site inspection, this review would provide a REAC inspector with a quick overview of how many repairs were reported, how long it took to complete them, and tenant satisfaction. It would also provide an indication of repair performance at the property and indicate any problems (such as water leaks, mold, etc.) that might suggest bigger problems.
6. REAC inspectors should access local code reports in localities if available online. REAC inspectors could upload property reports onsite for a given building using their hand-held computers to learn what local inspectors have found and get a sense of potential problems in a building before an inspection.

§5.707 Uniform Self-Inspection Requirement and Report

See comment above pertaining to §5.705(c)(2) Extended Inspection Cycle

Response to Question #16

There must be a provision added to §5.707 requiring owners of HUD-assisted housing to also report the results of a PHA's or owner's/manager's self-inspection to residents. There must also be a provision providing a formal mechanism for residents to raise challenges to the HUD Field Office that must be investigated and addressed by Field Office staff, requiring owners to cure any material deficiencies. This would be especially critical if HUD continues to proceed with the extended frequency provision of §5.705(c)(2). In order for residents to raise a challenge, notice to residents that a self-inspection has been completed must be conspicuously posted in the property's office and at common areas, and must be delivered to any tenant organization. The self-inspection must be made available to tenants upon request to review and copy at no cost.

§5.709 Administrative Process for Defining and Revising Inspection Criteria

§5.709(a)(2) concerning emergency revisions only refers to public housing. The final rule should include all HUD housing.

Response to Question #18

As stated in our comments regarding §5.703(d) *Units*, the final regulation should provide more specificity not only regarding kitchen and sanitary facilities, but other important in-unit components.

§5.711 Scoring, Ranking Criteria, and Appeals

§5.711(c)(1) Inspection Report Requirements; Severe Health or Safety Deficiencies

In the preamble, HUD states that it would identify by notice in the *Federal Register* “severe health or safety” (SHS) deficiencies that are life threatening and which are non-life threatening. The former would have to be addressed within 24 hours and the latter corrected within 30 days. However, the text of §5.711(c)(1) only discusses SHS deficiencies that must be “mitigated” within 24 hours. §5.711(c)(2) merely directs an owner to correct non-life threatening SHS deficiencies to be corrected “expeditiously” – not within 30 days. NLIHC urges HUD to clearly require an owner to correct non-life threatening SHS deficiencies within 30 days.

The use of the term “mitigated” is inadequate; in general it does not mean to eliminate or abate. Later in (c)(1) the text uses “resolved or sufficiently abated.” The preamble uses the term “corrected.”

PHAs and owners/managers should notify residents that the PHA/owner has submitted the required certification and supporting evidence that SHS deficiencies have been abated in three business days. The PHA/owner should conspicuously post the certification and supporting evidence at the property’s office and at common areas, along with delivering them to any tenant organization. The certification and supporting evidence must be made available to tenants upon request to review and copy at no cost. The final regulation should provide a formal mechanism for residents to raise challenges to the certification and supporting evidence to the HUD Field Office that must be investigated and addressed.

§5.711(h) Responsibility to Notify Residents of Inspections; Availability of Documents to Residents

§5.711(h)(1) Notification to Residents

The final regulation should require the notice be provided seven days prior to the inspection date, but no less than 48 hours prior to the inspection date. The regulation must direct owners to use plain language and explain the reason for and nature of the inspection. The regulation must provide the notice translated in the languages used by a given household. The regulation must inform residents that they may be present during the inspection and have the ability to point out problem areas.

§5.711(h)(2) Availability of Documents for Review

§5.711(h)(2)(i) In addition to the physical inspection report and related documents being available to residents for review and copying during business hours as proposed, the final regulation should add that they must be provided to residents at no cost upon request.

§5.711(h)(2)(ii) In addition to the items listed here, such as the results of any reinspection and appeal requests being available to residents for review and copying during business hours as proposed, the final regulation should add that they must be provided to residents at no cost.

§5.711(h)(2)(iii) should not limit the obligation of a PHA or owner/manager to retain these documents to 60 days; they must be retained and available for residents to review for at least five years (echoing the five-year retention and availability provision of the statute creating the Comprehensive Housing Affordability Strategy (CHAS), one of the statutory underpinnings of the Consolidated Plan.

§5.711(h)(3) should add that the owner certification and evidence that SHS deficiencies have been abated in three business days. In addition to posting, the owner must provide notice to any tenant organizations.

§5.711(h)(4) should explicitly state that the notices referenced in (h)(3), must also encourage residents to comment on the information directly to the HUD Field Office, provide the name of the responsible Field Office staff and their direct phone number and direct email address (not general office number or “info” email address). Field Office personnel must acknowledge receipt of resident comments in writing within seven calendar days and provide substantive responses within 14 calendar days.

§5.711(i) Administrative Review of Properties

§5.711(i)(1) Notification to Owner of Submission of Property File to the DEC

This paragraph should be modified to add that owners must post the notice regarding the property being submitted to DEC for evaluation in the management office and at common areas, as well as provide the notice to any tenant organizations. In addition, the owner should explain in plain language that the property received a score of 30 points or less and what that implies.

§5.711(i)(2) should change “may include input from tenants” to “shall include input for tenants.”

National Housing Trust Fund Proposed Changes

§93.301 Property Standards

§93.301(c)(3) Because the HTF regulations were modeled on the HOME regulations, this paragraph should be slightly modified to echo the same provision in the HOME regulations. Two simple inserts would achieve this:

Existing housing that is acquired for homeownership (e.g., downpayment assistance) must be decent, safe, sanitary, and in good repair **as referenced in 24 CFR 5.703**. The grantee must establish standards to determine that the housing is decent, safe, sanitary, and in good repair. At minimum, the standards must provide that the housing meets all applicable State and local housing quality standards and code requirements and the housing does not contain the specific deficiencies proscribed by HUD and published in the **Federal Register**. HUD will establish the minimum deficiencies based on the applicable standards for the condition of HUD housing (**National Standards for the Physical Inspection of Real Estate (NSPIRE)**) set out by the Secretary and published in the **Federal Register** pursuant to 24 CFR 5.705. The grantee must inspect the housing and document this compliance based upon an inspection that is conducted no earlier than 90 days before the commitment of HTF assistance. If the housing does not meet these standards of this paragraph or it cannot be acquired with HOME funds.

§93.301(e)(1)(i) Because the HTF regulations were modeled on the HOME regulations, this paragraph should be slightly modified to echo the same provision in the HOME regulations.

Conclusion

NLIHC urges HUD to give serious consideration our comments and include our suggestions in the final rule. Our intent is to enhance protections for residents of all HUD-assisted housing and prevent public housing agencies (PHAs) and owners/managers from evading their obligations to provide safe, habitable housing.

If there are any questions about these comments, please contact Ed Gramlich at ed@nlihc.org or 202.662.1530 x 314.

Sincerely,



Diane Yentel
President and CEO