

# **NLIHC’s Recommendations Regarding the Proposed Rule and the Final Rule**

Ed Gramlich, May 12, 2023

The following reflect the most significant [comments made by NLIHC to the proposed NSPIRE rule](#) and whether HUD accepted, rejected, or neglected them. All page references in the following text refer to the [preview version of the final NSPIRE rule](#).

## **§5.703 National Standard for the Condition of HUD-Assisted Housing**

At §5.703(d) pertaining to the physical standards for the dwelling units where people live, regarding the “affirmative requirements” that must be met in a dwelling unit, NLIHC made many detailed suggestions, most of which are now in the final rule (pages 167-169). For example, instead of the proposed rule calling for a unit to have “its own sanitary facility adequate for personal hygiene and the disposal of human waste,” NLIHC suggested that the final rule specify that a bathroom must contain a bathtub or shower and a sink with hot and cold running water – which the final rule now has. (See HUD response page 10 of the section of the preamble discussing changes made in the final rule.)

Unfortunately, §5.703(d)(5), which requires HCV- or PBV-assisted units to have at least one bedroom for each two people, also allows a living room to count as a sleeping room (page 168). NLIHC had urged HUD to not count a living room as an acceptable sleeping space. HUD does not provide a convincing reason for continuing to allow a living room to count as a sleeping room in the HCV and PBV programs. See pages 40-41 of the section of the final rule that lists all comments received from the public.

## **§5.705 Inspection Requirements**

### ***§5.705(c), Timing of Inspections***

The proposed NSPIRE rule at §5.705(c)(2) Extended Inspection Cycle, would allow HUD to extend the time between NSPIRE inspections for as long as five years. NLIHC strongly opposed a new option. HUD does not address (page 91). However, in the section of the preamble discussing changes made in the final rule, HUD states that after considering comments, it agrees that such an extended timeline of up to five years in most cases would be too long to adequately review HUD-assisted housing (page 14). The final text no longer contains that option (pages 172-173).

## **§5.707 Uniform Self-Inspection Requirement and Report**

§5.707 requires PHAs and owners (except for HCV and PBV owners) to conduct self-inspections of every unit each year and retain the results for three years (page 175). The proposed rule asked the public for comments regarding self-inspection (Question 16, page 90).

NLIHC wrote that there must be a provision added to §5.707 requiring owners of HUD-assisted housing to also report the results of their self-inspection to residents. HUD declined to implement resident involvement, and deflected providing a meaningful reason by stating “The self-inspection process will be spelled out in the NSPIRE Administrative notice, and HUD will provide an opportunity for tenant feedback in other areas of NSPIRE (page 101).

NLIHC also wrote that there must be a provision providing a formal mechanism for residents to engage the HUD Field Office to challenge an owner’s/PHA’s self-certification that all of their units meet the NSPIRE standards. NLIHC recommended that a Field Office be required to investigate such a challenge and address it in a timely manner, requiring owners/PHAs to cure any material deficiencies. HUD does not add this to the self-inspection section, providing a weak reason: each HUD program already has a complaint process, residents can call the Field Office, and they can raise concerns about the self-inspection process to the PHA Board of Commissioners (page 101).

## **§5.711 Scoring, Ranking Criteria, and Appeals**

### ***§5.711(c) Inspection Report Requirements***

§5.711(c)(1) provides details about inspection report requirements when there are “Life-Threatening” or “Severe” deficiencies (page 177). The proposed rule required “Life-Threatening” and “Severe” deficiencies to be “mitigated” within 24 hours. NLIHC asserted that the term “mitigated” was inadequate, that it did not mean to eliminate or abate. HUD agreed (pages 17 and 113-114) and the final rule uses the term “corrected” (page 177).

The proposed rule at §5.711(c)(2), “Post-Report Inspection,” merely directed an owner to correct non-life-threatening “Moderate” and “Low” deficiencies “expeditiously.” NLIHC recommended that HUD replace “expeditiously” with a more concrete timeline such as 30 days. HUD agreed (page 17) and it is now reflected in the final rule, which gives an owner 30 days to correct Moderate deficiencies within 30 days and Low deficiencies within 60 days (page 177).

The proposed rule at §5.711(c)(1) also required owners to electronically certify and provide supporting evidence to HUD within three business days that Life-Threatening and Severe deficiencies have been corrected. The final rule requires the certification take place within two days, which is probably a typo (page 177).

NLIHC wrote that PHAs and owners/managers should notify residents that the PHA/owner has submitted the required certification and supporting evidence that Life-Threatening and Severe 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. HUD ignored these recommendations (pages 113-115). NLIHC also recommended that this certification be posted in reference to §5.711(h)(3) discussed below.

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

### ***§5.711(h)(1) Notification to Residents***

This paragraph simply states that an owner or PHA must notify its residents of any planned inspections of their units or the housing development generally (page 182). NLIHC wrote that 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. HUD does not include this recommendation in the final rule, stating that notification requirements are already included in leases and will vary by owner and program (page 121).

NLIHC recommended that the regulation direct owners to use plain language and explain the reason for and nature of the inspection. HUD's response does not address the notification of an impending inspection; it refers to posting of final inspection reports, not advance information about the inspection process prior to an inspection (page 121). Many of HUD's responses do not directly address a specific recommendation in this fashion. Here HUD claims "HUD continues to seek avenues to expand tenant participation in the NSPIRE inspection process which will be addressed in subordinate notices via the *Federal Register* and available for public comment." HUD has had two years after comments were submitted about the proposed rule, yet it stalls providing meaningful measures to increase resident participation.

NLIHC also wrote that the regulation must provide the notice of a planned inspection to be translated in the language used by a given household. In addition, NLIHC wrote that the final rule must inform residents that they may be present during the inspection and have the ability to point out problem areas. HUD does not recognize these two recommendations, hence there is no response from HUD.

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

The final rule at §5.711(h)(2)(i) requires an owner/PHA to make a physical inspection report, once issued, available to residents during regular business hours when there is a request to review and copy the materials (page 182). The rule adds that all related documents should also be made available, including an owner's/PHA's survey plan, plan of correction, "certification," and related correspondence.

NLIHC recommended that in addition to being available to residents for review and copying during normal business hours, the physical inspection report and all related documents, as well as the results of any reinspections or appeals (as required by §5.711(h)(2)(ii)) be provided to

residents at no cost upon request. HUD provides one of its many non-responses, declaring “There is no cost associated with reviewing the documents,” completely dodging the request to provide the documents at no cost (page 122).

The final rule at §5.711(h)(2)(iii) requires an owner or PHA to maintain documents related to the inspection, any reinspections, or appeals available for review and copying by residents for 60 days (page 182). NLIHC recommended there be more than 60 days so that residents can identify changes over a longer period of time, going so far as to require maintaining the documents for up to five years (as is required for HOME and CDBG programs through the Consolidated Plan process). HUD responds, “Members of the public interested in older property inspection information from REAC can submit a Freedom of Information Act (FOIA) request to HUD” (page 122). Experience demonstrates that FOIA requests take far too long to be useful, and often do not provide the requested material or material so redacted that it is useless.

### ***§5.711(h)(3) Posting on the Availability of Materials***

The final rule requires an owner or PHA to post a notice to residents telling them that materials “in this section” are available. The notice must be posted in the owner’s or PHA’s management office and on any bulletin boards in all common areas on the date the inspection score is given to the owner/PHA (page 182).

NLIHC recommended specifically stating that an owner’s certification and evidence that Life-Threatening and Severe deficiencies have been abated in three business days. In addition to posting, the owner/PHA must provide notice to any tenant organizations.

HUD claims that it agrees and added a requirement that owners/PHAs post a notice of certification within three days of inspection (page 123). However, that is not anywhere in the final text. Perhaps HUD thinks this is covered at §5.711(h)(2) which does include “certification” in the list of “related documents.” While this might technically address NLIHC’s recommendation, it would be far more helpful to residents and advocated if §5.711(h)(3) specifically named the certification that all Life-Threatening and Severe deficiencies have been corrected by the three-day deadline. It would also help to include this at §5.711(c) discussing the certification requirement. HUD does not acknowledge the suggestion that tenant organizations be notified that the certification has been completed (page 123).

***§5.711(h)(4)*** states that residents are encouraged to comment on the information provided by an owner/PHA and to submit comments directly to the HUD Field Office. It also states that residents are encouraged to notify the Field Office if there is a false certification that all Life-Threatening and Severe deficiencies are corrected (page 182). NLIHC recommended that Field Office personnel must acknowledge receipt of resident comments in writing within seven calendar days and provide substantive responses within 14 calendar days. HUD did not respond to this specific recommendation.

## **§5.711(i) Administrative Review of Properties** (page 183)

This section requires additional administrative review of a property that receives an NSPIRE score of 30 points or less, or that receives two successive scores less than 60. A property with two successive NSPIRE scores less than 60 “may” be referred to HUD’s Departmental Enforcement Center (DEC) for evaluation. A property with a score of 30 points or less will automatically be referred to DEC.

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

HUD will notify an owner/PHA when a property is referred to DEC.

NLIHC recommended 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 or has received two consecutive scores less than 60 and what that implies.

HUD replied that the forthcoming Administrative notice will require an owner/PHA to provide a notification of referral to DEC to residents and certify it has done so by reasonable means such as leaving a notice under each door, posting in a mail room, and on each floor, which is consistent with practice outlined in [Housing Notice 2018-08](#). HUD also declares that it is not planning any additional notice or communication to residents or the public about referrals to DEC...” but the public has the right to submit a Freedom of Information Act request (page 125). Experience demonstrates that FOIA requests take far too long to be useful, and often do not provide the requested material or material so redacted that it is useless. If the language on page 125 will be actually be in the forthcoming Administrative notice, it will be welcome. However, a few lines in the final rule at §5.711(i)(1) would help residents and advocates avoid having to juggle resident-related provisions between the final rule and supplemental notices.

### ***§5.711(i)(2) Evaluation of the Property***

During the DEC’s evaluation period, DEC will perform an analysis of the property, which “may” include input from tenants (page 183). NLIHC recommended “may” be replaced with “shall.” HUD declines to use the word “shall,” stating “HUD believes that the addition of tenant participation into the REAC inspection process via the NSPIRE final rule gives residents a substantive feedback apparatus and that additional tenant participation during a DEC referral should be at the discretion of the DEC after consultation with program offices. Additional administrative procedures will be provided in a subordinate notice. This notice will include guidance on supporting and relevant information and documentation and the development of a compliance plan (page 125).

## **Response to Question #15 in the Proposed Rule: How Can Tenants Help REAC Identify Poor Performing Properties?**

NLIHC's complete response to Question #15 is repeated here.

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.

As noted above in this NLIHC summary, §5.711(h)(3) does require an owner or PHA to post a notice about the availability of the inspection report, and too indirectly the other items such as certifications and appeals by reference to "the materials described in this section" (page 182).

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.

HUD did not offer a response.

- 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.

HUD response: “HUD agrees that professional inspectors are the most reliable source for assessing property conditions but believes tenant involvement in NSPIRE and feedback about the condition of properties is also very meaningful and should be taken seriously. HUD will continue to evaluate how the NSPIRE inspection process design best results in independent assessments of property condition while balancing a desire for more tenant feedback about property condition. HUD does not consider these two objectives mutually exclusive.” (page 86). Again, NLIHC notes that HUD has at least two years to consider this recommendation; the absence of a provision calls into question HUD’s sincerity when it comes to genuine and full resident involvement.

- Adding five units to REAC’s random selection if requested by a tenant organization.

The final rule at §5.705(f) reads: “HUD will establish, through notice, a procedure for tenants to recommend to HUD particular units which HUD may choose to inspect either during or separate from its standard inspection. HUD will evaluate the condition of these units and issue a report on findings, but will not be included in the official score...” (page 174).

HUD response: “HUD takes into account the potential administrative burden on both the owners and the residents and plans to add additional units to the NSPIRE inspection if they are requested by the residents. Additional details will be provided in the Administrative notice.” (page 86)

HUD response: “HUD sees tenant involvement in the inspection process as an additional means to improve the overall quality of HUD-assisted housing by bringing the resident’s voice to the table. HUD sees this as useful where random sampling falls short—e.g., it’s possible that a random sample could completely miss units with infestation, and where pests are active only at night. Tenant involvement also provides an opportunity for HUD to ensure that known deficiencies raised by

tenants are corrected. HUD will take into consideration the suggestions to engage Tenant Organizations, resident councils and other means to allow residents to select certain units to be included in the inspection sample, but these units will not impact the overall score, unless they were already randomly selected as part of the REAC inspection sample.” (page 87)

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.

HUD responded that HUD and/or Performance-Based Contract Administrators already review work order processes (page 89).

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.

HUD responded, “HUD will take into consideration the suggestion to include evaluation of local code violations” (page 89). NLIHC sees this as a non-answer; HUD had two years to consider the suggestion.

In addition to the HUD responses above that declare, “HUD will continue to evaluate...,” and “HUD will take into consideration...” HUD’s responses to all suggestions (not just NLIHC’s) regarding “How Tenants Can Help REAC Identify Poor Performing Properties” boiled down to “HUD’s process will be addressed in a subordinate notice specifically on tenant engagement,” and “HUD will continue to evaluate,” or “HUD will take into consideration,” etc. (pages 86-90) Miscellaneous tenant-engagement quotes from pages 86-90 include:

- “HUD will also continue to explore tenant participation in an accessible manner to align feedback with potential deficiencies.” (page 86)
- “HUD will look at ways to strengthen the existing operational protocols while exploring ways to expand tenant engagement in the NSPIRE process.” (page 87)
- “HUD will take this feedback into consideration as it seeks to improve communication with HUD-assisted residents.” (page 89)
- “HUD will nonetheless take this feedback into consideration as it looks at ways to reinforce tenant education.” (page 90)
- “Additional information about resident opportunities to provide feedback will be provided in the NSPIRE Administrative notice and in a subsequent notice once HUD considers public and stakeholder burden.” (page 90)

In other words, after two years HUD still has no apparent means to truly and fully engage residents in the process that affects the quality of their homes, especially as it affects health and safety.