

August 01, 2022

Office of the General Counsel, Regulations Division
Department of Housing and Urban Development
451 7th Street SW
Room 10276
Washington, DC 20410-0500
Submitted electronically through www.regulations.gov

Re: Docket Nos. 6086-N-02 Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols

The following comments are submitted on behalf of the National Housing Law Project (NHLP) and the undersigned organizations regarding the Department of Housing and Urban Development's request for comments on the standards and protocols for the National Standards for the Physical Inspection of Real Estate (NSPIRE).

The National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide. Also, NHLP hosts the national Housing Justice Network (HJN), a vast field network of over 1,500 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

Thank you for your continued engagement of the public on the NSPIRE standards and inspection processes, and for providing multiple methods for the public to submit feedback. Further, we are pleased to see the swift integration of the carbon monoxide detectors and alarms into the NSPIRE standards, and other technology into the inspection process. However, we continue to be concerned HUD has not incorporated environmental considerations into the NSPIRE inspection protocol.

As noted in previous comments, it is important for HUD to engage the public not only on the standards and the inspection processes, but also on HUD's enforcement processes. While having a physical inspection process that consistently and accurately assesses the conditions of assisted properties is extremely important, it is also vital that those standards are also consistently enforced in a swift, effective, and efficient manner that minimizes the need for tenant relocation and preserves the subsidy. HUD's partners have a wealth of knowledge and insight for how to achieve this objective and HUD must engage its partners on this issue. In particular, tenants assisted by a HUD housing program should be an active part of this process.

As discussed in detail below, we recommend that HUD:

- Integrate assisted tenants into its oversight and enforcement processes;
- Incorporate the HOTMA life-threatening defects and the NSPIRE Life threatening defects lists into its regulations;

- Harmonize the defects listed as “life-threatening” on the HOTMA and NSPIRE lists;
- Establish condition standards for the presence of radon in public and assisted housing;
- Create and include unit temperature minimum and maximum defects on the life-threatening defects lists, and;
- Incorporate into its physical inspection protocol an assessment of environmental risks, specifically, the proactive identification of any air, soil, and water hazards.

By instituting these recommendations, HUD would protect tenants by ensuring units are indeed decent, safe, and sanitary as required by law. In jurisdictions where habitability standards do not meet industry standards or where other enforcement entities defer to HUD, HUD's conditions standards are often the only safeguard from truly decrepit living conditions.¹ Further, these standards should not curb families' access to housing because NSPIRE's additional standards focus on detecting and mitigating dangers to the health and well-being of assisted tenants, thereby keeping healthy housing available to tenants in need. When HUD catches defects early and requires timely, proper remediation, capital costs can be far more manageable than the major capital investments often required due to years of deferred maintenance.² *Keeping capital costs low or spread out over time is the best method for keeping units accessible and habitable to program participants.*³ And where there is a dire need for extensive rehabilitation, HUD has tools within its authority that the agency can deploy to bring properties back into compliance.⁴

Please accept the following recommendations for your consideration.

I. HUD SHOULD INCORPORATE AND HARMONIZE THE HOTMA AND THE NSPIRE LIFE-THREATENING DEFECTS INTO ITS REGULATIONS

HUD proposes to incorporate the HOTMA life-threatening list (“HOTMA LT List”) into the NSPIRE standards, but to not codify the HOTMA LT List into the voucher regulations. The proposal intends to consolidate condition standards into minimum locations throughout the United States Code. However, the revisions to 24 C.F.R. § 5.701(b) direct readers to review the supplemental, program-specific standards listed in the programs' regulations.⁵ Further, those program-specific standards govern when they conflict with the standards in 24 C.F.R. part 5.⁶ In this way, HUD attempts to harmonize its goal of consolidation with the need to create persistent and consistent standards that center the varying needs of each program. Including the HOTMA

¹ See CHANGE LAB SOLUTIONS, PROACTIVE RENTAL INSPECTIONS FOR HEALTHY HOMES (Oct. 4, 2021), <https://www.changelabsolutions.org/story/proactive-rental-inspections-healthy-homes>.

² AMY ACKERMAN ET AL., CHANGE LAB SOLUTIONS, A GUIDE TO PROACTIVE RENTAL INSPECTION PROGRAMS 5 (Feb. 14, 2014) (citing SUSAN KAY CUMMINS, MD, MPH, FAAP & RICHARD JOSEPH JACKSON, MD, MPH, THE BUILT ENVIRONMENT AND CHILDREN'S HEALTH 6 (2001), <https://www.cdc.gov/healthyplaces/articles/the%20built%20environment%20and%20children%20health.pdf>).

³ *Id.*

⁴ Letter from Bridgett Simmons, Staff Attorney, Nat'l Hous. Law Project, to Ethan Handelman, Deputy Assistant Secretary for the Office of Multifamily Housing Programs, U.S. Dep't of Hous. and Urban Dev. (Apr. 20, 2021), <https://drive.google.com/file/d/1-xQgfcMYF6dVBX0xRw2jfYW1r7ClyKa/view?usp=sharing>.

⁵ Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 86 Fed. Reg. 2582, 2595 (to be codified in 24 C.F.R. § 5.701(b)) (noting that supplemental program-specific regulations govern when it conflicts with the standards in 24 C.F.R. part 5).

⁶ *Id.*

LT List in the voucher regulations is consistent with the flexibility created by the revisions to 24 C.F.R. § 5.701(b).

HUD should codify the HOTMA LT List and the NSPIRE life-threatening deficiency list (NSPIRE LT List) in its regulations. Because life-threatening defects in housing can cause severe physical harm to assisted tenants,⁷ any proposed changes to HUD’s life-threatening defects (LT) lists should be done through the regulatory process and notice and public comment, particularly when there is a proposal to remove defects from those lists, because of the risk of serious harm (loss of life, permanent injury, debilitation, long-term hospitalization, etc.). Therefore, we believe the best method is to incorporate the LT Lists into the applicable regulations.⁸

Further, the HOTMA LT List permits the Secretary to add to the list defects “...subsequently identified by HUD as life threatening in a notice published in the Federal Register.”⁹ Thus, including the HOTMA LT List into the Voucher regulations will not interfere with HUD’s ability to quickly add additional deficiencies to the HOTMA LT List. The Secretary could be given the same flexibility to add to the NSPIRE LT List.

Along with codifying the LT Lists into the regulations, HUD should harmonize the LT Lists. Currently, some of the defects on the HOTMA LT List are not included in the NSPIRE LT List. For example, deteriorated lead-based paint is considered a life threatening defect on the HOTMA LT List,¹⁰ but is not included on the NSPIRE LT List.¹¹ Additionally, HUD should harmonize the inspection standards for each housing element.¹² Harmonization should focus on providing the most inclusive and protective housing standards for HUD households.

⁷ For the Voucher program, HUD defines life-threatening defects as those defects listed as such in the Housing Opportunity Through Modernization Act of 2016: Implementation of Various Section 8 Voucher Provisions Federal Register notice. 82 Fed. Reg. 5458, 5459-60 (Jan. 18, 2017). NSPIRE proposes defining life-threatening defects as those “...deficiencies (hazards) that present a direct threat to life or well-being, i.e., that are likely to cause severe injury or reduction in physical or mental ability.” *NSPIRE Life-Threatening Deficiencies*, HUD.GOV, (Apr. 02, 2021), https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/severe-risks.

⁸ The Administrative Procedures Act (APA) requires federal agencies to use formal rulemaking procedures for the promulgation of all substantive rules. 5 U.S.C. § 553(d). However, agencies can choose to use formal rulemaking procedures for the promulgation of general statements of policy, or internal agency rules. 5 U.S.C. § 553(d) (exempting the following from rulemaking procedures: “(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule”).

⁹ 82 Fed. Reg. 5460.

¹⁰ *Id.*; Housing Opportunity Through Modernization Act of 2016 (HOTMA) - Housing Quality Standards (HQS) Implementation Guidance, HUD Notice PIH 2017-20 5 (Oct. 27, 2017), <https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2017-20.pdf> [hereinafter “*HUD Notice PIH 2017-20*”].

¹¹ *NSPIRE Life-Threatening Deficiencies*, HUD.GOV, (Apr. 02, 2021), https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/severe-risks; *Potential Lead-Based Paint Hazards – Visual Assessment*, HUD.GOV (Jun. 23, 2022) (labeling the defect as either “moderate” or “Severe Non-Life Threatening”), <https://www.hud.gov/sites/dfiles/PIH/documents/NSPIRE-Standards-v2.2-Potential-LBP-Hazards-Visual-Assessment.pdf>.

¹² Compare 82 Fed. Reg. 5460 and HUD Notice PIH 2017-20 with *Lead-Based Paint Hazards – Visual Assessment*, HUD.gov (Jun. 23, 2022), <https://www.hud.gov/sites/dfiles/PIH/documents/NSPIRE-Standards-v2.2-Potential-LBP-Hazards-Visual-Assessment.pdf>.

II. RECOMMENDATIONS FOR AMENDING THE NSPIRE STANDARDS

HUD requests comments on how to improve specific conditions standards. HUD must incorporate assessments of environmental risks and the identification of hazardous conditions into its inspection processes. Additionally, HUD should include a deficiency for the presence of radon. As discussed *supra*, we support HUD’s proposal to harmonize the life-threatening defects (LT) lists and the “potential lead-based paint hazards” standards.

HUD must incorporate into its physical inspection protocol an assessment of environmental risks and the identification of any air, soil, and water hazards. The Biden Administration has advanced a national commitment to environmental justice through the Justice40 Initiative’s whole of government approach. Under this initiative, all federal programs, including HUD’s housing programs, will contribute 40% of current and future investments to benefit disadvantaged communities overburdened by pollution.¹³ However, HUD’s current inspection and oversight protocols fail to address families’ exposure to environmental toxins when residing in HUD assisted housing. The NSPIRE protocol remains silent on almost all of the issues raised in a report by HUD’s Office of Inspector General (HUD OIG) and the *Poisonous Homes* report by Earthjustice and the Shriver Center.¹⁴ HUD should adopt the *Haberle Letter* recommendations for assessing environmental toxins in the soil, water, and air.¹⁵

HUD should add high levels of radon as a deficiency, and where radon levels are at or above 4 picocuries per liter (pCi/L) the defect should be considered life-threatening. Radon is a radioactive gas that forms when radioactive metals break down in the surrounding environment.¹⁶ After cigarette smoking, radon is the second leading cause of lung cancer and is

¹³ *Justice40 A Whole Government Initiative*, THE WHITE HOUSE, <https://www.whitehouse.gov/environmentaljustice/justice40/#:~:text=What%20is%20the%20Justice40%20Initiative,underserved%2C%20and%20overburdened%20by%20pollution> (last visited Jul 21, 2022).

¹⁴ OFFICE OF INSPECTOR GEN., U.S. DEP’T OF HOUSING & URBAN DEV., AUDIT REP. NO. 2020-CH-004, HUD’S OVERSIGHT OF LEAD IN THE WATER OF HOUSING CHOICE VOUCHER AND PUBLIC HOUSING PROGRAM UNITS (Aug. 21, 2020) (noting the agency depends on the Office of Public and Indian Housing, Office of Multifamily, and the Office of Community Planning and Development to align its policies with the agency’s environmental regulations) [hereinafter “*OIG Radon Report*”]; EARTHJUSTICE & SHRIVER CENTER ON POVERTY LAW, POISONOUS HOMES: THE FIGHT FOR ENVIRONMENTAL JUSTICE IN FEDERALLY ASSISTED HOUSING (2020), <https://www.povertylaw.org/report/poisonoushomes/>; see also Letter from Megan Haberle *et al.*, Senior Policy Counsel, NAACP Legal Def. & Educational Fund, to Adrienne Todman, Deputy Secretary, U.S. Dep’t of Hous. and Urban Dev. 5-8 (June 30, 2021), <https://www.prrac.org/letter-re-advancing-health-and-housing-justice-together/> [hereinafter “*Haberle Letter*”].

¹⁵ Haberle Letter, *supra* note 14, at 5-8.

¹⁶ *Radon and Your Health*, CTR FOR DISEASE CONTROL AND PREVENTION (Jan. 3, 2022), <https://www.cdc.gov/nceh/features/protect-home-radon/index.html#:~:text=Radon%20is%20the%20second%20leading,risk%20of%20high%20radon%20exposure;OIG Radon Report, supra note 14, at 3.>

responsible for more than 20,000 lung cancer deaths a year.¹⁷ And as the climate continues to warm, radon will increasingly become a problem.¹⁸

The Environmental Protection Agency (EPA) recommends remediation when the presence of radon measures 4 pCi/L, although all levels of radon pose a risk to tenants' health.¹⁹ Currently, HUD does not have a condition standard for high levels of radon, despite previously expressing an interest in incorporating radon testing into its inspection protocol.²⁰ The agency also lacks a department-wide radon policy.²¹ Further, the agency is well-versed in the dangers of radon exposure²² and has been long-tasked with protecting assisted tenants from radon.²³ HUD's current method for detecting and mitigating radon is insufficient, incompatible with industry standards, and conflicts with the national goal of providing indoor air "...as free of radon as the ambient air outside of buildings."²⁴ While progress is being made through environmental reviews and the Radon Testing and Mitigation Demonstration Program, those efforts are not enough to protect families from the present dangers of radon. As noted in the HUD's Inspector General's report, there are "proven, cost-effective techniques" for controlling and managing radon levels.²⁵ Although HUD wants to signal a change in its business approach,²⁶ NSPIRE's lack of radon standards is a continuation of HUD's current practice that unnecessarily places tenant households

¹⁷ *Radon and Your Health*, CTR FOR DISEASE CONTROL AND PREVENTION (Jan. 3, 2022),

[https://www.epa.gov/radon/health-risk-radon](https://www.cdc.gov/nceh/features/protect-home-radon/index.html#:~:text=Radon%20is%20the%20second%20leading,risk%20of%20high%20radon%20exposure;Health Risk of Radon, EPA.GOV (May 10, 2022), <a href=).

¹⁸ Chris Baraniuk, *How Climate Change is Putting Millions at Risk of Radon Exposure*, PBS NEWSHOUR (May 18, 2022, 10:38 AM), <https://www.pbs.org/newshour/science/how-climate-change-is-putting-millions-at-risk-of-radon-exposure>.

¹⁹ *Health Risk of Radon*, EPA.GOV (May 10, 2022), <https://www.epa.gov/radon/health-risk-radon>; OIG Radon Report, *supra* note 14, at 4.

²⁰ Radon Information for PIH Programs, PIH 2013-06 2 (Apr. 13, 2013) (noting that "[t]he Department will continue to examine ways that radon testing and mitigation may be incorporated into HUD-assisted housing program requirements."), <https://www.hud.gov/sites/documents/PIH2013-06.PDF>.

²¹ OIG Radon Report, *supra* note 14, 11-12 (noting the agency depends on the Office of Public and Indian Housing, Office of Multifamily and the Office of Community Planning and Development to align its policies with the agency's environmental regulations).

²² Letter from Senator Ron Wyden, U.S. Senator, & Senator Jeffery A. Merkley, U.S. Senator, United States Congress, to Secretary Dr. Ben Carson, Secretary, U.S. Dep't of Hous. and Urban Dev. (Dec. 5, 2019), https://www.wyden.senate.gov/imo/media/doc/4400_001.pdf; Letter from Representative James P. McGovern *et al.*, U.S. Representative, United States Congress to Secretary Dr. Ben Carson, Secretary, U.S. Dep't of Hous. and Urban Dev. (Feb. 13, 2020), <https://www.warren.senate.gov/imo/media/doc/radon%20letter.pdf>; OIG Radon Report, *supra* note 14; *About Radon*, HUD.GOV, https://www.hud.gov/program_offices/healthy_homes/healthyhomes/radon (last visited Jul. 21, 2022); *Radon*, HUD EXCHANGE, <https://www.hudexchange.info/programs/radon/> (last visited Jul. 21, 2022); Brad Schmidt, *Cancer Cloud: Government Ignores Radon Risk in Public Housing*, THE OREGONIAN (Nov. 22, 2019), <https://projects.oregonlive.com/radon/> (reporting due to a lack of proper testing, "...more than 400,000 public housing residents live in areas at highest risk for indoor exposure to radon").

²³ Stewart B. McKinney Homeless Assistance Act, Pub. L. No. 100-628, § 1091, 1102 Stat. 3224, 3283-85 (1988); 24 C.F.R. pts. 50, 58; OIG Radon Report, *supra* note 14, at 5, 7-9.

²⁴ OIG Radon Report, *supra* note 14, 4, 11-12 (noting the use of environmental reviews for radon detection and remediation happens too infrequently to protect assisted tenants and does not meet the industry standard of testing every two years). The only way to detect high levels of radon is through testing; the EPA recommends testing every two years and remediation when radon is 4 pCi/L of air. OIG Radon Report, *supra* note 14, at executive summary, 3.

²⁵ OIG Radon Report, *supra* note 14, 3.

²⁶ 86 Fed. Reg. 2582, 2591 (Jan. 13, 2021), <https://www.federalregister.gov/documents/2021/01/13/2021-00098/economic-growth-regulatory-relief-and-consumer-protection-act-implementation-of-national-standards>.

at great risk of harm. HUD must act swiftly and test public and assisted housing for radon and create a life-threatening defect for the presence of high levels of radon.

HUD should add unit temperature minimum and maximum deficiencies to the LT lists. HUD proposes setting a unit minimum temperature, indicating the agency understands the dangers of an under-heated unit.²⁷ A unit that is too hot presents the same dangers as a unit that is too cold.²⁸ On average, annually 600 people in the U.S. die due to extreme heat.²⁹ Overheating can also exacerbate underlying health concerns.³⁰ Heat exhaustion "...can lead to heatstroke, a life-threatening condition that occurs when your core body temperature reaches 104 F or higher."³¹ Over-heating not only impacts one's physical health but one's mental health.³² Given the climate crisis and the related rising temperatures, including in parts of the country who have in the past rarely experienced heat waves, HUD should establish a unit temperature minimum and maximum. HUD should also consider a temperature defect life-threatening because of the serious threat to human health when a unit has insufficient heating and cooling.

III. RECOMMENDATIONS BASED ON HUD'S SPECIFIC QUESTIONS

Question 1. HUD proposes amending the standards for "mold-like substances" to include a deficiency related to the risk of mold.³³ We are supportive of HUD incorporating technology into the inspection protocol for mold-like substances. ***HUD should adopt the National Alliance of HUD Tenants recommendations for environmental testing for suspected hazards.***³⁴ Where inspectors have reasonable cause to suspect that an environmental hazard, such as mold, might

²⁷ 87 Fed. Reg. 36429.

²⁸ *Climate Change Indicators: Heat-Related Deaths*, EPA.GOV (Oct. 22, 2021), <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-related-deaths>; Rachel Hinton & Analisa Trofimuk, *City Agencies Fail To Intervene Before Three Older Women Die in Uncooled Apartment Building*, BETTERGOV.ORG (Jun 30, 2022, 6:00 AM), https://www.bettergov.org/news/city-agencies-fail-to-intervene-before-three-older-women-die-in-uncooled-apartment-building/?eType=EmailBlastContent&eId=0cce5f6b-5bbd-4c3a-827f-250751c49b84&fbclid=IwAR2xpavsKcMtYod0N11_QBgm00jgEZjZ70-wqEJuWdqzvzEPaFIUUrFYcE.250751c49b84&fbclid=IwAR2xpavsKcMtYod0N11_QBgm00jgEZjZ70-wqEJuWdqzvzEPaFIUUrFYcE.

²⁹ Suzy Khimm & Joshua Eaton, *As Deadly Heat Waves Spread, Access to Air Conditioning Becomes a Lifesaving Question*, NBC NEWS (Aug. 20, 2021, 1:31 AM), <https://www.nbcnews.com/news/us-news/deadly-heat-waves-spread-access-air-conditioning-becomes-lifesaving-question-n1277213> (updated Aug. 20, 2021, 8:10 AM). NBC News analysis of data in Oregon found that over half of those who died from hyperthermia were over 65 years of age. *Id.*; see also, *Climate Change Indicators: Heat-Related Deaths*, EPA.GOV (Oct. 22, 2021), <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-related-deaths>.

³⁰ *Common Medical Conditions Aggravated by Sun and Heat*, CEDARS-SINAI (Aug 13, 2018), <https://www.cedars-sinai.org/blog/summer-health-risks.html>; Aaron Bernstein, MD, MPH, *Extreme Heat: Staying Safe If You Have Health Issues*, HARVARD HEALTH PUBLISHING (August 6, 2021), <https://www.health.harvard.edu/blog/extreme-heat-staying-safe-if-you-have-health-issues-202108062563>.

³¹ Heat Exhaustion, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/heat-exhaustion/symptoms-causes/syc-20373250#:~:text=Untreated%2C%20heat%20exhaustion%20can%20lead,that%20can%20result%20in%20death>, (last visited Jun. 21, 2022).

³² Nora Eckert, *How High Heat Can Impact Mental Health*, NPR (Sep. 04, 2019, 7:18 AM), <https://www.npr.org/2019/09/04/757034136/how-high-heat-can-impact-mental-health>.

³³ 87 Fed. Reg. 36428.

³⁴ Comments from Nat'l Alliance of HUD Tenants on 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) to U.S. Dep't of Hous. and Urban Dev. 2-3 (Mar.15, 2021), <https://www.regulations.gov/comment/HUD-2021-0005-0067> [hereinafter "NAHT Comments"].

exist at the property, inspectors should note in the inspection report the need to test for the presence of environmental hazards.³⁵ HUD should then quickly test for the suspected hazards. And the housing provider must be required to remediate any confirmed hazards on the property.

Question 2. HUD proposes collecting information from property owners and management prior to or as part of the inspection process. HUD proposes requiring owners and agents to submit “any current local water alerts for the jurisdiction...and the name of the public water supply system that serves the property.”³⁶ The proposal intends to provide additional data for assessing the safeness of publicly provided water.³⁷

Inspectors should sample the drinking water during the inspection process.³⁸ Collecting information about local water alerts alone is not adequate. The absence of a local water alert does not mean that the water in an individual home is “safe” or “potable.” And a local water alert may not capture all the concerns related to the drinking water. HUD restates its intention to include “safe” in the water standards described in 24 CFR § 5.703(d). HUD should define “safe” as having “reasonable certainty that no harm will result,” as it has been defined in other federal statutes.³⁹ “Safe” should be further defined to mean that “there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the conditions of its intended use.”⁴⁰ Safe drinking water is particularly important to protect those at greatest risk of waterborne diseases and contamination, such as young children, pregnant women because of the risk to their fetuses, those who are debilitated and elderly, and those living in unsanitary conditions.⁴¹

Additionally, HUD should extend the proposal to require PHAs and private owners to submit ALL notices and reports regarding the habitability and safeness of public housing and HUD-assisted properties. HUD should mandate owners and agents to submit state and local code enforcement reports and records as part of the physical inspection process.⁴² The requirement should extend beyond water safety and be applicable to all elements of the property. HUD is already partially doing this in the NSPIRE demonstration by requiring participants to submit notices of local code violations.⁴³ HUD must require all PHAs and owners to submit state and local code enforcement reports, in their entirety, and any letters or other communication received by the PHA or owner from state and local code enforcement entities. As described in a previous

³⁵ *Id.*

³⁶ 87 Fed. Reg. 36428-29.

³⁷ *Id.*

³⁸ Comments from Nat’l Hous. Law Project & EarthJustice on 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) to U.S. Dep’t of Hous. and Urban Dev. 2, 4, 12-19 (Mar.15,2021), <https://www.regulations.gov/comment/HUD-2021-0005-0072> [hereinafter “NHLP Earthjustice Comments”].

³⁹ *See, e.g.*, 21 U.S.C. § 346a.

⁴⁰ *See* 21 C.F.R. § 170.3(i).

⁴¹ WHO, *Guidelines for Drinking-Water Quality* 1–2 (4th ed. 2011).

⁴² As used, the term “code enforcement” includes all inspections of the property to assess compliance with and enforcement of state and local physical condition and environmental standards.

⁴³ Notice of Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, 84 Fed. Reg. 43536, 43539 (Aug. 21, 2019), <https://www.federalregister.gov/documents/2019/08/21/2019-17910/notice-of-demonstration-to-assess-the-national-standards-for-the-physical-inspection-of-real-estate>.

comment letter,⁴⁴ including information from state and local code enforcement entities would ensure HUD has a fuller understanding of state and local impressions of the property and would enable HUD's inspection protocols to evolve. In communities without agencies engaged in code enforcement, HUD must develop a process for accepting and utilizing complaints from assisted tenants, local legal aid offices, public health officers, or other entities who have observed poor housing conditions or violations. HUD must codify this practice into the regulations to ensure the practice endures long-term.

Question 4. HUD proposes setting a unit minimum temperature.⁴⁵ As discussed *supra*, ***HUD should establish a unit temperature minimum and maximum.*** According to GroundWork USA, previously redlined communities, which is often where public and assisted housing tenants reside, are the most vulnerable to flooding and heat waves due to the lack of green spaces and municipal investment.⁴⁶ In providing decent, safe, and sanitary housing, HUD must ensure that a lack of heating and cooling does not force assisted tenants from their units and that they can safely remain throughout the day in their homes. Remaining in the unit is especially necessary for families with children, the elderly, or families with a member experiencing a disability.⁴⁷ Access to proper in-unit cooling systems is a necessity to protect vulnerable populations.⁴⁸ As such, HUD should amend the NSPIRE air conditioning defect to include a unit maximum temperature along with the unit minimum temperature standard.⁴⁹

Question 11. HUD proposes extending the cure period for “severe non-life threatening” defects,⁵⁰ and requests comment on where HUD should handle extending the cure period— in the inspection standards or extend the periods administratively. HUD will continue to require housing providers to remove the “health and safety” risk within twenty-four (24) hours of the inspection.⁵¹ HUD describes “health and safety” in amended 24 C.F.R. § 5.703(e) as “carbon monoxide, mold, flammable materials or other fire hazards, electrical hazards, garbage and debris, handrail hazards, infestation, and lead-based paint,”⁵² but it notes the list is not

⁴⁴ NHLP Earthjustice Comments, *supra* note 38, 2, 4, 12-19.

⁴⁵ 87 Fed. Reg. 36429.

⁴⁶ *Climate Justice for a Hotter, Wetter, Segregated World: Introducing Groundwork USA's Climate Safe Neighborhoods Partnership*, GROUNDWORK USA (Nov. 30, 2018), <https://groundworkusa.org/climate-justice-for-a-hotter-wetter-segregated-world-introducing-groundwork-usas-climate-safe-neighborhoods-partnership/>; see also, Natural Resources Defense Council, *We Must Invest in Climate Ready Affordable Housing Now*, NRDC (Jun. 30, 2020), <https://www.nrdc.org/experts/bettina-bergoo/we-must-invest-climate-ready-affordable-housing-now> (citing work of Groundwork USA); see also, Chris Hayes, *Heat is About to Restructure American Life in Ways We can Only Begin to Imagine*, MSNBC (July 21, 2021, 4:48 AM), <https://www.msnbc.com/msnbc/heat-about-restructure-american-life-ways-we-can-only-begin-n1274567>.

⁴⁷ Suzy Khimm & Joshua Eaton, *As Deadly Heat Waves Spread, Access to Air Conditioning Becomes a Lifesaving Question*, NBC NEWS (Aug. 20, 2021, 1:31 AM), <https://www.nbcnews.com/news/us-news/deadly-heat-waves-spread-access-air-conditioning-becomes-lifesaving-question-n1277213> (updated Aug. 20, 2021, 8:10 AM). NBC News analysis of data in Oregon found that over half of those who died from hyperthermia were over 65 years of age. *Id.*

⁴⁸ *Id.*; *Climate Change Indicators: Heat-Related Deaths*, EPA.GOV (Oct. 22, 2021), <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-related-deaths>.

⁴⁹ *Deficiency 3 Unit Air Conditioning System or Device is Not Operational, V2.1*, NSPIRE (Apr. 2, 2021), <https://www.hud.gov/sites/dfiles/PIH/documents/NSPIRE-Standards-v2.1-HVAC.pdf>.

⁵⁰ 87 Fed. Reg. 36429.

⁵¹ *Id.*

⁵² 86 Fed. Reg. 2595 (amending the text of 24 C.F.R. § 5.703).

exhaustive. **HUD must clearly define when a defect will be considered a risk to the health and safety of assisted tenants. And where the health and safety risk cannot be removed within twenty-hour hours, housing providers should be required to relocate the affected assisted tenant to a unit without health and safety defects or to other comparable housing until the deficiencies are addressed.** Otherwise, housing providers will not take seriously the urgency of these defects.

Where HUD grants an extension to the cure period, HUD personnel must give affected assisted tenants notice of the extended cure period. Statutory and regulatory law has consistently included the identification and remediation of poor physical conditions as an area in which active resident participation is critical.⁵³ However, HUD continues to hamper residents' ability to be a partner to HUD and housing providers by making their enforcement actions opaque to residents. Further, the lack of communication with affected residents about remediation deepens mistrust between residents, housing providers, and management. The practice also inhibits families' ability to make informed decisions about their housing, specifically, whether their housing is causing or exacerbating their health conditions. HUD must incorporate tenants into both the inspection and enforcement processes.⁵⁴ Tenant surveys are an improvement but are not enough.⁵⁵ HUD must develop a process for accepting and utilizing complaints from assisted tenants, local legal aid offices, public health officers, or other entities who have observed poor housing conditions or violations. And HUD must codify this practice into its regulations to ensure the practice endures long-term.

Question 12. HUD proposes establishing an additional deficiency category for extensive infestations. We are in support of the proposal. HUD should include rats, mice, raccoons, squirrels, snakes, other vermin, and bed bugs into the extensive infestation defect, and also note that any other pests common to the locality will be included. HUD should also create a mechanism for assisted tenants, local legal aid offices, public health officers, or other entities who have observed poor housing conditions or violations to report to HUD where there is extensive infestation at public and assisted properties. Given the increased respiratory and asthma risks associated with pest infestation, HUD should quickly inspect those properties where there is a report of an extensive infestation and obligate the owner to take appropriate and quick action to address the problem.⁵⁶

Question 13. HUD has expressed an intent "...to change its business approach."⁵⁷ To strongly signal a change in its business approach, as discussed *supra*, **HUD must incorporate tenants into**

⁵³ 12 U.S.C. § 1715z-1b(a); 24 C.F.R. §§ 964.11, 245.5.

⁵⁴ For additional recommendations for incorporating assisted tenants into HUD's oversight and enforcement processes, see NHLP Earthjustice Comments, *supra* note 38, NAHT Comments, *supra* note 34, Comments from Nat'l Low Income Hous. Coal. on 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) to U.S. Dep't of Hous. and Urban Dev. (Mar.14, 2021), <https://www.regulations.gov/comment/HUD-2021-0005-0051> [hereinafter "*NLIHC Comments*"].

⁵⁵ *NSPIRE Demonstration Resident Engagement Initiative*, HUD.GOV, https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/drei (last visited Jul. 23, 2022).

⁵⁶ The reporting mechanism can be structured similarly as recommended by the National Alliance of HUD Tenants for reporting the potential presence of environmental toxins. NAHT Comments, *supra* note 34, 2-3.

⁵⁷ 86 Fed. Reg. 2591.

its enforcement processes. For example, tenants should receive notice from HUD about the remediation timeline, with general descriptions of the work to be performed to bring the property into compliance. HUD should provide additional written notice to affected tenants with any information about changes in the remediation plan and what alternative housing options may be provided.

IV. ENFORCEMENT PROCESS RECOMMENDATIONS

Finally, HUD's enforcement processes (or the lack thereof) are what puts families at most risk, not industry-compliant standards. Unless HUD incorporates previous recommendations for improving their enforcement processes, adding new conditions standards will not mean much and will continue the current cycle of families living in housing that is not decent, safe, and sanitary.⁵⁸ HUD should engage its partners in the enforcement of the physical condition standards. While it is important that the physical inspection process consistently captures an accurate picture of the conditions of assisted properties, it is also vital that the enforcement of the physical condition standards be effective and efficient. HUD's partners, tenants in particular, have a wealth of knowledge and insight for how to achieve these goals.

In addition to previous enforcement recommendations,⁵⁹ HUD must adopt a policy of taking additional enforcement action when a property continues to be non-compliant after the given cure date. ***And where HUD has extended the cure period, HUD personnel must give affected tenants notice of the extension.*** Currently, when HUD extends the cure period, it does so without direct notification to the tenants, who may be making decisions about whether or not they can even remain at the property. This opaqueness and lack of tenant engagement ultimately undermines efforts to improve the housing and only deepens tenants' frustration and confusion. This is especially true when tenants continue to see conditions deteriorate and hear no updates from HUD.

HUD must also be transparent about how it uses its tools to bring properties back into compliance and encourage field staff to develop collaborative relationships with local and state stakeholders. ***HUD should make information available to local officials, advocates, and tenants about where a property is in the enforcement process.*** Otherwise, local officials may inadvertently act contrary to HUD's preservation goals, and tenants may leave out of the belief that no one is coming to their aid, as was done in Atlanta, Georgia at Forest Cove.⁶⁰

Further, HUD should use its existing mandates and tools to ensure long-range stewardship and stability. When a preservation sale of a troubled asset takes place, HUD should require a comprehensive physical needs assessment that evaluates both immediate and long-term capital needs and how those needs will be funded. ***HUD should closely review and evaluate that assessment, as well as the proposed remediation plan, and require that tenants have a full***

⁵⁸ For additional recommendations for incorporating assisted tenants into HUD's enforcement processes, see NHLP Earthjustice Comments, *supra* note 38, NAHT Comments, *supra* note 34, NLIHC Comments, *supra* note 54.

⁵⁹ NHLP Earthjustice Comments, *supra* note 38, NAHT Comments, *supra* note 34, NLIHC Comments, *supra* note 54.

⁶⁰ Stephanie Stokes, *At Deteriorated Forest Cove Complex, A 50-Year History of Neglect*, WABE (May 2, 2022), <https://www.wabe.org/at-deteriorated-forest-cove-complex-a-50-year-history-of-neglect/>.

opportunity to be consulted about both the assessment and the proposed remediation plan, similar to what is required under the Mark to Market program. HUD should also closely review the qualifications and track record of preservation purchasers to ensure they have the capacity to execute the transaction. These steps are absolutely vital to ensure that scarce federal assistance is directed to the current and long-term needs of the property for the benefit of tenants, in order to avoid any unjust enrichment of sellers.

Thank you for your consideration of our comments and recommendations. We look forward to working with HUD and are happy to further discuss our suggestions. Please contact Bridgett Simmons (bsimmons@nhlp.org) or Kate Walz (kwalz@nhlp) should you wish to clarify our position on these important issues.

Best regards,

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