

October 18, 2019

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

Re: Docket No. FR-6160-N-01: “Notice of Demonstration to Assess the 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) regarding the Department of Housing and Urban Development’s Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols (Docket No. FR-6160-N-01).

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. Through policy advocacy and litigation, NHLP has contributed to many critically important changes to federal housing policy and programs that have resulted in increased housing opportunities and improved housing conditions for low-income people.

I. Background

HUD expressed a need for a new physical inspection model that is “well-aligned to the livability and the residential use” of the assisted housing.¹ HUD noted its current inspection model relied heavily on individual judgment, did not incorporate technology advances, and did not place an adequate amount of focus on the condition of living units.² Additionally, the current physical inspection process does not include resident engagement, despite statutory and regulatory law recognizing the importance of resident participation in the operation of assisted-properties, in particular, the proper maintenance of the property.³

Based on HUD’s review of its current physical inspection process, HUD developed the National Standards for the Physical Inspection of Real Estate (NSPIRE) model. On August 21, 2019, the Department of Housing and Urban Development (HUD) published its Notice of Demonstration to Assess NSPIRE and Associated Protocols in the Federal Register. The demonstration will test the NSPIRE model, with the intention of the model replacing the current physical inspection process. Through

¹ 84 Fed. Reg 43,536, 43538 (Aug. 21, 2019).

² 84 Fed. Reg 43,536, 43538 (Aug. 21, 2019).

³ 12 U.S.C. § 1715z-1b(a) (2018); 24 C.F.R. §§ 964.11, 245.5 (2019).

NSPIRE, HUD hopes to create a physical inspection process that focuses on health and safety (H&S) deficiencies over function and appearance deficiencies; that increases public housing agencies, owners, and agents' (POAs) proactive response to deficiencies, and; that captures an accurate picture of properties' physical conditions. **In order to achieve these goals, HUD must (1) add resident participation requirements to the demonstration process and the NSPIRE model by including notice to tenants of the property's participation in the demonstration; notice to residents of upcoming physical inspections; collecting feedback from residents about the NSPIRE model, and; including tenant surveys as part of the NSPIRE model, and (2) address the lack of HUD oversight in the current inspection process by strengthening HUD's role in overseeing housing conditions in the NSPIRE model.** Our comments focus on revisions to the demonstration and model that will address these two key concerns.

II. Lack of Resident Participation

NOTICE TO RESIDENTS

Active resident participation in the operation of HUD-subsidized properties is essential to the success of assisted properties.⁴ And yet, HUD has not indicated how it will inform and engage residents about a property's participation in the NSPIRE demonstration. **HUD should require that written notice be given to residents living in participating properties, as well as continuing to require POAs to give residents notice of an upcoming physical inspections and access to inspection reports.**

Through the NSPIRE model, HUD seeks to create a physical inspection process that better identifies substandard properties. Residents are key to ensuring NSPIRE efficiently and accurately identifies serious deficiencies at properties. A property's participation in the NSPIRE demonstration will affect the operations and suitability of the property, prompting the need to engage residents about the change.⁵ Statutory and regulatory law has consistently included the identification of poor physical conditions and maintenance concerns as an area in which active resident participation is critical.⁶ For HUD's resident participation regulations to be meaningful,⁷ POAs must inform residents of the property's participation in the NSPIRE demonstration. Furthermore, residents are impacted the most by the change in how the property is inspected. The timely detection of deficiencies, in particular, health and safety (H&S) deficiencies, dramatically impacts the health and the quality of life of residents. **As such, HUD should require POAs to give each resident written notice of the building's participation in the NSPIRE demonstration.**

Additionally, the demonstration notice does not indicate if POAs will continue to be required to provide residents prior notice of physical inspections, nor does the notice provide residents access to NSPIRE physical inspection documents. The current physical inspection process requires POAs to give residents notice of upcoming physical inspections.⁸ Also, residents have a right to review physical inspection

⁴ 24 C.F.R. § 964.11 (2019) (promoting active resident participation in all aspects of the operation of Public Housing); 24 C.F.R. § 245.5 (2019) (recognizing the importance and benefit of residents participation in the creation and operation of suitable living environment, including the good physical condition of and proper maintenance of the property); HUD, Notice H 2012-21 (A) (Oct. 17, 2012) (stating "tenant participation is an important element to maintaining sustainable [properties] and communities").

⁵ 24 C.F.R. §§ 964.135(b)-(c), 245.100 (2019)

⁶ 24 C.F.R. §§ 964.11, 245.5 (2019).

⁷ 24 C.F.R. §§ 964.11, 245.11 (2019).

⁸ 24 C.F.R. § 200.857(g) (2019).

reports and all related documents.⁹ HUD included these measures to ensure that there are sufficient opportunities for residents to participate in seeing that all necessary repairs are made in a timely, efficient and comprehensive manner.¹⁰ **As part of the NSPIRE model and demonstration, HUD should continue to require POAs to inform residents of upcoming physical inspections and to make physical inspection documents available for residents' review.**¹¹

CONSULTING RESIDENTS AND THE PUBLIC AS PART OF THE NSPIRE DEMONSTRATION

HUD states it is seeking feedback on the NSPIRE demonstration from a “diverse, representative group of stakeholders.”¹² However, HUD has only included in the demonstration engagement of HUD officials and POAs. Congress has recognized “the importance and benefits of cooperation and participation of residents in creating a suitable living environment in...housing [properties]....”¹³ HUD plans to seek feedback from HUD officials and POAs about the NSPIRE model through focus groups; however, the NSPIRE demonstration does not include formalized engagement of residents or the public. And while HUD has provided an email address where comments from residents and the public can be sent, HUD should formalize the engagement of residents and the public into the demonstration's structure.

As HUD assesses the NSPIRE model, HUD should meet with residents and the public. Residents are the most important stakeholder. Residents will be familiar with the conditions of the property and will call attention to conditions not currently captured by the NSPIRE model.

HUD should also engage the public about the NSPIRE model, in particular, public health advocates. Just as HUD has worked in a cross-sectional manner with its healthy housing initiatives, HUD should also work in a cross-sectional manner in its assessment of the NSPIRE model. HUD should consult public health organizations researching and/or working on initiatives focusing on the overlap of housing and health.

HUD should engage residents and the public about all aspects of the NSPIRE model, but specifically:

1. The categorization of health and safety (H&S) and exigent health and safety (EH&S) deficiencies;¹⁴
2. How to better address the pervasiveness of deficiencies;¹⁵
3. The accuracy of established standards;¹⁶
4. The method for scoring properties; and
5. Other property characteristics HUD should consider in its inspection and scoring protocols.

HUD should provide tenants and advocates with an opportunity to give feedback about the NSPIRE model through the use of focus groups, as well as hosting listening sessions at participating properties. **Just as HUD will seek feedback from property owners in a formalized manner, as part of the**

⁹ 24 C.F.R. § 200.857(g)(2)-(4) (2019).

¹⁰ 65 Fed. Reg. 77,229, 77,232 (Dec. 08, 2000).

¹¹ 24 C.F.R. § 200.857(g) (2019).

¹² 84 Fed. Reg. 43,536, 43,538 (Aug. 21, 2019).

¹³ 12 U.S.C. § 1715z-1b(a) (2018); 24 C.F.R. §§ 245.5, 964.1(2019).

¹⁴ 84 Fed. Reg. 43,536, 43,540 (Aug. 21, 2019).

¹⁵ 84 Fed. Reg. 43,536, 43,540 (Aug. 21, 2019).

¹⁶ 84 Fed. Reg. 43,536, 43,541 (Aug. 21, 2019).

NSPIRE demonstration HUD should also engage residents and the public in a similar formalized manner.

Additionally, HUD should make publicly available a list of properties participating in the NSPIRE demonstration, along with their advisory scores. HUD currently publishes a list of inspected properties along with their REAC scores. This list is publicly available on HUD's website. HUD should continue the practice of publishing physical inspections scores as part of the NSPIRE demonstration. Public publication of the scores increases accountability and tenant engagement. Although the scores given during the demonstration are only advisory, access to the scores will allow residents and the public to give constructive feedback about NSPIRE's ability to "better reflect the true physical conditions of the property."¹⁷

OPPORTUNITY TO INCLUDE RESIDENT SURVEYS

Even though HUD regulations consistently cite the identification of poor physical conditions and maintenance concerns as an area in which active resident participation is critical, HUD has continuously excluded residents from participating in the physical inspection process.¹⁸ REAC previously used customer satisfaction surveys as part of the physical inspection process but discontinued its use due to administrative costs. HUD used the customer satisfaction survey as an assessment tool to identify residents' opinion of the building's physical condition and areas of concern. The Real Estate Assessment Center (REAC) has expressed interest in reinstating resident surveys as part of the physical inspection process. The NSPIRE demonstration provides an opportunity to work with resident leaders on the structure of the resident survey and to test the integration of a resident survey into the physical inspection process. **HUD should take advantage of the opportunity and include tenant surveys as part of the NSPIRE model and demonstration.**

III. HUD Oversight in the NSPIRE Demonstration

One of the goals of NSPIRE is to deliver services in a way that increases accountability and consistency.¹⁹ POAs will have to complete annual surveys of their properties. The survey, along with "other data," will have to be uploaded into HUD's system.²⁰ HUD has committed to inspecting participating properties at least once during the two-year demonstration.²¹ HUD does not describe how it will determine if the information provided by POAs is accurate and complete, in particular, the information provided after the one HUD inspection. Ensuring the accuracy and completeness of the information provided is part of increasing the accountability and consistency of the physical inspection process. One way to ensure the accuracy of the information provided by POAs is to include tenant surveys as part of the NSPIRE model and demonstration.²² Another is to inspect participating properties annually during the demonstration. **HUD must add additional oversight mechanisms to ensure the information provided by POAs is accurate and complete.**

NSPIRE provides an opportunity to develop a process to populate HUD's database with local code

¹⁷ 84 Fed. Reg 43,536, 43,538 (Aug. 21, 2019).

¹⁸ 24 C.F.R. §§ 964.11, 245.5 (2019).

¹⁹ 84 Fed. Reg 43,536, 43,537 (Aug. 21, 2019).

²⁰ 84 Fed. Reg 43,536, 43,539 (Aug. 21, 2019).

²¹ 84 Fed. Reg 43,536, 43,540 (Aug. 21, 2019).

²² See Opportunity to Include Tenant Surveys, *supra*.

enforcement reports and records. HUD listed local code violations as an example of “other data” POAs are required to upload into HUD’s new system. Instead of only uploading local code violations, POAs should be required to upload all local code enforcement reports, in their entirety, and any letters or other communication received by the POA from the local code enforcement agency. This would ensure HUD has a fuller understanding of the local code enforcement’s impression of the property. Additionally, the inclusion of this information enables the NSIPRE model to evolve by allowing HUD to observe which considerations are commonly included in local code enforcement inspections throughout the country.²³ This type of evolution would achieve HUD’s goal of protecting residents by addressing health and safety hazards and would increase accountability and consistency. **As such, as part of the NSPIRE model, POAs should be required to upload local code reports in their entirety, as well as other communications received by the POA from local code enforcement agencies.**

NHLP supports HUD responding to the calls to make changes to the physical inspection process. While NSPIRE requires POAs to be more responsive to the needs of their properties, the NSPIRE model continues to exclude tenants from the physical inspection process and does not strengthen HUD’s oversight. HUD must include residents and local code enforcement information as part of the NSPIRE model if the Department is serious about improving accountability and consistency.

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) should you wish to clarify our position on these important issues.

My Best,

A handwritten signature in black ink, appearing to be 'Bridgett Simmons', with a stylized, cursive script.

Bridgett Simmons
Staff Attorney
National Housing Law Project

²³ An example is the requirement to have carbon monoxide detectors. Roughly, half of the states require the use of carbon monoxide detectors; however, HUD has not previously included functioning carbon monoxide detectors as part of its physical inspection standards. Collecting data on which safety considerations are becoming increasingly more important to local jurisdictions will allow HUD to determine if those considerations should be included in the NSPIRE model.