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Office of General Counsel, Regulations Division  
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Room 10276  
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*Submitted electronically through [www.regulations.gov](http://www.regulations.gov)*

**Re: Docket No. FR–6086–N–04 Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols, Proposed Scoring Notice**

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.

HUD has previously expressed its intent to replace its current inspection protocols with a new protocol developed through the NSPIRE demonstration.<sup>1</sup> HUD has noted its current inspection protocols have largely remained the same since its inception, have relied heavily on individual judgment, does not incorporate technology advances, and does not place an adequate amount of focus on the living conditions of units. Additionally, the current physical inspection process does not include resident engagement, despite statutory and regulatory law recognizing

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<sup>1</sup> 60-Day Notice of Proposed Information Collection: National Standards for the Physical Inspection of Real Estate (NSPIRE) Demonstration, 84 Fed. Reg. 40434, 40435 (Aug. 14, 2019), <https://www.regulations.gov/document/HUD-2019-0047-0002>.

the importance of resident participation to the success of HUD’s programs—in particular, to the proper maintenance of the property.<sup>2</sup>

We applaud HUD for revising its physical inspection protocol and for its ongoing conversations with stakeholders about the changes. HUD has engaged stakeholders in a multitude of ways—going on presentation tours, multiple public commenting opportunities,<sup>3</sup> and it’s NSPIRE webpage. We are grateful for the opportunity to continue the dialogue. HUD published the *Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols, Proposed Scoring Notice* as a complimentary effort to the agency’s previous rulemaking efforts.<sup>4</sup> The NSPIRE inspection scoring protocol maintains the fail/pass inspection indicator for the housing choice and project-based voucher programs,<sup>5</sup> and will maintain the 0-100 scale for properties previously inspected under the uniform physical conditions standards (UPCS) inspection protocol.<sup>6</sup> The changes made to the published notice will not apply to the housing choice and the project-based voucher programs, but will apply to the latter set of programs.<sup>7</sup>

The NSPIRE scoring protocol is much better than the UPCS scoring protocol. The NSPIRE scoring protocol systemizes the process for generating the inspection score, simplifies the distinction between inspectable areas, and removes the caps that limited defects’ impact on the final score. However, NSPIRE continues HUD’s practice of disenfranchising tenants from the process, despite habitually citing conditions as an area where tenant engagement is critical.<sup>8</sup>

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<sup>2</sup> Housing and Community Development Act of 1978 § 202, 12 U.S.C. § 1715z-1b(a) (1978); 24 C.F.R. §§ 964.11, 245.5; *see also*, Nat’l Hous. Law Project, 29 Hous. Bulletin 141-42 (July/Aug. 1999), <https://www.nhlp.org/wp-content/uploads/NHLP-HUD-Proposes-Rule-on-Tenant-Organizing-29-HOUS.-L.-BULL.-141-July-Aug.-1999.pdf> (quoting the Committee on Conference’s statement about the vital tenant participation and engagement in HUD’s housing programs); CITIES RISE, FORD FOUNDATION & HESTER STREET, *THE POWER & PROXIMITY OF CODE ENFORCEMENT: A TOOL FOR EQUITABLE NEIGHBORHOODS* 25-27 (2019); CHRISTINA STACY ET AL., URBAN INSTITUTE, *STRATEGIC HOUSING CODE ENFORCEMENT AND PUBLIC HEALTH A HEALTH IMPACT ASSESSMENT IN MEMPHIS, TENNESSEE* 69 (2018); MICHAEL WEINBERG, 29 GEO. J. POVERTY L. & POL’Y 88-90 (2021).

<sup>3</sup> Letter from Bridgett Simmons, Staff Attorney, Nat’l Hous. Law Project, to Ethan Handelman, Deputy Assistant Secretary, Office of Multifamily Housing Programs, U.S. Dep’t of Hous. and Urban Dev. (Apr. 20, 2021) (on file with author); Comments Letter 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>; Comment Letter from Nat’l Hous. Law Project *et al.* to U.S. Dep’t of Hous. and Urban Dev. 2, 4, 12-19 (Aug. 1, 2022), <https://www.regulations.gov/comment/HUD-2022-0044-0077>.

<sup>4</sup> Request for Comments: National Standards for the Physical Inspection of Real Estate and Associated Protocols, Proposed Scoring Notice, 88 Fed. Reg. 18268 (Mar. 28, 2023).

<sup>5</sup> 88 Fed. Reg. at 18269.

<sup>6</sup> 88 Fed. Reg. at 18269, 70 (citing 86 Fed. Reg. 2582 (Jan. 13, 2021) (to be codified at 24 CFR § 5.701)).

<sup>7</sup> 88 Fed. Reg. at 18269, 70.

<sup>8</sup> Housing and Community Development Act of 1978 § 202, 12 U.S.C. § 1715z-1b(a) (1978); 24 C.F.R. §§ 964.11, 245.5. *See also*, Nat’l Hous. Law Project, 29 Hous. Bulletin 141-42 (July/Aug. 1999), <https://www.nhlp.org/wp-content/uploads/NHLP-HUD-Proposes-Rule-on-Tenant-Organizing-29-HOUS.-L.-BULL.-141-July-Aug.-1999.pdf> (quoting the Committee on Conference’s statement about the vital tenant participation and engagement in HUD’s housing programs).

HUD must incorporate tenants into its oversight and enforcement processes in a meaningful way. Additionally, because of this improved and more accurate inspection protocol, without proactive preservation steps by HUD, more HUD assisted properties are at risk of being permanently lost. Thus, HUD must take an additional enforcement action that prioritizes preservation, rehabilitation, and modernization. Where not possible, HUD must mandate the one-for-one replacement of assisted units that are removed, ensure resident consultation, and maximal protection from involuntary displacement.

### **HUD REPLACES THE UPCS SEVERITY AND CRITICALITY METHODOLOGY WITH A SYSTEMATIC POINT DEDUCTION PROTOCOL.**

NSPIRE creates a consistent and easily understood pattern for how points will be deducted from the property’s final score. The UPCS scoring methodology relied on two factors-- severity and criticality—when determining each defects’ impact on the final score. The defect’s impact was capped based on how many elements made up the inspectable area.<sup>9</sup> The NSPIRE scoring protocol will replace the criticality and severity methodology with a standardized point deduction protocol, deducting points based on the severity and location of the defect and then normalizing by dividing by the number of units inspected.<sup>10</sup> Also, the NSPIRE scoring protocol will not include point loss caps.<sup>11</sup>

*We are supportive of HUD’s decision to use a systematic point deduction protocol to generate inspection scores.* HUD wanted a protocol that would generate a score that would accurately evaluate assisted properties’ condition.<sup>12</sup> HUD has noted the UPCS inspection protocol relied heavily on individual judgment, did not incorporate technology advances, and placed cumbersome caps on the numerical impact of a defect.<sup>13</sup> HUD’s NSPIRE inspection standards limit individual discretion by clearly listing the severity of a defect and which inspectable area a defect can be recorded. The NPSIRE inspection standards also lists the tools to use during the inspection.<sup>14</sup>

Generating scores using the UPCS scoring protocol made it difficult for housing providers and management to “estimate” their score in preparation for HUD’s inspection. Under the NSPIRE scoring protocol, housing providers and management can easily estimate their inspection score by applying the NSPIRE standards during their inspections.<sup>15</sup> Seeing the “cost”

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<sup>9</sup> 88 Fed. at 18277. UPCS inspections capped the total amount of points a property could lose for each inspectable area. Point loss was further limited by how many inspectable items were located within each inspectable area and HUD’s points loss cap for each type of defect.

<sup>10</sup> 88 Fed. Reg. at 18272, 18276.

<sup>11</sup> 88 Fed. Reg. at 18276.

<sup>12</sup> 88 Fed. Reg. at 18270.

<sup>13</sup> Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, 84 Fed. Reg. 43,536, 43538 (Aug. 21, 2019).

<sup>14</sup> 88 Fed. at 18276.

<sup>15</sup> This is further made possible using HUD’s NSPIRE Score calculator tool. HUD's NSPIRE Score Calculator, [https://www.youtube.com/watch?v=dEKRYfM7R\\_s](https://www.youtube.com/watch?v=dEKRYfM7R_s) (last visited Apr. 25, 2023).

of a defect will incentivize housing providers to prioritize the remediation of “high cost” defects—those in the unit and those that are life-threatening or severe.<sup>16</sup> This is in line with HUD’s goal to prioritize the identification of defects that threaten the life and health of tenants.<sup>17</sup>

In its description of NSPIRE’s varying levels of severity, HUD notes its consideration of defects that compromise the “physical security or safety of a resident or their property.”<sup>18</sup> Physical safety is an important element of a safe home, and we support those measures that promote resident safety in their homes and community, such as proper lighting, attractive landscaping, secure doors, and specific access points.<sup>19</sup> However, it is critical that these measures be evaluated on a property by property basis in consultation with the residents. It is not helpful for HUD or NSPIRE to encourage housing providers to turn their projects into prisons or fortresses, that severely limit the quality of life for residents and the enjoyment of their homes. It is likewise harmful to perpetuate short-sighted solutions under the guise of safety that run contrary to HUD’s fair housing guidance and whole of agency commitment to allow returning citizens to reunite with their families who live in HUD housing.

### **HUD REDUCES THE NUMBER OF INSPECTABLE AREAS FROM FIVE TO THREE**

HUD reduced the number of inspectable areas from five to three to “better clarify where certain defects can be observed and to eliminate some unique situations under UPCS where an inspector could have more leeway in designating the inspectable area of a certain defect.”<sup>20</sup> As HUD noted, the location of the defect impacts the final score.<sup>21</sup> As assisted properties’ characteristics become increasingly varied, the UPCS inspection protocol becomes increasingly more difficult to consistently and reliably apply.<sup>22</sup>

*We support HUD’s simplification of the inspectable areas.* NSPIRE’s inspectable areas are clearly distinguishable and can be more consistently applied on the various configurations of assisted properties.<sup>23</sup> NSPIRE has three inspectable areas— unit, inside, outside.<sup>24</sup> Along with the

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<sup>16</sup> 88 Fed. Reg. at 18271.

<sup>17</sup> 88 Fed. Reg. at 18270.

<sup>18</sup> 88 Fed. Reg. 18270-71.

<sup>19</sup> See Eugenia C. South, MD, MS *et al.*, *Effect of Abandoned Housing Interventions on Gun Violence, Perceptions of Safety, and Substance Use in Black Neighborhoods, A Citywide Cluster Randomized Trial*, 183(1) JAMA INTERN MED. 31-39 (2022), <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2799226> (finding inexpensive, straightforward abandoned housing remediation was directly linked to significant relative reductions in weapons violations and gun assaults, and suggestive reductions in shootings in their randomized controlled trial cluster); Gregory Saville & Chuck Genre, CPTED Bibliography, <https://www.cpted.net/CPTED-bibliography> (last visited Apr. 25, 2023).

<sup>20</sup> 88 Fed. Reg. at 18276.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 86 Fed. Reg. 2582, 2584-85 (Mar. 15, 2021) (to be codified at 24 CFR § 5.703), <https://www.federalregister.gov/documents/2021/01/13/2021-00098/economic-growth-regulatory-relief-and-consumer-protection-act-implementation-of-national-standards>.

<sup>24</sup> *Id.*

distinguishable inspection areas, the NSPIRE standards note where inspectors may find the defect and “prescribe that those defects can only be recorded in that area.”<sup>25</sup> The NSPIRE standards minimize inspectors’ use of their judgment in determining placement, limiting inspectors’ influence on the final inspection score. This practice makes the scoring protocol more systematic and allows for the protocol to be applied to the portfolio’s various configurations.

HUD proposes only inspecting the outside of buildings with the selected inspection units.<sup>26</sup> While we understand that HUD intends to achieve a uniform confidence level of 90 percent with a 6 percent margin of error, we believe it is important that HUD know the condition of the outside and inside of all residential properties. Some housing providers have attempted to skirt the intent of HUD’s inspections—determining actual compliance with HUD’s condition standards—by making temporary or cosmetic repairs to conceal the property’s actual condition.<sup>27</sup> As HUD noted, housing providers have an obligation to repair defects.<sup>28</sup> However, that obligation is only made meaningful by housing providers’ willful compliance and HUD’s enforcement.<sup>29</sup> HUD must be willing to work collaboratively with all stakeholders to identify practices aimed at passing the inspection without actually maintaining the physical health of the property.

For these reasons, ***we recommend HUD explicitly incorporate tenants, local code enforcement, and other local community stakeholders into HUD’s oversight and enforcement processes.*** HUD has taken a strategic code enforcement approach to enforcing its condition

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<sup>25</sup> 88 Fed. at 18276.

<sup>26</sup> *Id.*

<sup>27</sup> Molly Parker & Patrick Johnson, *How a Consultant Said He Gamed HUD Inspections: Sweep Problems Behind a Wall*, THE SOUTHERN ILLINOISAN, THE REPUBLICAN & PROPUBLICA (March 22, 2019, 4:30 p.m. EDT), <https://www.propublica.org/article/chestnut-park-springfield-massachusetts-how-a-consultant-said-he-gamed-hud-inspections>; Molly Parker, *How HUD’s Inspection System Fails Low-Income Tenants Nationwide*, THE SOUTHERN ILLINOISAN & PROPUBLICA (Nov. 16, 2018, 10:58 a.m. EST), <https://www.propublica.org/article/hud-inspection-system-fails-low-income-tenants>; Nick Neville, *Columbia Mayor Says Federal Agency “Dropped the Ball” by Giving Colony Apartments Passing Score on Appeal*, WISTV.COM (Mar. 17, 2023 at 4:12 PM PDT), <https://www.wistv.com/2023/03/17/columbia-mayor-says-federal-agency-dropped-ball-by-giving-colony-apartments-passing-score-appeal/>.

<sup>28</sup> 88 Fed. Reg. at 18273.

<sup>29</sup> Michael Weinberg, 29 Geo. J. Poverty L. & Pol’y 79-81 (2021); Molly Parker, *HUD’s House of Cards*, THE SOUTHERN ILLINOISAN & PROPUBLICA, <https://www.propublica.org/series/huds-house-of-cards> (a series of stories in conjunction with the Southern Illinoisan about substandard conditions in HUD-assisted housing); Molly Parker, *How HUD’s Inspection System Fails Low-Income Tenants Nationwide*, THE SOUTHERN ILLINOISAN & PROPUBLICA (Nov. 16, 2018, 10:58 AM EST), <https://www.propublica.org/article/hud-inspection-system-fails-low-income-tenants>; Suzy Khimm et al., *Under Ben Carson, More Families Live in HUD Housing that Fails Health and Safety Inspections*, NBC NEWS, <https://www.nbcnews.com/politics/white-house/under-ben-carson-more-families-live-hud-housing-fails-health-n935421> (updated Nov. 14, 2018, 5:22 PM PST); Molly Minta, *Cordoba Courts in Opa-locka Criticized as a Slum*, MIAMI NEW TIMES (September 5, 2018, 8:00 AM), <https://www.miamiherald.com/news/slum-conditions-at-cordoba-courts-in-opa-locka-10698557>; Sarah Smith, *Living In Hell: As HUD pays Private Company Millions, Tenants say Complaints of Mold, Pest go Ignored*, HOUSTON CHRONICAL (March 11, 2021), <https://www.houstonchronicle.com/news/investigations/article/Living-Hell-housing-tenants-hud-properties-problem-16000650.php>.

standards,<sup>30</sup> but lacks some key components in its protocol, like the ability to identify patterns based on data analysis and community input, coordinating across silos, and expanding stakeholders' capacity.<sup>31</sup> If in the final rule HUD only scores the outside of buildings with inspected units, HUD must couple that practice with additional practices to ensure housing providers have a reliable method for identifying and remediating all defects, even those not identified by inspectors.<sup>32</sup>

## **HUD REMOVES ITEM AND AREA-BASED LIMITS AND SCORING WEIGHT DISTRIBUTION ALONG WITH POINT CAPS**

The UPCS scoring protocol created caps on points loss based on the inspectable area, the number of inspectable items within the inspectable area, the number of buildings on the property, and the number of units inspected.<sup>33</sup> Further, HUD limited defects' numerical impact by establishing a point loss cap for single deficiencies in sub-areas.<sup>34</sup>

***We support the removal of point loss caps.*** UPCS-caps limit some health and safety defects impact on the property's final score—in particular, those defects in tenants' units. The use of caps in the UPCS scoring protocol is in opposition with HUD's goal of having “reliable evaluations of housing conditions” to use in its decision-making to protect tenants.<sup>35</sup> Under the new scoring protocol, NSPIRE will deploy a standardized point deduction protocol, deducting points based on the severity and location of the defect.<sup>36</sup> To incentivize the remediation of deficiencies that pose the greatest harm to the tenants, the NSPIRE scoring protocol will weigh in-unit deficiencies heavier than deficiencies in other inspectable areas, as well as defects considered life-threatening or severe.<sup>37</sup>

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<sup>30</sup> Weinberg, *supra* note 29, at 81-85; CITIES RISE, FORD FOUNDATION & HESTER STREET, THE POWER & PROXIMITY OF CODE ENFORCEMENT: A TOOL FOR EQUITABLE NEIGHBORHOODS 2 (2019); MATT KREIS, CTR. FOR CMTY. PROGRESS, KAREN BLACK, MAY 8 CONSULTING, INC., A MORE STRATEGIC, EQUITABLE APPROACH TO HOUSING AND BUILDING CODE ENFORCEMENT IN TOLEDO, OHIO 2 (2021).

<sup>31</sup> KREIS, *supra* note 30, at 32.

<sup>32</sup> Letter from Bridgett Simmons, Staff Attorney, Nat'l Hous. Law Project, to Ethan Handelman, Deputy Assistant Secretary, Office of Multifamily Housing Programs, U.S. Dep't of Hous. and Urban Dev. (Apr. 20, 2021) (on file with author); Comments Letter 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. 21-24 (Mar. 15, 2021), <https://www.regulations.gov/comment/HUD-2021-0005-0072>; Comment Letter from Nat'l Hous. Law Project *et al.* to U.S. Dep't of Hous. and Urban Dev. 7-10 (Aug. 1, 2022), <https://www.regulations.gov/comment/HUD-2022-0044-0077>; Preservation Working Group Preservation Priorities for HUD, 2022, <https://nationalhousingtrust.org/sites/default/files/documents/pwg-preservation-recommendations-for-hud.pdf> (last visited Apr. 25, 2023).

<sup>33</sup> 88 Fed. at 18277. UPCS inspections capped the total amount of points a property could lose for each inspectable area. The loss of points was further limited by how many inspectable items were located within each inspectable area and HUD's points loss cap for each type of defect.

<sup>34</sup> *Id.*

<sup>35</sup> 88 Fed. Reg. at 18270, 18273-74.

<sup>36</sup> 88 Fed. Reg. at 18276.

<sup>37</sup> *See* 88 Fed. Reg. at 18271.

## **ENFORCEMENT OF HUD’S PHYSICAL CONDITION STANDARDS**

HUD must exercise its enforcement authority to prioritize maintenance, modernization activities, and investments that promote long-term preservation outcomes over enforcement options that heighten the risk of the permanent removal or loss of federally-assisted units and the involuntary displacement of existing residents. HUD must incorporate previous recommendations for improving their enforcement processes to ensure effective compliance with NSPIRE standards.<sup>38</sup> Otherwise, a new inspection protocol will not mean much and will continue the current cycle of families living in housing that is not decent, safe, and sanitary, or worse, their involuntary displacement.

## **IMPROVE HUD’S ENFORCEMENT AND PRESERVATION PRACTICES**

The Biden administration has expressed a desire to expand affordable housing “so every American has access to housing that is affordable, stable, safe, healthy, accessible, energy efficient and resilient, and located near good schools” and economic opportunities.<sup>39</sup> However, the practice of looking to the market to meet the need for affordable housing has proven disastrous and inadequate. According to the National Low Income Housing Coalition, no state has an adequate supply of affordable rental housing for the lowest income renters and there is a shortage of 7.3 million rental homes affordable and available to extremely low-income renters.<sup>40</sup>

Preservation of this important housing stock is critical. The loss of any affordable housing units creates serious consequences for low-income families because the supply of federally subsidized low-income housing falls far short of the high demand. These consequences are especially troublesome when the threatened units are occupied, which can result in the displacement of the current residents.

HUD must adopt a policy of taking additional enforcement action when a property continues to be non-compliant after the given cure date. HUD must use its existing mandates and tools to ensure long-term affordability by promoting enforcement options which prioritize rehabilitation, modernization, the one-for-one replacement of assisted units that must be removed, ensure resident consultation, and maximal protection from involuntary displacement. HUD must expand the public’s access to property and subsidy information in order to equip tenants and communities with the information needed to allow them to be partners to housing providers and

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<sup>38</sup> Letter from Bridgett Simmons, Staff Attorney, Nat’l Hous. Law Project, to Ethan Handelman, Deputy Assistant Secretary, Office of Multifamily Housing Programs, U.S. Dep’t of Hous. and Urban Dev. (Apr. 20, 2021) (on file with author) [*hereinafter* “Letter to Handelman”]; Comment Letter from National Housing Law Project and 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. 23 (Mar. 15, 2021) [*hereinafter* “NHLP Earthjustice Comments”], <https://www.regulations.gov/comment/HUD-2021-0005-0072>.

<sup>39</sup> *The Biden Plan for Investing in Our Communities Through Housing*, BIDEN HARRIS, <https://joebiden.com/housing/> (last visited Mar. 18, 2021).

<sup>40</sup> NAT’L LOW INCOME HOUS. COAL., *THE GAP* 2, 4-9 (2023), <https://nlihc.org/gap>.

HUD. HUD must also proactively develop collaborative partnerships with other entities who share oversight responsibilities and local stakeholders.

### Public Housing Enforcement

NSPIRE offers many improvements to accurately assess the physical conditions of public housing as recognized above. However, in the absence of sufficient funding to address the growing backlog of public housing capital and maintenance needs,<sup>41</sup> it is imperative that HUD exercises its enforcement authority in accordance with the recommendations above, with robust resident consultation, and a commitment to public housing preservation outcomes over enforcement activities that will accelerate or heighten the risk of the permanent loss of public housing, cause mass, involuntary displacement of existing residents, and destabilize neighborhoods.

HUD enforcement activities which promote public housing preservation outcomes may include providing grants and set asides for (1) the elimination of safety and health and safety hazards in developments with high vacancy rates (e.g., at or above 8%) (2) proactive and robust technical assistance to support the preservation capacity of Smaller and Qualified Public Housing Authorities (PHAs) which administer fewer than a combined 250 or 550 units of public housing and vouchers, respectively, have any cluster of units in a development or a part of a development with a relatively high vacancy rate or are designated "Troubled PHAs" with recent low Public Housing Assessment System (PHAS) or failing Section Eight Management Assessment Program (SEMAP) scores, and are otherwise deemed poorly performing private owners with troubled properties or scattered sites; and (3) providing for building amenities like broadband access and elevators. Preservation capacity includes support of funding, investments, and technical assistance targeted to achieving the long-term viability of any distressed property as assisted housing which after reasonable investment can sustain structural soundness and full occupancy without additional impairments which would disqualify it from continuation as assisted housing for a certain period of time based on the level of rehabilitation (e.g., 20 years or 30 years when there has been rehabilitation equivalent to new construction).

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<sup>41</sup> Since 1937, public housing has been a crucial part of our nation's affordable housing infrastructure, and today, public housing remains the sole source of affordable housing in many U.S. communities. Yet, due to the growing funding gap for public housing and the lack of new financing strategies to rehabilitate the existing aging and distressed public housing supply, most of which is over 40 years old and in need of major capital improvements, more than 300,000 public housing units have been lost since the 1990s, and each year, more than 10,000 units continue to be permanently lost. Today, there remains only 860,000 public housing units across the country which serve as the stable housing platform for 1.7 million extremely low and low-income residents. Against this backdrop, the U.S. is facing the worst housing affordability crisis in generations, where only 1 in 5 households receive rental assistance for which they are otherwise income eligible, and increasingly more eligible households compete for a shrinking affordable housing supply. As such, without HUD oversight and enforcement actions, public housing tenants have few meaningful options to ensure their homes are safe, sanitary and healthy, or to resolve often serious habitability concerns.



Prior to the approval of any preservation sale or transfer of a troubled property, or the demolition, disposition, or required conversion of public housing as part of HUD's enforcement plan, HUD must require a comprehensive independent assessment of the troubled property and/or troubled PHA, with meaningful notice and opportunity for resident input, which assessment includes an impact analysis of whether converting to tenant-based Section 8 vouchers instead of rehabilitating the property for continued use as affordable housing will principally benefit the residents, the community, and the PHA, including the impact on the community's capacity to meet the residents' affordable housing needs. The assessment must inform an agreement between HUD and the PHA, negotiated with input from the residents, identifying specific targets, strategies, and times for revitalizing the troubled properties and/or improving performance of the PHA, which agreement must include a description of the technical assistance HUD will make available to the PHA, the incentives or sanctions for effective implementation of the agreed strategies, and a plan for enhancing resident involvement in the management of the PHA. In the event the revitalization and preservation of the assisted housing is determined not possible, HUD must require and ensure the development, with resident input, of a fair and transparent relocation plan that at a minimum includes adequate relocation payments, counseling and other supports to ensure that all displaced residents are in fact able to secure safe, quality, affordable replacement housing with a right to return and impose minimal displacement burdens and harms; require the one-for one-replacement of all lost units; and require robust resident consultation in all phases of the relocation and replacement housing development processes.

### Multifamily Program Enforcement

HUD must develop a national proactive strategy to preserve the existing supply of HUD-assisted multifamily housing whose affordability is at risk due to a variety of factors, including substandard conditions. HUD's strategy must include increasing investments to improve housing conditions, incentivizing owners to stay in the multifamily housing programs or to sell to preservation purchasers who are committed to meeting the needs of existing residents. HUD should incorporate previous preservation recommendations into HUD's enforcement protocols.<sup>42</sup>

Performance-based contract administrators (PBCAs) are tasked with daily oversight of assisted properties and the enforcement of HUD's standards. HUD uses PBCAs as the first point of contact for residents and the public. When tenants and advocates contact HUD regarding conditions, HUD redirects tenants and advocates to the PBCAs or to the regional staff. However, PBCAs and regional offices often are not responsive to the concerns of residents and advocates, and they use antiquated systems insufficient for adequately assessing the operations and

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<sup>42</sup> Letter to Handelman, *supra* note 38; Preservation Working Group Preservation Priorities for HUD, 2022, <https://nationalhousingtrust.org/sites/default/files/documents/pwg-preservation-recommendations-for-hud.pdf> (last visited Apr. 25, 2023).

management of assisted properties.<sup>43</sup> Tenants, organizers, and advocates trying to get relief and accountability report a constant “loop” they are placed into, where one entity habitually redirects them to another regardless of how serious issues have become.

***HUD must restructure the PBCA system to ensure there is adequate oversight of assisted properties, meaningful enforcement of programmatic requirements, and timely responses to the needs of families.*** HUD must require PBCAs and regional staff to substantially improve its communication with residents and its process to collect and analyze resident provided data regarding assisted properties.<sup>44</sup> PBCAs should support HUD headquarters’ efforts to preserve this subsidy and be required to prioritize preservation of the subsidy in their administration and oversight. PBCAs should thus have to more proactively direct matters to HUD when they receive a certain threshold of resident complaints about poor housing conditions and unresolved work orders.

HUD must strengthen its guidance on the use of pass-through leases as a tool to temporarily relocate tenants elsewhere while the subsidized housing is brought into compliance. HUD’s guidance must require a written instrument that clearly, explicitly conveys the relationship between the owners and the tenant, such as a lease addendum and a master lease. The written instrument must explicitly maintain the rights and protections granted via the federal housing program. HUD should expressly state that tenants cannot be evicted or threatened with eviction when the originating owner fails to advance the Housing Assistance Payments (HAP). HUD must clearly articulate that the originating owner must advance the payments until directed otherwise by HUD. Confusing and uneven pass-through lease practices and the inconsistent handling of relocated tenants has created unnecessary hurdles for tenants, including threatened evictions, and, unfortunately too often, displacement. A recent example of the confusion created by HUD’s current pass-through lease guidance is the relocation of tenants from Forest Cove Apartments (Atlanta, GA).<sup>45</sup> Forest Cove residents received eviction notices due to late HAP payments from the originating owner, Millennia. For its part, HUD failed to clearly articulate the policy, leaving it to Millennia and the receiving owners to work out on their own. HUD’s inaction threatened Forest Cove tenants’ housing subsidies and failed to address their concerns about what to expect as the rehabilitation continues past the term of their pass-through leases. Forest Cove is only one example of how the lack of specificity in HUD’s current guidance harms tenants, interferes with rights guaranteed in federal housing programs, and creates inequitable outcomes.

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<sup>43</sup> Molly Rockett, *Private Property Managers, Unchecked: The Failures of Federal Compliance Oversight in Project-Based Section 8 Housing*, 134 Harv. L. Rev. F. 286 (2021); Jonah Newman, *HUD Orders Chicago Housing Complex to Correct Security Problems*, CHICAGO REPORTER, Sept. 30, 2015, <https://www.chicagoreporter.com/hud-orders-chicago-housing-complex-to-correct-security-problems/>.

<sup>44</sup> See [NHLP Earthjustice Comments](#), *supra* note 38, at 21-24; *see also*, Letter to Handelman, *supra* note 38.

<sup>45</sup> Riley Bunch, *Former Forest Cove Residents Say Relocation Process Has Fallen Short of Promises*, THE ATLANTA JOURNAL-CONSTITUTION (Feb. 14, 2023), <https://www.ajc.com/news/atlanta-news/former-forest-cove-residents-say-relocation-process-has-fallen-short-of-promises/2VMYXIF2JVAQDDYIUWCHWTVBAU/>.

When a preservation sale of a troubled multifamily 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 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 and to avoid any unjust enrichment of sellers. ***And in instances where the budget authority is transferred, HUD must ensure that assisted families benefit most from the transfer and are transferred to communities with the same or better qualities as their previous community.***<sup>46</sup>

#### DIRECT ENGAGEMENT OF ASSISTED FAMILIES

Resident participation is a critical component to the success of assisted properties.<sup>47</sup> Residents and resident organizations play a vital role in identifying systematic issues by sharing their lived experiences and proposing solutions.<sup>48</sup> Resident organizations also play an important

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<sup>46</sup> For a detailed Section 8(bb) recommendations on this and other fair housing concerns, see letter from Thomas Silverstein, Associate Director, Lawyers' Comm. for Civil Rights Under Law, to Demetria McCain, Principal Deputy Assistant Office of Fair Housing and Equal Opportunity, Dep't of Hous. and Urban Dev. (Jan. 21, 2022) (letter on file with author).

<sup>47</sup> Housing and Community Development Act of 1978 § 202, 12 U.S.C. § 1715z-1b(a) (1978); 24 C.F.R. §§ 964.11, 245.5. See also, Nat'l Hous. Law Project, 29 Hous. Bulletin 141-42 (July/Aug. 1999), <https://www.nhlp.org/wp-content/uploads/NHLP-HUD-Proposes-Rule-on-Tenant-Organizing-29-HOUS.-L.-BULL.-141-July-Aug.-1999.pdf> (quoting the Committee on Conference's statement about the vital tenant participation and engagement in HUD's housing programs); see also, Nat'l Hous. Law Project, 29 Hous. Bulletin 141-42 (July/Aug. 1999), <https://www.nhlp.org/wp-content/uploads/NHLP-HUD-Proposes-Rule-on-Tenant-Organizing-29-HOUS.-L.-BULL.-141-July-Aug.-1999.pdf> (quoting the Committee on Conference's statement about the vital tenant participation and engagement in HUD's housing programs); CITIES RISE, FORD FOUNDATION & HESTER STREET, THE POWER & PROXIMITY OF CODE ENFORCEMENT: A TOOL FOR EQUITABLE NEIGHBORHOODS 25-27 (2019); CHRISTINA STACY ET AL., URBAN INSTITUTE, STRATEGIC HOUSING CODE ENFORCEMENT AND PUBLIC HEALTH A HEALTH IMPACT ASSESSMENT IN MEMPHIS, TENNESSEE 69 (2018); MICHAEL WEINBERG, 29 GEO. J. POVERTY L. & POL'Y 88-90 (2021).

<sup>48</sup> *Id.*; Josh Cohen, *HUD Has Money for Tenant Organizing. Why Isn't the Agency Spending It?*, SHELTERFORCE (Mar. 19, 2021), <https://shelterforce.org/2021/03/19/hud-has-money-for-tenant-organizing-why-isnt-the-agency-spending-it/>; EMPOWERING TENANTS WITH OTAG-ITAG-VISTA ACCOMPLISHMENTS AND RECOMMENDATIONS REPORT - 2002 4-9 (2002), <https://shelterforce.org/wp-content/uploads/2021/03/Williams-Report-on-514-TA-Nov02.pdf>; *Millennia Resistance Campaign*, Twitter, <https://twitter.com/ResistMillennia> (last visited Sept. 19, 2022); Tia Carol Jones, *Study Finds Resident Input is Key to Woodlawn's Redevelopment*, WEEKLY CITIZEN, <https://citizennewspapergroup.com/news/2022/mar/23/study-finds-resident-input-key-woodlawns-redevelop/> (last visited Sept. 19, 2022); *Housing Redevelopment Updates*, PHAR CVILLE, Aug. 26, 2022, <https://www.pharville.org/phars-focus/housing-redevelopment/housing-redevelopment-updates/>.

role in informing and educating their neighbors about the federal housing programs and building collective power.<sup>49</sup>

HUD's new inspection protocol continues to hamper tenants' ability to enforce their right to decent, safe, sanitary housing. HUD must incorporate tenants into its oversight and enforcement processes. Although HUD has expressed an intent to create a permanent tenant engagement vehicle,<sup>50</sup> HUD continues to insist that tenant engagement will have no impact on the inspection score. ***HUD should adopt the National Alliance of HUD Tenants (NAHT) recommendations for incorporating tenants into HUD's oversight and enforcement processes.***<sup>51</sup> NAHT's recommendations include giving tenants third-party beneficiary rights to enforce condition standards, providing tenant organizations an opportunity to include additional units to the inspection list, providing legitimate tenant organizations with the same appeals rights as housing providers. Public housing leases permit tenants to abate their rent due to poor housing conditions where the conditions cannot be addressed in a reasonable period of time and there is no replacement housing.<sup>52</sup> HUD should extend to tenants participating in the multifamily housing programs the same or a similar right.

Additionally, HUD must be transparent about how it uses its enforcement tools to bring properties back into compliance and encourage regional staff to develop collaborative relationships with local and state stakeholders to preserve federally-assisted housing. Developing relationships with local partners is essential to maintaining properties' long-term affordability.<sup>53</sup> ***HUD should make information available to local officials, advocates, and tenants about the enforcement objective (e.g. if a preservation sale or transfer, receivership, demolition, disposition, etc.), enforcement timeframe and steps entailed in the applicable process, and any required resident or public consultation or other tenant rights and protections during each stage of the applicable enforcement.*** 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

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<sup>49</sup> *Id.*; Karen Ceraso, *National Alliance of HUD Tenants*, SHELTERFORCE, Jul. 01, 1997, <https://shelterforce.org/1997/07/01/national-alliance-of-hud-tenants/>; *National Alliance of HUD Tenants*, <https://www.saveourhomes.org/>; *Massachusetts Union of Public Housing Tenants*, <https://massunion.org/>.

<sup>50</sup> *NSPIRE Demonstration Resident Engagement Initiative*, HUD.gov, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/reac/nspire/drei](https://www.hud.gov/program_offices/public_indian_housing/reac/nspire/drei) (last visited Apr. 25, 2023).

<sup>51</sup> 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>; Letter from Nat'l Alliance of HUD Tenants recommending improvements for HUD's REAC Inspection Process to Donald J. Lavoy, Deputy Assistant Secretary of the Real Estate Assessment Center, U.S. Dep't of Hous. & Urban Dev. (Jan. 21, 2016) (on file with author).

<sup>52</sup> 24 C.F.R. § 966.4(h).

<sup>53</sup> AMY KHARE *ET AL.*, FROM THE GROUND UP: HOUSING AS A CATALYST FOR COMMUNITY-DRIVEN REDEVELOPMENT OF CHICAGO'S MAJORITY-BLACK WOODLAWN NEIGHBORHOOD 6-11 (2021); HEATHER L. SCHWARTZ *ET AL.*, PRESERVATION OF AFFORDABLE RENTAL HOUSING EVALUATION OF THE MACARTHUR FOUNDATION WINDOW OF OPPORTUNITY INITIATIVE (2016); URBAN LAND INST. & MACARTHUR FOUND., THE PRESERVATION COMPACT PRESERVE RENEW REBUILD A RENTAL HOUSING ACTION PLAN FOR COOK COUNTY (2007); *Models for Affordable Housing Preservation*, HUD.GOV, <https://www.huduser.gov/portal/periodicals/em/summer13/highlight3.html> (last visited Mar. 26, 2021).

aid.<sup>54</sup> Along with making information about enforcement actions publicly available, HUD must provide public access to management and occupancy reviews (MOR) and all other relevant, associated documents. MORs should also be posted at the developments that underwent the review.

***HUD must also revise how it notifies families of potential environmental hazards.*** The Biden Administration has made a national commitment to environmental justice through the Justice40 Initiative. However, HUD's current inspection and oversight protocols fail to address families' exposure to environmental toxins when residing in HUD housing, including exposures from water, soil, and air, or proximity of their housing to heavy industry.<sup>55</sup> HUD should adopt HUD's Office of Inspector General and the Poisonous Homes report recommendations, as well as the Haberle Letter recommendations for protecting assisted tenant families from the harms of contaminated land and other environmental toxins.<sup>56</sup>

Finally, HUD must actively enforce the resident organizing regulations and take retaliation allegations seriously. Along with incorporating residents into HUD's oversight of assisted properties, HUD must increase its financial commitment to tenant organizing—funding tenant organizing activities and capacity building programs.<sup>57</sup>

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](mailto:bsimmons@nhlp.org)), Kate Walz ([kwalz@nhlp.com](mailto:kwalz@nhlp.com)), Lauren Song ([lsong@nhlp.org](mailto:lsong@nhlp.org)) should you wish to clarify our position on these important issues.

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<sup>54</sup> Stephannie 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/>.

<sup>55</sup> *Defending Flint, Michigan from a Toxic Asphalt Plant*, EARTHJUSTICE, <https://earthjustice.org/case/defending-flint-michigan-from-a-toxic-asphalt-plant> (last visited Apr. 27, 2023).

<sup>56</sup> 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); 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. (June 30, 2021), <https://www.prrac.org/letter-re-advancing-health-and-housing-justice-together/>.

<sup>57</sup> EMPOWERING TENANTS WITH OTAG-ITAG-VISTA ACCOMPLISHMENTS AND RECOMMENDATIONS REPORT - 2002 4-9 (2002), <https://shelterforce.org/wp-content/uploads/2021/03/Williams-Report-on-514-TA-Nov02.pdf>; *Millennia Resistance Campaign*, <https://twitter.com/resistmillennia>; Recommendations from the Nat'l Alliance of HUD Tenants to U.S. Dep't of Hous. & Urban Dev. (Jun. 10, 2019), <https://docs.google.com/document/d/1umkSNKLTGVGMibIY5ZgfmOgo1NCKJxoA/edit?usp=sharing&oid=111956935870613971150&rtpof=true&sd=true>; *Safe and Decent? Examining the Current State of Residents' Health and Safety in HUD Housing Hearing Before the House Financial Services Committee Subcommittee on Housing, Community Development and Insurance*, 116<sup>th</sup> Cong. (2019) (statement of Geraldine Collins, President of the National Alliance of HUD Tenants, <https://www.congress.gov/116/meeting/house/110250/witnesses/HHRG-116-BA04-Wstate-CollinsG-20191120.pdf>); Letter from Michael Kane *et al.* regarding lessons learned from HUD section 514 programs 1995-2021 to Ethan Handelman, Office of Multifamily Housing Programs, U.S. Dep't of Hous. and Urban Dev. (Mar. 29, 2022), [https://docs.google.com/document/d/1C\\_os0gaYx8lzPeHNb7Y-Ev1Qoe8Jz1-v/edit](https://docs.google.com/document/d/1C_os0gaYx8lzPeHNb7Y-Ev1Qoe8Jz1-v/edit).

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