

April 27, 2023

Regulations Division  
Office of General Counsel/RIN 2577-AD05  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> St, SW  
Room 10276  
Washington, DC 20410

**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**

To Whom It May Concern:

We write in response to the United States Department of Housing and Urban Development (“HUD”) request for public review and comment on the proposed National Standards for the Physical Inspection of Real Estate (“NSPIRE”) physical inspection scoring and ranking methodology to implement HUD’s final NSPIRE rule for Public Housing and Multifamily Housing programs, including Section 8 Project-Based Rental Assistance (“PBRA”) and other Multifamily assisted housing, Section 202/811 programs, and HUD-insured Multifamily as described in the NSPIRE proposed rule. The undersigned organizations, which represent multifamily owners, operators, developers, housing cooperatives, property managers, housing agencies and lenders involved in the provision of rental housing, both affordable and conventional, to millions of American families, offer the following comments. Notably, many of these Housing Organizations own or manage properties with PBRA or accept Housing Choice Vouchers (“HCV”) under the Section 8 program.

The Housing Organizations appreciate efforts from the Real Estate Assessment Center (“REAC”) to convert a long-standing physical inspection model, the Uniform Physical Condition Standards (“UPCS”), to NSPIRE in an effort to more accurately assess the physical condition of federally assisted properties. Furthermore, we understand and appreciate HUD’s focus on the habitability of the properties, particularly the dwelling units. The Housing Organizations agree with HUD that livability as an objective standard should carry more weight than cosmetic issues. However, we are concerned that the proposed increased weighting of the unit deficiencies, along with the lack of a cap on the inspectable areas and automatic failure of the inspection if 30 points are lost in the units, may disproportionately impact the property score.

Accordingly, in response to the proposed rulemaking related to the NSPIRE program, we respectfully offer the following comments related to the specific areas of concern below.

**Unit Performance Score:**

The proposed methodology will generate two “actionable” scores. The typical overall score and a new “Unit Performance” score. Under this model, a property can fail the REAC inspection if 30 points or more are deducted within the unit portion of the inspection. For reasons described in this section, we do not believe failing a property as a result of point losses in the units, accurately

reflects the property's condition. We also believe it is unnecessary, since HUD is assigning the highest point losses for deficiencies inside the units. Therefore, we strongly urge HUD to remove the NSPIRE provisions that automatically assign a failing score to a property that loses 30 points inside the units.

HUD specifically requested comments on its decision to remove the UPCS caps on point losses. We offer several reasons why HUD should restore the UPCS caps or substantially similar caps adapted for NSPIRE.

First, a property would be less likely to fail an inspection for in-unit point losses if the current UPCS caps were retained. Under the proposal, one unit's defects could result in many more point deductions than under the current scoring method. And duplicate defects are counted more than once under the proposed formula. For example, one unit may have multiple damaged doors, whereby each damaged door will add up to an aggregated deduction of points from the score. In contrast, the UPCS model provides that a fraction of a point value would be deducted based on the number of units inspected. This disproportionate impact based on just one unit's defects has the potential to significantly impact the scoring results applicable to various Housing Organizations.

A reasonable solution to prevent disproportionate negative impacts on Housing Organizations is to reinstate the current UPCS caps. Unfortunately, HUD has not provided significant research or other actionable evidence as to why the concept of UPCS caps was removed. Instead, it points broadly to consulting with "experts".<sup>1</sup> We urge HUD to consider implementing UPCS caps or a similar concept to ensure that key stakeholders in the housing industry are not disproportionately impacted by the proposed scoring methodology in such a way that such methodology would disincentivize stakeholders from investing in further affordable housing and related efforts nationwide.

In addition, tenant actions or damage are well-documented problems when assessing the condition of the property. The de-emphasis of the unit scores under UPCS limited this impact. However, the NSPIRE proposal will unfairly result in a larger penalty. For example, a common issue involves egress. A resident will often place a dresser or headboard in front of a window or door. When the applicable manager or maintenance staff pre-inspects the unit two weeks before a scheduled REAC inspection, he or she typically works with the tenant to move the item away from the window or door. However, within the two-week period, the tenant could move the item back in front of the window or door. This could be considered a life safety issue, and as a result, there would be a larger penalty due to the emphasis on units set forth in the proposed scoring methodology. We do not disagree with HUD's basic proposition that such violations should be corrected. However, we believe the resulting large point loss will result in many more failures in connection with the proposed methodology. Again, this adds unnecessary obstacles to providing affordable housing for consumers, particularly in the case of the stated example, where it is arguably beyond the control of the Housing Organizations.

As we have previously noted to HUD in prior NSPIRE-related rulemakings, HUD must recognize, and the NSPIRE scoring must account for, the fact that landlords have the least amount of control over the inside of the unit. HUD's expectation that landlords are responsible for engaging in

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<sup>1</sup> NPRM at 18270.

reasonable due diligence to maintain safe and sanitary conditions must be balanced with competing interests, including, but not limited to, tenants' expectations of privacy and tenants' complaints regarding the inconvenience and intrusiveness of unit inspections, among other factors. Simply put, landlords cannot be unilaterally penalized for tenant-caused deficiencies, including, but not limited to, blocked egress, trip hazards, removed batteries from smoke detectors, and others, when evidence and data indicate that the applicable landlord has reasonably addressed such tenant action. The Housing Organizations have asked if REAC would consider management documentation with time-stamped photos of the conditions as evidence that such violations exist despite management's best efforts. We urge REAC to consider this because it would reduce the impact of this and other similar penalties due to common tenant-related actions. Furthermore, scores for tenant created deficiencies like "ingress/egress" should be made advisory rather than scored against the property.

Ultimately, as we have emphasized in the past to HUD, subjectivity with respect to REAC inspections has often been a significant concern. Subjective scoring methodologies result in unfair results, including, but not limited to, inconsistent scoring by different inspectors. On top of this, a burdensome appeals process makes addressing subjectivity extremely burdensome. We recognize that HUD has sought to limit the negative impacts of subjectivity and appreciate HUD's commitment to the same. However, more can and should be done. We urge HUD to consider additional proposals and nuances related to the proposed scoring methodology that would emphasize objectivity and the realities of this process on the ground.

#### **Weighting/Severity Calculations:**

The Housing Organizations are not able to comment on the proposed formula in relation to severity and weighting without seeing how these work in a real inspection. We believe the initial NSPIRE inspections should be "advisory" until a critical mass of properties experience an NSPIRE inspection. It would be helpful if REAC could provide its internal analysis comparing the scoring under UPCS and NSPIRE.

Generally, we believe that smaller properties will be most negatively impacted by the proposed scoring methodology. As an example, a defect in an eight-unit property could cause a seven-point deduction, while the same defect in a 100-unit property would result in a two-point loss. We recognize that HUD intends to increase the maximum number of units that will be inspected from 27 to 32 and remove the requirement that every resident building be inspected regardless of whether any unit within that building was subject to inspection. We understand that these actions are an attempt to achieve consistency in inspection results across all sizes of properties, but that may not be enough.

Further, we repeat our cautionary note set forth in prior comment letters submitted to HUD in response to NSPIRE rulemakings that any changes to the proposed scoring methodology must consider the impact of such changes on older properties. As HUD staff is aware, many of HUD's project-based portfolios are old. It is already incredibly costly for housing providers to update properties to ensure compliance with HUD requirements, such as the Uniform Federal Accessibility Standards. Without seeing how the proposed scoring methodology changes work in practice, we continue to urge HUD to make adjustments in the scoring methodology for factors

related to an applicable building's age, including, but not limited to, property age, building type, amount of common area amenities, maintenance staffing, maintenance expenditures, work order completion and/or timeliness, among other factors.

**Scoring Designations:**

We appreciate that the new standards will retain the numerical score for NSPIRE inspections. The new assignment of a letter grade to each property inspection score is less acceptable to some of our members who suggested HUD adopt the Management and Occupancy Review (MOR) standard (Superior, Above Average, etc.).

**Non-Scored Defects:**

We note that HUD will continue the practice of not scoring smoke detector defects or similarly defective carbon monoxide devices. We support this stance and understand that these will be categorized as life-threatening defects that must be corrected within 24 hours.

**Affirmative Requirements:**

We appreciate that HUD is holding off on scoring the affirmative requirements. Considering that these types of items are not generally scored under UPCS, it will take properties time to comply. We note that HUD will include the list of new affirmative requirements in the final rule.

We thank you for the opportunity to highlight our issues with the scoring formula and look forward to a continued productive dialogue.

Sincerely,

Council for Affordable and Rural Housing  
Institute of Real Estate Management  
Mortgage Bankers Association  
National Affordable Housing Management Association  
National Apartment Association  
National Association of Home Builders  
National Association of Realtors  
National Leased Housing Association  
National Multifamily Housing Council  
Institute for Responsible Housing Preservation