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March 15, 2021

Office of the General Counsel  
Rules Docket Clerk  
U.S. Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0001

*Via regulations.gov*

**Re: Comments of the International Code Council on the Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), Docket No. FR-6086-P-01**

The International Code Council (ICC) is nonprofit organization, driven by the engagement of its more than 64,000 members, that is dedicated to helping communities and the building industry provide safe, resilient, and sustainable construction through the development and use of model codes (I-Codes) and standards used in design, construction, and compliance processes. Most U.S. states and communities, federal agencies, and many global markets choose the I-Codes to set the standards for regulating construction and major renovations, plumbing and sanitation, fire prevention, and energy conservation in the built environment. The Code Council appreciates the opportunity to submit the following comments in response to the U.S. Department of Housing and Urban Development’s (HUD) proposed rule implementing national standards for the physical inspection of real estate (proposed rule).

The Code Council facilitates the development of the International Property Maintenance Code (IPMC),<sup>1</sup> a model code that regulates minimum maintenance requirements for existing buildings, including for basic equipment, plumbing, mechanical, electrical, light, ventilation, heating, sanitation, and fire safety. Responsibility is fixed among owners, operators, and occupants for code compliance. The IPMC and the other I-Codes are national “voluntary consensus standards” under Office of Management and Budget (OMB) Circular A-119 and the National Technology Transfer Advancement Act (NTTAA), meaning they are developed in an open forum—with a balance of interests represented and due process—that, ultimately, ensures a consensus outcome. All I-Codes are updated every three years.

The NTTAA, supplemented by OMB Circular A-119, directs federal agencies to use voluntary consensus standards wherever possible in their procurement and regulatory activities in lieu of expending public resources developing government unique standards. HUD has applied these principles repeatedly across its programs. For example, the Department has recognized every edition of the International Building Code since 2018 and the Code Council’s Accessible and Usable Buildings and Facilities A117.1 standard as safe harbors for satisfying the Fair Housing Act’s accessibility requirements.<sup>2</sup> HUD has also required that lenders offering Federal Housing Administration (FHA)-backed mortgages use Code Council-certified

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<sup>1</sup> <https://codes.iccsafe.org/content/IPMC2021P1/>.

<sup>2</sup> Fair Housing Act Design and Construction Requirements; Adoption of Additional Safe Harbors; 85 Fed. Reg. 78,957 (Dec. 8, 2020).



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inspectors where the local jurisdiction does not provide building code enforcement and requisite documentation.<sup>3</sup>

As HUD looks to align and consolidate the inspection regulations used to evaluate HUD assisted housing across multiple programs, the Code Council encourages HUD to continue to leverage private sector codes by, at minimum, accepting the IPMC across HUD's programs as an optional, alternative compliance mechanism. Doing so would strengthen maintenance practices, given the many instances where the IPMC exceeds HUD's existing requirements; improve compliance by standardizing federal, state, and local maintenance requirements; and better integrate maintenance practices with existing construction codes.

### **The IPMC Exceeds HUD's Maintenance Requirements**

Through Question 13, the proposed rule notes several "affirmative requirements" HUD is considering. The IPMC already addresses and in many cases exceeds each of these proposals by requiring:

- (a) Two receptacle outlets in every habitable space, at least one receptacle in laundry areas and bathrooms, and at least one electric luminaire in every public hall, interior stairway, toilet room, kitchen, bathroom, laundry room, boiler room, and furnace room;
- (b) GFCI protection for laundry areas; new receptables must be installed in accordance with the International Residential Code, which generally requires<sup>4</sup> GFCI protection for new receptacles installed in bathrooms, garages, exterior locations, basements, kitchens, laundry areas, and indoor damp/wet locations;
- (c) Heating facilities capable of maintaining safe temperatures in habitable rooms, bathrooms, and toilet rooms; the IPMC prohibits the use of one or more portable space heaters to satisfy this requirement;
- (d) Guardrails for elevated walking surfaces with drop offs greater than 30 inches; and
- (e) Permanent light fixtures, not just in bathrooms, but also in hallways, stairways, kitchens, laundry, toilet, furnace, and boiler rooms.

Through Question 18, the propose rule asks whether HUD should define what constitutes a kitchen and a sanitary facility, which the IPMC addresses. The IPMC requires efficiency units to have a kitchen that includes a kitchen sink, cooking appliance, and refrigeration facilities, each having a minimum clear working space of 30 inches, with sufficient lighting and ventilation. Per the IPMC, every dwelling unit must contain its own bathtub or shower, lavatory, water closet, and kitchen sink that shall be maintained in a sanitary, safe working condition.

Beyond these questions in the proposed rule, and in contrast to the IPMC, the HUD codes do not establish minimum room widths/ceiling heights or require additional bathrooms beyond the first to be functional. In several instances with life safety implications, the HUD codes defer to local codes, which

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<sup>3</sup> Streamlining Inspection Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the FHA Inspector Roster, 83 Fed. Reg. 31,038 (July 3, 2018).

<sup>4</sup> See <https://codes.iccsafe.org/content/IRC2021P1> for additional detail and specifications.



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are not always in place. FEMA released a study last year that found that 30 percent of construction is occurring in communities with no codes or that use codes that have not been updated this century.<sup>5</sup>

HUD did not require carbon monoxide detectors<sup>6</sup> until Congress acted in 2020 to require carbon monoxide detectors be installed consistent with the 2018 edition of the International Fire Code. As the proposed rule notes, HUD “intends to publish a proposed rule concerning the implementation of requirements to install carbon monoxide detectors in HUD-assisted and -Insured Housing.” The IPMC has required carbon monoxide detectors in each of the last two editions.

One of the reasons the IPMC exceeds HUD’s standards is that those standards have not been substantively updated for decades. As the Proposed Rule recognizes, HUD currently uses two inspection models for the majority of HUD housing programs: The Housing Quality Standards (HQS) developed in the 1970s and the Uniform Physical Condition Standards (UPCS) developed in the 1990s. As the Proposed Rule notes, “[b]oth remain largely unchanged since their inception.” By contrast, the IPMC is updated every three years, allowing it to keep pace with changing technology, building science, and improved understanding of life safety risks.

The proposed rule states that HUD is “working to establish an ‘infrastructure of partnerships’ to provide continuous technical input and scientific guidance for standards development,” and “anticipates that the continued expansion of these relationships will help to provide the input into the three-year updates to which HUD commits in this rule.” Achieving this commendable commitment would require a considerable investment and a change from longstanding practice.

Further, the commitment to continuous updates through an infrastructure of technical partnerships that the rule proposes appears very similar to a commitment by HUD to developing and updating a property maintenance standard across its program portfolio. We encourage the Department to consider whether its doing so is consistent with the NTTAA, supplemented by OMB Circular A-119, which directs federal agencies to use voluntary consensus standards wherever possible in their procurement and regulatory activities in lieu of expending public resources developing government unique standards.

### **Leveraging the IPMC would Standardize Maintenance Requirements and Improve Compliance**

The IPMC is a nationally applicable, consensus-based, model code, that has been adopted or is in use in 36 states. In instances where the IPMC is already required at the state or local level, allowing adherence to the IPMC to satisfy HUD’s maintenance requirements would harmonize these requirements, and standardize practices. Inspectors would be more efficient and effective at implementing a single maintenance standard than they would at three or more variations.

The IPMC is part of a 15-part family of International Codes that collectively govern all aspects of construction. These codes include the International Building Code and International Residential Code, which are adopted or in use in 50 and 49 states, respectively, are required by the General Services

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<sup>5</sup> FEMA, *Building Codes Save: A Nationwide Study* (Nov. 2020).

<sup>6</sup> See HUD Office of Public and Indian Housing, *Housing, and Lead Hazard Control and Healthy Homes Notice PIH 2019-06, H 2019-5, and OLHCHH 2019-01* (Apr. 18, 2019).



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Administration and the Department of Defense for federal buildings, and which govern all construction and renovations in residential structures. The I-Codes also include the International Mechanical Code, the International Fire Code, the International Plumbing Code, and the International Fuel Gas Code, all of which are adopted or in use in most states throughout the U.S. Where a building condition implicates multiple code provisions, the IPMC includes pointers to the relevant I-Codes. The ability to reference the other I-Codes makes the IPMC more comprehensive and integrates it into existing construction requirements in place throughout the United States. Although there are instances where HUD's codes defer to state and local regulations, those deferrals are general in nature. Without greater specificity, these references do not provide guidance to implementers as to which specific state or local code requirements should apply or what to do when no state or local code is in place.

The proposed rule indicates a willingness to "approve inspection criteria variations . . . which apply standards in local housing codes" and states that minimum requirements include "compliance with State and local codes and ordinances." HUD's permitting the IPMC as an alternative compliance option is consistent with those themes.

In sum, the Code Council strongly encourages HUD to recognize the IPMC as providing an alternative means of compliance with maintenance requirements across the Department's housing programs.<sup>7</sup> By doing so, HUD would meet the Department's obligations under the NTTAA and OMB-A119 to leverage private sector developed codes and standards in place of advancing government-unique ones, and support the use of a stronger, continuously updated code, that better complements existing maintenance and construction requirements at the state and local levels.

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Thank you for the opportunity to provide comments. If you have any questions concerning the Code Council's recommendations, please do not hesitate to contact me.

Sincerely,

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<sup>7</sup> Although this proposal would apply to all of HUD's housing programs, it is also responsive to Question #4 (what minimum housing condition standards should HUD apply to HOME and Housing Trust Fund supported activities) and Question #10 (should another housing quality standard apply to HOME tenant based rental assistance). The Code Council recommends HUD utilize the IPMC to ensure minimum housing condition standards in these instances.