Testimony of

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"Oversight of the Federal Government's Approach to Lead-Based Paint and Mold Remediation in Public and Subsidized Housing"

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Introduction

Chairman Duffy, Ranking Member Cleaver, and Members of the Subcommittee, thank you for the opportunity to testify today on the issue of lead-based paint and mold remediation in public and subsidized housing. I am Emily Benfer, Distinguished Visiting Scholar & Senior Fellow at Yale Law School's Solomon Center for Health Law & Policy. It is an honor and privilege to testify before you today on this critical issue.

Over the past ten years, my scholarship has focused on the social determinants of poor health, including housing conditions that result in lead poisoning and asthma in private and federally assisted housing. In addition, I founded and directed a medical-legal partnership clinic in Chicago, Illinois, that addressed the underlying social issues resulting in poor health among low-income patients of a Federally Qualified Health Center. In many cases, children developed asthma and lead poisoning due to substandard housing conditions. In addition, I collaborated with the Sargent Shriver National Center on Poverty Law (Shriver Center), Green & Healthy Homes Initiative (GHHI), and over 30 national experts and nonprofits to petition the U.S. Department of Housing and Urban Development (HUD) for rulemaking, which led to the 2017 amendments to the Lead Safe Housing Rule, and I was a member of a team of lawyers responding to the lead poisoning of public housing residents in East Chicago, Indiana. In 2019, I will be joining the Columbia Law School faculty to continue to address the social determinants of poor health caused by housing conditions and the environment as the founding director of a health equity and social justice advocacy clinic for law, public health and medical students.

Based on my experience and review of the June 14, 2018 HUD Office of the Inspector General Report entitled, "HUD's Oversight of Lead-Based Paint in Public and Housing Choice Voucher Programs" (OIG Report) and the June 19, 2018 U.S. Government Accountability Office Report entitled, "Lead Paint in Housing: HUD Should Strengthen Grant Processes, Compliance Monitoring, and Performance Assessment" (GAO Report), it is my assessment that **HUD has failed to protect children in federally assisted housing from lead poisoning and other health harming environmental hazards, such as mold, due to a *lack* of**

1) **Action by the agency to implement primary prevention strategies that would prevent exposure and, thus, lead poisoning and asthma;**

2) **Oversight, compliance, and long-term plans necessary to ensure the health and safety of residents, especially children; and**

3) **Funding to improve the conditions of federally assisted housing.**

In this testimony, I will provide an overview of the risks to and repercussions on children that have resulted from these failings and recommendations to improve HUD's ability to provide decent, safe, and sanitary housing to low-income families.

Lead Hazards and Mold in Federally Assisted Housing Can Result in Permanent and Severe Health Impairments

Nationwide, inadequate housing conditions, age, and affordability of housing sustain poor health trends.[1] A recent Harvard report estimated that 8.3 million households lived in inadequate housing conditions in 2015, placing occupants at elevated risk of poor health outcomes.[2] In federally assisted housing, over 1,652,000 households with children are more likely to be clustered in low-income, segregated areas with a deteriorating housing stock.[3] **Children occupy more than one third of public housing and Housing Choice Voucher (HCV) program households and approximately one third of the project-based Section 8 households.[4]** The large number of child occupants and high risk of substandard conditions underscore the need to protect against lead and mold exposure in federally assisted housing.

Lead Poisoning

Over 37 million homes in the United States have lead-based paint that will become a lead hazard if not closely monitored and maintained.[5] Of those, 23 million homes contain significant lead hazards. 3.6 million homes with lead hazards are occupied by children under the age of six, the age group most at risk for lead poisoning because their brains and nervous systems are still developing.[6] In addition, 1.1 million of the homes with significant lead hazards are occupied by low-income families with children under age six.[7] **According to HUD, "a considerable number of children under age six currently reside in HUD-assisted housing units that contain lead-based paint."[8]** People living in federally assisted housing are susceptible to lead poisoning because many of the units were built before lead-based paint was banned and the home is not maintained or the units are located in areas with elevated risk of lead poisoning.[9] **HUD estimates that 450,000 housing units within the federal assistance programs were built before 1978, which increases the likelihood of lead-based paint content, and occupied by children under age six**.[10] At the same time, seventy percent of Superfund sites are within a mile of public housing or HUD multi-family housing, exposing residents to lead-soil and arsenic, among other toxins.[11] In fact, between 2012-2015, $5.6 million in federal funds were used in the HCV program to subsidize the rent in homes with a known and uncontrolled lead hazard in Chicago alone.[12] During the same time period, over 200 children in the Chicago-based HCV program developed lead poisoning between 6 micrograms per deciliter (µg/dL) and 19 µg/dL.[13] It is estimated that thousands of children were lead poisoned at lower levels. **Of greatest concern, this poisoning is entirely preventable.**

Lead poisoning presents an urgent health and safety threat to children,[14] causing irreversible neurological harm that affects bodily functions, growth, cognition, behavior, and development.[15] The overwhelming scientific research proves, and Children's Health Protection Advisory Committee, the Centers for Disease Control and Prevention, the American Academy of Pediatrics, and the Environmental Protection Agency agree, that **no amount of lead in the blood is safe and children require a wide margin of safety**.[16] Very high levels of lead exposure can cause seizures, coma and death. At the lowest levels of exposure, lead poisoning can lead to permanent brain damage, reduced IQ, diminished intellectual and academic abilities, academic failure, juvenile delinquency, high blood pressure, learning disabilities, behavioral problems, developmental delay, and premature death.[17] At a blood lead level of three µg/dL,

children demonstrate decreased end of grade test scores; at a blood lead level of four µg/dL, three-year-olds face an increased likelihood of being classified as learning disabled in elementary school; and at a blood lead level of five µg/dL, children are thirty percent more likely to fail third grade reading and math tests and to be non-proficient in math, science, and reading.[18] In fact, global childhood lead exposure contributes to approximately 600,000 new cases of intellectual disabilities diagnosed in children each year.[19] In addition, lead poisoning increases the risk of chronic renal failure, heart disease, and premature death in adulthood.

According to a 2017 report from the Health Impact Project, children who have been lead poisoned "are more likely to struggle in school, drop out, get into trouble with the law, underperform in the workplace, and earn less throughout their lives, independent of other social and economic factors."[20] And while secondary in importance to the health impacts, "the financial consequences of these outcomes include billions of dollars in public spending on special education, juvenile justice, and other social services."[21] Lead poisoning amounts to $11-53 billion in healthcare costs, $165-233 billion in lost lifetime earnings, $25-35 billion in lost tax revenue, $30-146 million in special education expenses, and $1.7 billion in direct costs of crime.[22] Ultimately, **the elimination of solely lead paint hazards from older homes occupied by low-income families would provide $2.8 billion in health, education, and increased revenue benefits to federal and state governments for the 2018 cohort of children alone**.[23]

Asthma

Asthma is among the leading adverse health consequences of substandard housing conditions and the most common chronic pediatric disease in the United States.[24] Nationally, asthma affects 6.1 million children and 16.5 million adults.[25] Children living in poverty are more likely to be diagnosed, to experience more severe symptoms, and to have ongoing asthma symptoms than their more affluent peers.[26] Asthma requires constant health monitoring, daily medication, and vigilant avoidance of triggers.[27] Substandard housing conditions, such as the presence of cockroaches, rodents, mold, leaks, and poor air quality, often create common asthma triggers.[28] **A study of the 2011 U.S. Census Bureau report found that public housing residents are four times as likely to have roach infestations and three times as likely to have leaks than private rental apartments**.[29] Another study found that low-income public housing residents in Illinois experienced poor housing conditions that cause asthma at extremely high rates: fifty percent of residents experienced a cockroach infestation, thirty-three percent lived with mold or mildew, twenty percent endured a rodent infestation, and thirty-three percent had plumbing problems.[30] Public Housing and HCV program residents across the country suffer the adverse consequences of mold.[31]

The ability of asthma to affect and limit activities can be severe. Among adults, twenty-five percent with asthma are unable to work or carry out activities of daily living;[32] in 2008, **asthma alone caused 14.2 million missed days of work.**[33] For children, asthma is the leading cause of school absences.[34] **In 2008, there were 10.5 million missed days of school due to asthma.**[35] In some cities, school absences are a basis for termination from public housing.[36] **The economic cost of asthma as a result of medical expenses, lost work, missed school days, and premature death is estimated at as much as $56 billion.**[37] Despite highly effective treatment guidelines for asthma, the overall morbidity (attack rates, emergency department visits, and

hospitalizations) and mortality rates among children have not decreased.[38] It is irrefutable that environmental hazards—especially in housing—have devastating consequences for health, even when effective treatment options are available.

Recommendations

Eliminate the Risk of Lead Poisoning in Federally Assisted Housing

Children cannot escape becoming lead poisoned without greater federal interventions. HUD has repeatedly stated its renewed commitment to lead safe homes and lead poisoning prevention, but as both the GAO and OIG reports found, has yet to adopt primary prevention strategies, engage in compliance and oversight mechanisms, or dedicate the necessary funds to prevent exposure to lead hazards in all federally assisted housing programs.[39]

Engage in Primary Prevention Strategies to Protect Children from Lead Poisoning

The country's most vulnerable children remain unprotected from the dangers of lead poisoning because, in the HCV program and project-based Section 8 receiving less than $5,000 per unit, the **current regulations only require a lead hazard risk assessment *after* a child has suffered lead poisoning and permanent neurological damage. In all other programs some form of pre-occupancy lead hazard inspection is required. There is no valid rationale for HUD's ineffective approach that applies different levels of protection from lead poisoning based on the type of housing.[40] All children, regardless of type of housing program, deserve to be protected from the neurotoxin.** As in the past, until HUD engages in primary prevention strategies, these children function as "sensing devices" for lead hazards[41] and will continue to be "the proverbial 'canary in the coal mine.'"[42]

To protect children from exposure to lead hazards, HUD must:

1. Require pre-occupancy lead hazard risk assessments in all federally assisted housing

HUD must adopt a healthy housing standard for federally assisted housing.[43] The CDC Advisory Commission on Childhood Lead Poisoning Prevention determined that visual assessments, the only lead inspection in the HCV program and project-based Section 8 receiving less than $5000 per unit,[44] "should now be considered unacceptable."[45] As recently as March 2018, HUD Secretary Ben Carson agreed that visual inspections alone are not sufficient to identify lead hazards in multiple programs.[46] In fact, HUD has classified lead-dust and lead-soil in the residential environment as among "the most important preventable exposure sources for children."[47] Risk assessment, which should include visual assessment plus the collection of dust, soil, water, and paint samples in homes, is proven to more accurately identify lead hazards than visual assessment alone.

HUD has justified using this ineffective and inequitable tiered approach, rather than initial lead hazard risk assessments, on 1) lack of legal authority[48] and 2) the need to conduct a cost benefit analysis.[49] In the 2017 Consolidated Appropriations Act, the Senate Report expressly clarified and confirmed that HUD has the authority to conduct more rigorous lead hazard

inspections in all federally assisted housing, stating: "HUD has the statutory authority necessary to require more stringent inspections when checking homes for lead paint." As the House Report noted, HUD's current visual lead inspections have proven insufficient,[50] and more rigorous standards, such as requiring risk assessments prior to a family moving into a home, should be implemented to ensure that children living in federally assisted housing are protected from lead poisoning."[51] In addition, the 2018 GAO Report recommended that HUD request from Congress the authority to use a specific, stricter inspection standard in the HCV program than visual assessments.[52] HUD disagreed with the recommendation claiming it needed the flexibility to conduct an analysis of the benefits and costs before requesting or adopting changes. **As long as lead-based paint exists, and children continue to be poisoned in federally assisted housing, there is no justification for delay and HUD should not be allowed to ignore the findings of Congress and the GAO.**

It is of paramount importance that Congress direct HUD to engage in pre-occupancy lead hazard risk assessments in all federally assisted housing occupied by children. In 2017, a bi-partisan group of Senators, including Senators Scott (R-SC), Durbin (D-IL), Young (R-IN), Portman (R-OH), Donnelly (D-IN), Duckworth (D-IL), Menendez (D-NJ), and Kaine (D-VA), introduced S. 1845, Lead-Safe Housing for Kids Act.[53] The Lead-Safe Housing for Kids Act was based on a bill introduced in the 114th Congress by Representatives Kildee (D-MI), Quigley (D-IL) and Ellison (D-MN) and directs HUD to replace ineffective visual assessments with lead hazard risk assessments in all federally assisted housing programs. National and local non-profits, experts, and associations—including the GHHI, Shriver Center, American Academy of Pediatrics, American Hospital Association, National Housing Trust, and National Center for Healthy Homes—have endorsed the Lead-Safe Housing for Kids Act.

2. Adopt the Universal Physical Condition Standards that include the identification of lead hazards in all federally assisted housing

In May 2017, Congress indicated its preference for Universal Physical Condition Standards (UPCS) inspections over Housing Quality Standards inspections.[54] UPCS inspections are more detailed and require greater documentation than HQS inspections. However, UPCS inspections do not require lead hazard inspection. For example, in its current form, the UPCS-V Decision Trees only includes a visual inspection of lead-based paint. It also includes numerous inspection items that could have "peeling paint or needs paint" and "peeling or cracking paint," including doors, walls, ceilings, floors, and windows.[55] (The inspectable item of "patio/porch/balcony" does not include a decision related to peeling or cracking paint, despite the possibility of deteriorated paint.[56]) However, the presence of peeling or cracking paint does not result in a "fail" outcome or trigger a lead hazard risk assessment. The only time a unit fails inspection for a lead hazard is when a "target unit" does not have a lead-free certificate and deteriorated lead-based paint is present.[57] This only captures a fraction of potential sources of lead hazards and relies upon a lead paint inspection, which may or may not be conducted.

HUD should incorporate risk assessments into the newly created Universal Physical Condition Standards inspection protocol for HCV program units constructed before 1978. This will eliminate the cost and any delays associated with a second inspection solely for the purpose of identifying lead hazards. In addition, PHAs can support the certification of existing staff

members as risk assessors or enter into staffing or equipment sharing agreements with local public health departments. Again, this is a clear and simple path to preventing the poisoning of children; HUD must be made to follow this path that will literally save children's lives. Please see the comments on the UPCS-V demonstration (Docket No. FR-5928-N-01) submitted on July 5, 2016 for additional details.[58]

3. Update the lead-paint, lead-dust, and lead-soil standards to accurately identify the presence of lead that is hazardous to health

Congress recently acknowledged that the standards for lead-dust and soil are based on pre-1995 research and are no longer sufficient to identify lead hazards. Congress therefore requested that EPA review and update the standards accordingly.[59] The United States Court of Appeals for the Ninth Circuit ordered EPA to issue a proposed rule updating its lead dust hazard standard and the definition of lead-based paint within 90 days of the decision becoming final and a final rule within 1 year of the proposed rule.[60] On June 25, 2018, EPA released a proposal to lower the dust-lead hazard standards. While the Lead-based Paint Poisoning Prevention Act (LPPPA) gives EPA express authority to define lead-dust and lead-soil, HUD has the authority to amend its standards immediately to prevent a "threat of adverse health effects in pregnant women or young children" and to identify lead "at or in excess of the levels determined to be hazardous to human health."[61] In fact, HUD established lead hazard definitions years in advance of the EPA in promulgating the Lead Safe Housing Rule 1999.[62] Most recently, HUD's Office of Lead Hazard Control and Healthy Homes established more stringent, health-based requirements for dust-lead action levels for risk assessments and clearance for Lead-Based Paint Hazard Control and Lead Hazard Reduction Grantees, effective April 1, 2017. These new lead dust action levels are based in science and demonstrate both HUD's recognition of the need and its ability to update standards for all HUD programs.[63] Failure to apply these standards to all HUD programs will maintain a tiered approach that values children's health by the program they participate in.

Currently, HUD's standards for lead-paint, lead-dust, and lead-soil are not based in the prevailing science and, as a result, HUD cannot fulfill its duty to provide safe, decent, and habitable housing. Without health-based standards, risk assessments prior to occupancy and clearance testing following interim controls, renovation, or abatement are unreliable and potentially place occupants in danger.[64] For example, in one study, tests using the current residential floor lead-dust standard failed to identify 85% of housing units of children who had a blood lead concentration of 10 µg/dL.[65] Similarly, children's blood lead concentrations increase by 3.8 µg/dL for every 1000 ppm increase in soil lead concentration.[66] The current standards are hazardous to health, often resulting in lead poisoning and its permanent neurological harm and must be amended and set at the lowest detectable level to protect human health.

In addition, HUD should update the definition of lead paint. HUD has the express authority under LPPPA to revise its standard for lead-based paint in housing constructed prior to 1978.[67] LPPPA directs HUD to periodically review its standards as the technology makes lower detection feasible and the medical evidence warrants a lower level.[68] Congress' foresight was fortunate, as the technology and science on lead-based paint have dramatically improved since the standards for lead-based paint were last reviewed in 1992 – *i.e.*, 25 years ago – and detecting paint with content levels of lead that are low, but still extremely dangerous, is possible today.

The current technological and medical evidence necessitate that HUD update the lead-based paint definition. Failure to do so means that HUD will be turning a blind eye to information that we have and know to be true – and that could save a child's life.

EPA indicated that it would work with HUD to establish a lower lead content standard in lead-based paint.[69] In 2012, in response to a request from the EPA's Office of Pollution Prevention and Toxics, EPA's Science Advisory Board issued a final report that supported updated standards.[70] HUD has both the statutory authority and obligation to act to ensure that the standards reflect current science, and there is no rationale that could justify creating an "illusion of safety" and placing children in both private and federally assisted housing in grave danger.[71]

4. Amend the Lead Safe Housing Rule to extend protections to zero-bedroom dwelling units

In May 2017, Congress amended LPPPA to remove from the definition of target housing the exception for zero-bedroom dwellings, in which any child under the age of six resides or is expected to reside. In many cities where affordable housing is scarce, families and single parent households commonly live in efficiency, or zero-bedroom dwelling units, where their children could be exposed to lead-based paint hazards in pre-1978 housing. To protect these children and to comply with Title X, as amended, HUD must update the Lead Safe Housing Rule at 24 C.F.R. 35.100, 35.115 by removing the zero-bedroom dwelling unit from the exemptions to the rule, as Congress has expressly required.

5. Include the identification of lead risks from lead water service lines in Environmental Investigations

In the 2017 Consolidated Appropriations Act, Congress dedicated significant funding to address lead-contaminated water and directed the General Accountability Office to assess the number of lead service lines in the United States.[72] It is critical that HUD identify lead exposure caused by lead service lines and subsequent lead in drinking water in federally assisted housing as part of its Environmental Investigations and ensure that full lead service lines are eliminated from federally assisted housing. While HUD guidelines have long recommended sampling water in limited circumstances, the recent findings of lead contamination in water in almost 2,000 water systems, serving more than three million Americans across the country, increased knowledge and highlighted the importance of eliminating exposure to the neurotoxin in all forms.[73] HUD should require PHAs and property owners to determine the presence or absence of a lead service line and develop a timeframe for full replacement.

PHAs can effectively address lead poisoning in federally assisted housing by taking an aggressive and committed approach to lead hazard remediation. In Baltimore, Maryland, after the Housing Authority of Baltimore City (HABC) failed to comply with federal lead-safe requirements, it faced nearly 200 toxic tort lawsuits and millions of dollars in judgments for failure to mitigate lead-based paint in public housing that resulted in lead poisoning of hundreds of residents. In response, HABC adopted the state's primary prevention standards, bringing over 18,000 units under state oversight, and modified its approach by allocating funding to remediate public housing units. HABC replaced windows, doors and other sources of lead poisoning. The

targeted approach dramatically reduced the incidence of lead poisoning in federally assisted housing.

Increase Oversight and Data Collection to Ensure Public Housing Authorities and Property Owners are in compliance with lead poisoning prevention laws

1. Increase oversight and compliance mechanisms

Media coverage related to lead poisoning in federally assisted housing, despite a mandate to abate public housing and protect residents from lead poisoning, has caused Congress to voice its concerns over HUD's oversight and quality assurance capacity.[74] Congress recently directed HUD to establish and "implement a process that improves data collection and analysis of actions PHAs are taking to comply with lead-based paint regulations in housing choice voucher units by March 31, 2017."[75] Congress also directed HUD to report on the incidences of lead poisoning in federally assisted housing, specifically the Housing Choice Voucher program. In addition, Congress directed HUD to issue Guidance and provide trainings on recent amendments to the Lead Safe Housing Rule and best practices in applying lead-safe standards, especially for maintenance and property management staff. Although HUD recently issued Guidance on the Lead Safe Housing Rule, public housing authorities have expressed concerns about implementation, suggesting the need for additional support and training.

The June 2018 OIG and GAO Reports determined that HUD lacked adequate oversight of lead-based paint reporting and remediation in its public housing and HCV programs. PHAs self-certify compliance, leaving wide margins for fraudulent reporting and HUD has no procedure for addressing noncompliance other than offering technical support to faltering PHAs. At the same time, HUD has not reported on its lead poisoning prevention progress and plan since 1997. These findings highlight the urgency of implementing adequate procedures and controls to ensure compliance with lead-safe requirements.

In addition, HUD should update and strengthen its enforcement program. Currently, HUD lacks stated methods to compel compliance with the Lead Safe Housing Rule, and for addressing violations. Current regulations, at 24 C.F.R. § 35.170, state only that designated parties "…shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law." HUD can and should go beyond this generic language. For example, HUD could include in its grant and contract documents clear and specific monetary holdbacks for the failure to adhere to lead poisoning prevention regulations. Similarly, HUD should ensure that PHAs comply with the data collection and record keeping requirements mandated at 24 C.F.R. §35.1225(g). Without a clear system for monitoring compliance and enforcement, these and other requirements hold little value. To ensure that lead hazards are correctly identified and repaired, HUD should require intervention on behalf of noncompliant designated parties and HUD should conduct monitoring activities to ensure compliance with the rule, with any costs recovered from the designated party.

2. Increase enforcement of the Lead Disclosure Rule

The Lead Disclosure Rule is mandated by Residential Lead-based Paint Hazard

Reduction Act of 1992 (Title X) and ensures that purchasers and renters of older housing units understand the dangers of lead poisoning, and their rights and obligations as a homeowner or renter. Lead disclosure is an important part of the nation's multi-pronged lead poisoning elimination strategy. The Lead Disclosure Rule is dependent upon, and thus is only as effective as, HUD's and EPA's vigilance in enforcing it. Healthy homes proponents, such as Green & Healthy Housing Initiative has recommended increasing enforcement activities and personnel to aid in educating the public about potential lead hazards in the pre-1978 property that they are about to rent or purchase. As a result of the enforcement of this Rule, over 188,000 non-compliant units have been made lead safe. The Disclosure Rule gives those tenants and homeowners the warning necessary to help them in seeking further testing or lead hazard remediation to protect children and pregnant women in particular in the home from harm. The Disclosure Rule can also be an effective tool to spur private investment and direct resources toward lead poisoning prevention and funding for enforcement. The Disclosure Rule must also be updated to remove any exemptions for zero-bedroom dwelling units, pursuant to the Consolidated Appropriations Act of 2017.

Increase Funding to Identify and Eliminate Lead Hazards in Private and Federally Assisted Housing Before Children are Exposed to Harm

In recent years, PHAs have not had sufficient funding for the operation or maintenance of public housing. There is an estimated backlog of public housing capital needs as high as $40 billion that grows at a rate of $3.4 billion per year.[76] Because of this, the public housing inventory has been losing an average of 10,000 units annually through demolitions and dispositions.[77] The current conditions of many properties inhibit investment and recapitalization efforts in the communities with the greatest needs. Greater funding would allow PHAs to use increased operations and administrative funds to fully address the lengthy accumulation of maintenance requests and capital funding needs for public housing. These funds could also be used to ensure that units are lead-safe and comply with the Lead Safe Housing Rule before occupancy by children.

HUD's Community Development Block Grant and HOME programs are critical to the health and safety of participants and the American people, especially children. Each year, HUD uses funds to provide grants to states for the purposes of lead hazard control and elimination. The Lead-Based Paint Hazard Control (LHC) and Lead Hazard Reduction Demonstration (LHRD) Grant Programs are critical to reducing lead-based hazards in the housing stock. As a result of these grants, lead hazards in over 190,000 housing units have been remediated or eliminated since 1994. In 2018, HUD is proposing to use these funds to address lead hazards in approximately 8,400 units.

Despite the proven effectiveness, these grant programs remain underfunded and not accessible to the most at-risk communities. This is due, in part, to the lack of a long-term lead poisoning prevention plan and inconsistent grant allocation standards. HUD can improve the effectiveness of these programs by evaluating selection criteria, providing guidance to reviewers, and using data to expand these programs to target a greater number of at-risk housing units and continue to reduce the prevalence of childhood lead poisoning. **To end lead poisoning as a major public health threat, HUD would need to increase the budget for lead hazard reduction and abatement funding from $110-$130 million to $2.5 billion annually for the**

next five years. HUD should allow grantees of the HUD Office of Lead Hazard Control and Healthy Homes and other HUD programs to use funds to replace leaded water fixtures and lead service lines in homes and environmental hazards in the community, in addition to paint related hazards.

At the same time, HUD should increase funding for the Community Development Block Grant (CDBG) program for housing rehabilitation and community infrastructure improvement. Lead poisoning prevention, ultimately, will require not only the removal of environmental hazards but, also, investing in safe and affordable housing, community development, poverty elimination. This program is critical to lead poisoning prevention because the issue plagues entire communities. Since 1974, CDBG has invested $149.4 billion in communities nationwide, assisting states and localities to achieve the kinds of infrastructure investment, job creation, and poverty elimination low- to moderate-communities desperately need. CDBGs should be disbursed in jurisdictions across the country in adherence to high standards and with a focus on its goal of ensuring decent and affordable housing to the most vulnerable in our communities.

The HOME program plays an important role in helping address home-based environmental health hazards such as lead hazards through larger scale housing rehabilitation projects. HOME funding should be maintained not only to promote housing affordability and stability in low income communities, but to also complement other lead hazard reduction and hazard remediation resources.

State and local governments can help address lead poisoning, including in federally assisted units, by developing programs that complement HUD lead hazard grants using new and creative approaches. In Maine, the Legislature just last week approved a new $4 million program with the goal of abating lead hazards in the 280,000 rental housing units with lead-based paint issues *before* children are harmed. The Maine State Housing Authority will oversee the program that anticipates makes larger contributions in homes that have resulted in lead poisoning and allowing the use of less expensive, RRP-certified firms to conduct renovations where a child has not yet been poisoned.

Address the Underlying Causes of Mold in Federally Assisted Housing Before Occupants Suffer Irreversible Health Harms

Housing Quality Standards require that mold on walls, ceilings or in bathrooms must be "corrected" or replaced.[78] The Universal Physical Condition Standards (UPCS) includes an inspection for evidence of leaks, mold, or mildew less than 1 square foot (level 1), between 1 and 4 square feet (level 2), or more than 4 square foot (level 3) and the UPCS-V inspection includes a pass/fall option for the presence of mold. In many public housing and tenant-based assistance programs, the common remedy for mold is painting over or washing the area rather than addressing the root cause. Exposure to mold and mildew can result in asthma, severe respiratory distress, allergic reactions, infection. It is critical that housing authorities address the underlying cause of the mold, such as leaks, uninsulated pipes, and lack of ventilation to protect the health of residents. PHAs must use plumbers and mold remediators to diagnose and address underlying plumbing problems or leaks causing mold and moisture, remove walls, ceilings and flooring with

mold or moisture, minimize resident's exposure, among other measures.[79] To protect residents from further harm, temporary relocation should be offered during prolonged repairs.

Recent healthy homes interventions demonstrate that it is possible to reduce indoor allergens, such as mold, that contribute to asthma. After countless children residing in federally assisted housing were treated in at The Johns Hopkins Hospital for acute respiratory distress and asthma attacks, HABC partnered with GHHI to launch the Healthier Homes Asthma Initiative. The initiative trains HABC staff to identify and eliminate environmental conditions that cause or trigger asthma attacks. Any child who suffers an asthma attack is relocated while the unit is remediated. In addition, the program trains and hires residents to become certified community health workers. The cost-effective national model dramatically reduced the incidence of asthma in public housing and the associated healthcare costs, while improving conditions and offering training and employment opportunities to residents.

Lead and Mold in Federally Assisted Housing Violate the Americans with Disabilities Act

HUD's current practices and procedures violate the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Fair Housing Act for residents whose asthma is exacerbated by mold or whose impairment would be worsened by exposure to lead hazards.[80] The United States District Court for the Southern District of New York held that the New York City Housing Authority's failure to correct conditions and remove mold preventing public housing residents from participating in the program and violated the ADA.[81] At the same time, numerous PHAs have granted reasonable accommodation requests in the form of pre-rental lead hazard risk assessments and lead hazard control in the HCV program.

If a child has a history of asthma, elevated blood lead level, or other disability that could be exacerbated by exposure to an environmental hazard,[82] he or she is a qualified individual with a disability, as defined by the Fair Housing Act (FHA), Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.[83] Asthma substantially limits the major bodily function of respiration and lead poisoning substantially limits the major bodily function of the neurological system and results in impairments that substantially limit multiple major bodily functions and major life activities.[84] Participants with elevated blood lead levels, asthma or other impairments will not have equal opportunity to access and participate in the federally assisted housing if uncontrolled lead or mold is present in a unit. Exposure to lead hazards or mold will aggravate or worsen these children's disabilities. These participants are entitled to a reasonable accommodation in the form of housing that is mold-free and lead-safe or lead-free. The only way to ensure that participants with lead poisoning, asthma or other impairments have equal opportunity to participate in federally assisted housing through the completion of repairs that remove the source of mold, and a lead hazard risk assessment and remediation prior to occupancy.[85]

Conclusion

It is critical that HUD uphold its duty to provide decent, safe, and sanitary housing that will enable families to thrive. Federally assisted housing should never be the source of harm to a resident; they should be the "gold standard" of healthy housing. Units with substandard

conditions, such as lead and mold, pose a great threat to the health and livelihood of residents, especially children, and cannot be considered "housing" under federal standards. HUD must eliminate the root causes of lead poisoning and asthma in housing before children are exposed by implementing primary prevention strategies, engaging in oversight, compliance and long-term planning, and dedicating funding to eradicating health harming conditions in federally assisted housing. Any other approach places children's lives at risk.

Thank you for the invitation to testify today on this important issue and I look forward to your questions.

Appendix

Select Examples of Mold and Lead Hazards in Federally Assisted Housing

The following examples demonstrate the need to improve the conditions in federally assisted housing nationwide and to increase HUD's compliance and oversight activities in order to protect residents from lead poisoning, asthma and other severe health impairments. These examples are not exhaustive.

Alabama

- **Tuscaloosa Housing Authority** (THA): HCV Program participant notified THA that her home was infested with mold and causing health problems. THA did not send a Housing Quality Standard (HQS) inspector to the unit within 15 days, as required by federal law and the mold continued to grow in the unit.

California

- **Jordan Downs Public Housing Complex, Los Angeles:** The Housing Authority of the City of Los Angeles informed the 2,400 residents that the area was free of health risks, despite documentation of high levels of lead, arsenic and cadmium in the soil, exceeding state thresholds for concern. Health coordinators have reported allergic reactions, asthma, difficulty breathing, low birth weights, cancer and mental disorders among residents.

Illinois

- **Alexander County Housing Authority** (ACHA): Numerous public housing complexes administered by ACHA were infested with mice, roaches, bedbugs, and other pests. Many units have structural, health and safety deficiencies, including mold, lead hazards, exposed asbestos, and insufficient electrical and plumbing systems. ACHA failed to conduct lead inspections or control any lead hazards. Despite this, units regularly passed inspection and requests for repairs were ignored or repaired in a substandard manner.
- **Chicago Housing Authority:** Hundreds of children have developed lead poisoning in Chicago-based HCV program units.
    - Tolanda McMullen's son was lead poisoned in two separate HCV program units that passed inspection. The once healthy boy was diagnosed with severe developmental delays and autism after residing in the HCV program units. One unit was repaired in violation of the Renovation, Repair, and Painting Rule, causing additional lead poisoning. Ms. McMullen became homeless to avoid further exposure to lead hazards.
    - Lanice Walker's three youngest children were lead poisoned in her HCV program unit, resulting in developmental delay, behavioral problems, and neurological disorders. The unit had caused lead poisoning of at least one other child in the past. Ms. Walker required legal assistance to exercise her children's rights under the Americans with Disabilities Act to obtain lead-safe housing.
    - A mother of three relocated to Chicago with a portable HCV. Her pre-1978 unit initially failed inspection for deteriorated paint and passed upon reinspection. Two children residing in the unit were diagnosed with lead poisoning after a few

months in the unit. The Chicago Department of Public Health found lead hazards throughout the unit. The same property had poisoned at least two other children.

Indiana

- **East Chicago Housing Authority** (ECHA): The West Calumet Housing Complex was deliberately built on the site of former lead smelting plants. Despite longstanding knowledge of the risks, ECHA did not inform residents of the dangerous toxins in the soil. When children developed lead poisoning, no risk assessments were conducted. Last year, the Complex was vacated and as a result of a lawsuit, residents had to be transferred to lead safe units. ECHA identified exposed lead paint in emergency transfer units but failed to disclose its knowledge of lead paint. In response, HUD offered training.

Louisiana

- **New Orleans Public Housing - Lead:** Children living throughout public housing in New Orleans experienced elevated blood lead levels resulting in a class action that was eventually settled.
- **New Orleans Housing Choice Voucher – Mold:** The Housing Authority of New Orleans ("HANO") conducts annual and special HQS inspections. HANO considers visible mold to be an HQS violation. In fact, HANO considers "serious mold" an emergency condition that requires a re-inspection after 24 hours, rather than 30 days. However, HANO will not fail the inspection if the mold is not visible to the inspector. Frequently landlords paint over mold in order to pass HQS inspection but do not actually treat or remediate the mold. The tenant is then forced to remain in a house that is making them sick, or risk losing their voucher for abandonment. Where the unit does fail inspection and re-inspection, HANO will release a participant's voucher so that they can move. Other area PHAs are not so reliable. In neighboring St. Bernard Parish, it took advocacy by legal services to get one client's voucher released even though the property failed re-inspection four months earlier and the unit was in abatement.
- **New Orleans Section 202 Housing – Mold:** Tenants at Peace Lake Tower in New Orleans East, a Section 202 property housing roughly 180 seniors, have experienced recurring water leakage and resulting mold and mildew on their ceilings and walls. In December 2017, Peace Lake Tower received a failing score of 24c at its REAC inspection, indicating multiple health and safety violations and triggering enforcement action by HUD. Despite the ongoing mold, mildew, water leaks, and other substandard conditions, the owner of the property certified in April, 2018 that the property had done a 100% survey of the property and corrected all deficiencies. After pressure from the local legal services office, who represent multiple tenants at the building, HUD agreed to expedite a re-inspection. The property owner has also refused to release results of air quality testing done at the property.

Maine

- **Maine Housing Authority** (MHA): When the family notified the MHA that their children had elevated blood lead levels of two to six times the Centers for Disease Control and Prevention reference value, the MHA accused the family of lying. The public health department issued an abatement order after finding lead hazards throughout the unit. The landlord ignored the abatement order and painted over chipping paint. Although

the unit had not undergone any repairs or lead hazard remediation, the MHA passed the unit.

- **Regional (Unnamed) Housing Authority:** After an infant developed lead poisoning in the HCV program, the PHA ordered a lead hazard risk assessment. Despite knowledge of lead hazards, the PHA did not inform the resident until four months after receiving results and has yet to abate the HAP contract, despite unmitigated lead hazards. The child has spent two years in the unit exposed to lead hazards.

New York

- **New York City Housing Authority (NYCHA)—Lead Hazards:** Over 202 children tested positive for elevated lead levels and about 48% of those children lived in a public housing unit with known or presumed lead-based paint. NYCHA falsely certified that it had complied with the Lead Safe Housing Rule.
- **NYCHA—Mold:** In Baez v. NYCHA, the federal district court determined that NYCHA failed to make reasonable accommodations and modifications to its policies and practices to effectively abate mold and moisture for its residents with asthma, as required by federal and state law. NYCHA has yet to fully comply with the order.
- **Rochester Housing Authority:** Between 2008 and 2012, children in one household were lead poisoned in five separate Housing Choice Voucher program units that passed RHA inspection. After the children were lead poisoned, the public health department confirmed the presence of lead-based paint hazards in each home.

Ohio

- **Parma Public Housing Agency (PPHA):** In 2017, two children participating in the HCV program developed lead poisoning after their Cleveland unit passed PPHA inspection. The landlord attempted to evict the family after they sought to have the hazard remediated. With the assistance of legal representation, they secured a court order to have the unit remediated. However, the owner failed to comply with the court order. The landlord owned multiple properties throughout the Cleveland area. In 2014, of children tested for lead in Cleveland, 13.7% had elevated blood levels. This percentage is likely an underestimate as only 41% of children receiving Medicaid were tested for elevated blood levels.

Texas

- **Austin**: Numerous units in the project-based Section 8 complexes Fairway Village Apartments and Travis Park Apartments have health and safety issues, including mold and visible plumbing leaks. Nevertheless, the REAC scores do not reflect the substandard conditions. Residents suffer from asthma, allergic reactions, and other health conditions related to these conditions.

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[2] *The State of the Nation's Housing 2018*, JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf
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[7] *Id*.
[8] Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels, 82 Fed. Reg. 4151, 4155 (Jan.13, 2017) (to be codified at 24 C.F.R. pt. 35).
[9] Bryce Covert, *We Know How to Stop the Epidemic of Lead Poisoning. So Why Aren't We?*, THINKPROGRESS (Mar. 24, 2016, 9:38 AM), https://thinkprogress.org/we-know-how-to-stop-the-epidemic-of-lead-poisoning-so-why-arent-we-a4c618d26f91#.di5ibttma
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HEALTH & HUMAN SERVS., NTP MONOGRAPH: HEALTH-EFFECTS OF LOW-LEVEL LEAD (2012), https://perma.cc/UJ8H-R9TQ

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[18] *Id.*

[19] *Lead Poisoning and Health*, WORLD HEALTH ORG., http://www.who.int/mediacentre/factsheets/fs379/en/.

[20] *10 Policies to Prevent and Respond to Childhood Lead Poisoning,* HEALTH IMPACT PROJECT (2018), http://www.pewtrusts.org/~/media/assets/2017/08/hip_childhood_lead_poisoning_report.pdf

[21] *Id.*

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population of Canadian schoolchildren, indicating that gas cooking, exposure to environmental tobacco smoke, home dampness, and humidifier use are associated with the prevalence of asthma). Data show that the age of housing, housing type (apartments versus single family homes), floor level, and location affect respiratory and mental health outcomes. Megan Sandel & R.J. Wright, *When Home Is Where the Stress Is: Expanding the Dimensions of Housing that Influence Asthma Morbidity*, 91 ARCHIVES DISEASE IN CHILDHOOD 942, 943 (2006).

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[54] S. Rep. 114-243, at 97-98 (2016).
[55] UPCS-V Decision Tree *at* 6, 8, 9, 16, 17.
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[58] Comments to Notice of Demonstration to Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing, 24 C.F.R. Part 982, Docket No. FR-5928-N-01, July 5, 2016 (submitted by Health Justice Project, Sargent Shriver National Center on Poverty Law, National Housing Law Project).
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[76] Message from Diane Yentel, National Low-Income Housing Coalition President and CEO, on President Trump's Proposed Budget (March 9, 2017).
[77] *Rental Assistance Demonstration Newsletter*, U.S. Dep't of Hous. & Urban Dev.(Oct. 2015), http://portal.hud.gov/hudportal/documents/huddoc?id=RAD_Newsltr_Oct2015.pdf. Demolitions and Dispositions, before RAD, were the only way that a PHA could transform or dispose of its public housing inventory. PHAs can still apply to HUD to do a demolition or disposition (and in some cases it is required), although RAD has greater tenant and preservation protections in place.
[78] 24 CFR 982.405(a)
[79] IICRC S520, Standard and Reference Guide for Professional Mold Remediation; AIHA, Recognition, Evaluation, and Control of Indoor Mold, Institute of Medicine, Damp Indoor Spaces (2004)
[80] 42 U.S.C 12132, 12131(!)(A)-(B); 28 CFR 35.104, 35.130(a); 29 U.S.C. 794(a); 42 U.S.C. 3604(f)(1)(A)-(B).
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[84] 42 U.S.C. § 12102(1)-(2).
[85] 42 U.S.C. § 3604(f)(3)(B); 29 U.S.C. § 701