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HEARING: SAFE AND DECENT? EXAMINING THE CURRENT STATE OF RESIDENTS'
HEALTH AND SAFETY IN HUD HOUSING

BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON HOUSING AND
INSURANCE

WEDNESDAY, NOVEMBER 20, 2019

Good afternoon Chairman Clay, Ranking Member Stivers, and distinguished members of the Committee. Thank you for the opportunity to testify today on behalf of the National Housing Law Project on the Current State of Residents' Health and Safety in HUD Housing.

The National Housing Law Project (NHL) is a charitable nonprofit organization founded over 50 years ago that provides legal and technical support for housing advocates, tenant leaders and public officials nationwide on the housing issues confronting Americans with incomes at or near the poverty level. Our work includes legal research, advice and co-counsel regarding litigation matters; legislative and administrative advocacy and assistance with Congress, federal agencies and state and local governments; publication of housing law manuals; and training and technical assistance.

NHL also hosts the national Housing Justice Network, a vast field network of over 1,500 community-level housing advocates, legal services attorneys and tenant leaders committed to promoting affordable housing and protecting tenants' rights. This network of local advocates deals with the day-to-day problems and opportunities presented by implementation of affordable housing laws and programs. Our work with them has informed the views we express today.

Housing Conditions and Health Outcomes

The country faces an unprecedented affordable housing crisis. Almost half of renters, or 20.8 million Americans, spend more than 30 percent of their income on rent, and of these, 11 million spend more than 50 percent.¹ The U.S. Department of Housing and Urban Development's (HUD) programs are an essential source of housing that is affordable to our nation's severely cost-burdened families.² HUD housing programs help address homelessness and housing instability, two of the largest public health problems facing American families today.³

However, for some HUD residents, housing comes at the cost of their health. Federally assisted households are clustered in census tracks with high poverty rates and a deteriorating housing stock.⁴ Poor tenants, particularly black and Hispanic families, are disproportionately impacted by health-related hazards such as mold, allergens, lead, and poor air quality.⁵ Children face the biggest health risks due to the lasting impacts of substandard housing conditions.

Lead-based Paint. There is no safe level of lead poisoning. The Centers for Disease Control and Prevention makes it clear that the devastating effects of lead poisoning are immediate and permanent. Even at the lowest levels of exposure, children experience physical and cognitive impairment.⁶ Lead poisoning affects behavior, growth and cognition, causes permanent brain damage, anemia, organ

¹ Joint Ctr. For Hous. Studies of Harvard Univ., The State of the Nation's Housing 2018 30 (2018).

https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf

² For research on connections between housing, health, and community vitality see Ctr. on Budget & Pol'y Priorities, *Connecting the Dots: Bridging Systems for Better Health*, <https://www.cbpp.org/connecting-the-dots-0>.

³ HUD, U.S. Dep't of Hous. & Urb. Dev. Strategic Plan 2014-2018, at 22 (2014). HUD has indicated it will use a Housing First approach, along with leveraging other federal programs and local resources, to provide life sustaining health and social services through stable housing.

⁴ See generally Who Lives in Federally Assisted Housing?, NAT'L LOW INCOME HOUS. COAL. (Nov. 2012), <http://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

⁵ National Center for Healthy Housing, *Housing and Health: New Opportunities for Dialogue and Action*.

⁶ Agency for Toxic Substances and Disease Registry, *Registry Case Studies in Environmental Medicine (CSEM) Lead Toxicity*, Course WB2832, 44.

damage, seizures, coma, cardiac disease, and death, and results in academic failure and juvenile delinquency, reduced IQ, and other negative outcomes.⁷ Over 90,416 children have lead poisoning in the Housing Choice Voucher (Section 8) program and there are an additional 340,000 children living in federally-assisted housing who are at risk.⁸ Children in voucher units and in some Project-Based Section 8 housing must develop lead poisoning *before* HUD requires a lead hazard risk assessment, whereas all other federal housing programs undergo a risk assessment or paint inspection prior to occupancy by a child under age six.

Roaches and Mold. Both roaches and mold are asthma triggers.⁹ Asthma can severely limit an individual's life choices. 25 percent of adults with asthma are unable to work or carry out daily activities.¹⁰ For children, asthma is the leading cause of school absences, accounting for 10.5 million lost school days in 2008.¹¹ 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.¹² Public housing units are four times as likely to have roach infestations and three times as likely to have water leaks as private rental apartments.¹³

Carbon Monoxide. The effects of carbon monoxide poisoning occur almost immediately and can result in death in a matter of minutes. Exposure to carbon monoxide can cause permanent brain damage, life-threatening cardiac complications and death. For pregnant women, carbon monoxide poisoning can result in miscarriage and fetal death. Carbon monoxide is also dangerous for children, elderly individuals, and people with cardiovascular disease, among others. HUD recently started requiring inspections for carbon monoxide detectors in a small subset of voucher units¹⁴ but that won't help all of the 4.6 million families receiving federal housing assistance, many of whom are families with young children, elderly individuals, or people with disabilities. This year, four public housing residents died from carbon monoxide poisoning and at least thirteen people have died in public housing since 2003.

The connection between poor housing conditions and negative health outcomes is devastatingly clear. Congress must act now to implement policies that directly address housing conditions for all families living in federally assisted housing.

⁷ National Toxicology Program: U.S. Department of Health and Human Services, NTP Monograph on Health Effects of Low Level Lead (2012).

⁸ A pre-occupancy risk assessment is not required in the Housing Choice Voucher or the project-based Section 8 program receiving less than \$5,000 in assistance from HUD.

⁹ Testimony of Emily Benfer, JD, LLM, Solomon Center for Health Law And Policy, Yale Law School, Before the House Financial Services Subcommittee on Housing and Insurance: Oversight of the Federal Government's Approach to Lead-Based Paint and Mold Remediation in Public and Subsidized Housing (June 26, 2018) at 4.

¹⁰ Illinois. Dept. of Pub. Health, Addressing Asthma in Illinois (2009), http://www.idph.state.il.us/pdf/Asthma_State_Plan_3rd_Edit.pdf.

¹¹ *Id.*

¹² Marla McDaniel et al., Urban Institute, Making Sense of Childhood Asthma: Lessons for Building a Better System of Care (2014).

¹³ 2011 U.S. Census.

¹⁴ The Housing Opportunity Through Modernization Act of 2016, 130 Stat. 783; 42 U.S.C. § 1437f(o)(8)(1)(A)(ii). HOTMA authorizes housing authorities to adopt a policy that allows voucher families to move into a unit if the unit fails a Housing Quality Standard (HQS) inspection for a non-life threatening condition but lists the failure to have a working CO detector as a life-threatening HQS violation.

The Current State of Public Housing

Public housing is home to more than 2.6 million low-income seniors, people with disabilities, children, and families. Like other federal housing investments, public housing provides families with the stable homes they need to live with dignity and financial independence. In many communities, public housing is the only source of deeply affordable housing. Public housing also supports local economies and low-wage workers. Physical improvements to public housing buildings and the development of new public housing units injects \$2.12 back into the local community for every \$1 spent.¹⁵ In fiscal year 2015, federal funding for public housing directly supported 42,633 jobs and indirectly supported an additional 34,007 jobs nationwide.¹⁶

While public housing is an essential asset for local communities, for decades Congress has chronically underfunded public housing. Beginning in the early 1980s, funding for public housing has decreased significantly. In 2016, funding for repairs had fallen 53 percent since 2000, while operations had been fully funded only three times.¹⁷ Between 2010 and 2016, after the *Budget Control Act* went into effect, Congress cut public housing by \$1.6 billion. While Congress recently increased funding for public housing in fiscal year 2018, funding for the program is still 17 percent lower than the FY10 funding level.

As a result of underfunding, the public housing capital needs backlog is likely close to \$50 billion dollars and grows at a rate of \$3.4 billion per year.¹⁸ Although many public housing properties are passing inspections, they are in need of capital improvements.¹⁹ 10,000 public housing units are lost each year due to deteriorating conditions and many of the health threats described above are directly attributable to Congress' failure to provide enough funding for basic upkeep of the public housing stock. As a major source of affordable housing that targets the nation's poorest families, it is imperative to repair and maintain the existing public housing stock.

The Current State of Project-Based Rental Assistance

HUD's project-based rental assistance (PBRA) programs provide critical affordable housing to 1.2 million low-income families across the country.²⁰ Project-based rental assistance allows tenants to pay

¹⁵ Econsult Corporation (2007) Assessing the Economic Benefits of Public Housing - Final Report" (https://www.housingcenter.com/wp-content/uploads/2017/11/EcoImpactReport03_01_07.pdf) The report, Assessing the Economic Benefits of Public Housing, quantifies the contribution public housing provides to local economies and describes its role in supporting local industries and low wage workers.

¹⁶ Weiss, E. (2017). *A Place to Call Home: The Case for Increased Federal Investments in Affordable Housing*. National Low Income Housing Coalition. Retrieved from <http://nlihc.org/sites/default/files/A-Place-To-Call-Home.pdf>.

¹⁷ Rice, D. (2016). *Cuts in Federal Assistance Have Exacerbated Families' Struggles to Afford Housing*. Center on Budget and Policy Priorities. Retrieved from <https://www.cbpp.org/research/housing/chart-book-cuts-in-federal-assistance-have-exacerbated-families-struggles-to-afford>.

¹⁸ Finkel, M., Lam, K. et al. (2010). *Capital Needs in the Public Housing Program*. Abt Associates Inc. Retrieved from https://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.

¹⁹ According to HUD, nearly 92% of its 6,923 public housing properties have passing scores of 60 or higher on REAC inspections.

²⁰ HUD, Programs of HUD (2018).

rent based upon their income²¹ and can be paired with units in HUD's multifamily mortgage programs to provide a deeper level of affordability. 56% of families living in PBRA housing include a member who experiences a disability or is elderly. The average income of households that live in PBRA units is less than \$12,000.

With project-based rental assistance, a private for-profit or non-profit owner enters into a contract with HUD to provide affordable units.²² The PBRA program leverages private dollars to provide affordable housing and often includes support services to help families succeed and work towards financial independence. Although a vast majority of PBRA properties are in good physical condition,²³ some properties face serious health and safety defects.

HUD's current physical inspection protocol, the Real Estate Assessment Center (REAC) inspection, does not adequately assess the physical conditions of HUD properties.²⁴ The process is antiquated and has not evolved since REAC's adoption 21 years ago.²⁵ The REAC inspection process was intended to hold owners of HUD multifamily housing to HUD's physical conditions standards, although HUD provides little data about how often it has opted to use the tools available to bring properties into compliance.

Key Recommendations

Congress should increase HUD oversight requirements when HUD identifies troubled/failing properties. HUD uses physical inspections of assisted properties to ensure assisted housing is decent, safe and sanitary. However, HUD's current physical inspection process has remained largely the same since its adoption in 1998.²⁶ The dangers of a stagnant physical inspection process are especially concerning in the context of detecting toxins and other environmental hazards. Common toxins and environmental hazards are not readily identified by inspectors, and HUD has not integrated technology advances into the physical inspection process to assist inspectors in detecting toxins and environmental hazards. These toxins and hazards have a detrimental effect on the health of families and will inevitably increase their health costs. Tenants have few options to resolve habitability concerns.

HUD has the authority to create remediation plans and to use penalties to bring properties into compliance. However, HUD's *obligation* to do so has weakened with time. Previously, Congress required HUD to (1) create Compliance, Disposition and Enforcement Plans if the property was considered

²¹ *Id.*

²² *Id.*

²³ According to HUD, 97% of its 25,168 multifamily properties have passing REAC scores of 60 or higher.

²⁴ Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, 84 Fed. Reg. 43,536-38 (Aug. 21, 2019). See also, U.S. Gov't. Accountability Office, Real Estate Assessment Center, HUD Should Improve Physical Inspection Process and Oversight of Inspectors (2019); Molly Parker, *HUD's House of Cards "Pretty Much a Failure": HUD Inspections Pass Dangerous Apartments Filled with Rats, Roaches and Toxic Mold*, PROPUBLICA (Nov. 16, 2018, 11:00 AM), <https://www.propublica.org/article/hud-inspections-pass-dangerous-apartments-with-rats-roaches-toxic-mold>.

²⁵ See Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, 84 Fed. Reg. 43,536, 43,538 (Aug. 21, 2019); Dep't of Hous. and Urban Dev., Improving Real Estate Assessment Center's (REAC) Inspections: A Presentation to HUD's Inspection Partners, HUD.gov (Apr. 4, 2019), https://www.hud.gov/sites/dfiles/PIH/documents/REACNewInspectionModel_1s_atl.pdf.

²⁶ See Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, 84 Fed. Reg. 43,536, 43,538 (Aug. 21, 2019).

troubled²⁷ and (2) take additional enforcement action if a property was not within compliance following the remediation deadline.²⁸ Now, HUD is only required to issue a Notice of Default or a Notice of Violation in lieu of a more comprehensive remediation plan.²⁹ Although HUD still has the authority to take an additional enforcement action following continued non-compliance,³⁰ it is unclear how often HUD has opted to use this tool. We offer the following recommendations to increase HUD oversight of failing properties:

- Create an early warning system to identify low-performing owners and housing authorities;
- Require HUD to take a more hands-on approach once it identifies a troubled or failing property. HUD should be required to actively assist with the building's rehabilitation, and in the public housing context, prioritize preservation as opposed to demolition or conversion;
- HUD should adopt a second stage environmental testing protocol for properties suspected by the inspector, management staff or residents of having environmental hazards;
- Incorporate local code enforcement reports and documentation into the Real Estate Assessment Center's (REAC) records on assisted properties;
- Require HUD to take an enforcement action to bring a property into compliance when the property continues to be in noncompliance after the remediation deadline;³¹
- Ensure that HUD has sufficient funding for oversight and enforcement of its physical condition standards;
- Provide clear guidelines and requirements for administrative receiverships to preserve properties and protect residents; the receivership process must also include residents, and;
- Streamline and standardize inspection scoring—currently a failing or passing score is dependent on individual inspector's training and other subjective factors.

Congress should require greater tenant involvement in the inspections process. As both Congress and HUD have recognized, active tenant participation is essential to the success of public housing and HUD-assisted properties.³² Resident engagement is especially important in the conditions context because residents can report real-time property conditions and monitor subsequent remedial

²⁷ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div L, tit. II, General Provisions, § 225, 129 Stat. 2242, 2894 (2016).

²⁸ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div L, tit. II, General Provisions, § 225, 129 Stat. 2242, 2894-95 (2016).

²⁹ Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 221, 133 Stat. 13, 461 (2019)

³⁰ Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 221, 133 Stat. 13, 462 (2019)

³¹ This can be achieved by reverting the preservation language included annually in the general provisions of HUD's appropriations back to the language previously used. *Compare* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div L, tit. II, General Provisions, § 225, 129 Stat. 2242, 2894-95 (2016), *with* Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 221, 133 Stat. 13, 461-63 (2019). H.R. 3745 also requires HUD to take an enforcement action if a property continues to be in noncompliance following the remediation date.

³² 12 U.S.C. § 1715z-1b (2019); 24 C.F.R. § 964.11 (2019) (promoting active resident participation in all aspects of the operation of Public Housing); 24 C.F.R. § 245.5 (2019) (recognizing the importance and benefit of residents participation in the creation and operation of suitable living environment, including the good physical condition of and proper maintenance of the property); HUD, Notice H 2012-21 (A) (Oct. 17, 2012) (stating "tenant participation is an important element to maintaining sustainable [properties] and communities").

action. However, HUD has continuously excluded residents from participating in the physical inspection process. We recommend the following to strengthen the role of tenants:

- Tenant surveys should be reintroduced as part of the physical inspection process and be accessible to non-technical users;³³
- Tenants and formally organized tenant organizations should be explicitly allowed to accompany the inspector during the inspection;
- Allow a physical inspection to be triggered upon request by tenants at the property or by a request from the city in which the property is located;
- Tenants should be afforded the same notice, comment and appeals rights provided to PHAs and owners during the physical inspection process;
- Assure tenants have access to inspection documents— project-based owners are required to give tenants notice of upcoming physical inspection, as well as access to review the inspection reports and all related documents;³⁴ in practice, REAC scores are rarely posted at developments and reports rarely made available to tenants upon request, despite the requirement;
- Tenants should be consulted by HUD during the development of the remediation plan for a troubled property;
- Create a way for tenants to enforce habitability requirements by allowing rent withholding or making tenants third-party beneficiaries to housing assistance agreements;
- To enable greater utilization of these engagement points, HUD should annually expend Section 514 funds for tenant capacity building grants and programs;
- Require resident, resident organization and advocate participation in the National Standards for the Physical Inspection of Real Estate (NSPIRE) demonstration and any subsequent evaluation/revision of REAC.

Congress should increase its oversight of HUD. Currently, neither tenants nor advocates have the data necessary to assess the condition of public housing and project-based rental assistance nationwide. Through the annual appropriation acts, HUD is required to submit quarterly reports to Appropriations Committees of the Senate and House regarding HUD's enforcement of its physical condition standards at troubled properties within the PBRA inventory.³⁵ HUD's quarterly reports summarize the enforcement actions taken to bring troubled properties into compliance and other actions taken by HUD to protect tenants. HUD is required by statute to also report to Congress annually about housing authorities that are in troubled status and the reasons. However, none of these reports include compliance information, nor where each property is in the remediation process. We offer the following recommendations to improve reporting requirements and Congressional oversight of HUD properties:

- Reports should include property-level enforcement information to support the work of keeping HUD accountable by Congress and local advocates.
- For public housing: HUD should submit to Congress quarterly reports that include: identification of troubled/failing properties in each public housing authority's inventory, property-level

³³ Both H.R. 3745 and the Tenants Empowerment Act include tenant surveys.

³⁴ Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 221, 133 Stat. 13, 461 (2019); 24 C.F.R. § 200.857(g) (2019).

³⁵ Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div G, tit. II, General Provisions, § 221, 133 Stat. 13, 461, 463 (2019)

enforcement information, number and location of all demolition and disposition applications and data on the loss of units due to disrepair nationwide.

Other Recommendations to Address Public Housing Conditions

Congress should increase funding for the public housing program to address ongoing capital needs and maintenance backlogs. To bring our public housing stock into the twenty-first century, Congress must substantially increase federal investments in public housing. Congress should:

- Fully fund the Public Housing Capital Fund to address maintenance and repair needs of all existing units;
- Provide funding to small Public Housing Authorities (PHAs) to allow access to private investments for preservation and rehabilitation, and;
- Appropriate funding for Tenant Protection Vouchers for all units lost to demolitions, dispositions, or conversions.

Congress should amend Section 18 to strengthen tenant protections and long-term preservation requirements.³⁶ In some cases, preservation of public housing is not possible and a demolition or disposition is necessary to rehabilitate the property or relocate tenants to more suitable living conditions. While the RAD program provides long-term preservation of affordable housing and tenants' rights, Section 18 demolitions and dispositions fall short of providing meaningful relocation and other protections. NHLP's recommendations include:

- One-for-one unit replacement requirement for all demolitions, dispositions, and conversions; replacement units must ensure long-term affordability;
- Require full replacement vouchers for units lost;
- Stronger resident consultation and participation requirements, and;
- Permit PHAs to build replacement units on-site in gentrifying neighborhoods.

Congress should make it easier for PHAs to voluntarily merge and encourage consortia and regionalization among PHAs. Over 1,478 PHAs administer public housing programs across the country. This large number of PHAs increases costs and reduces program effectiveness. There is currently no incentive for a high-performing PHA to voluntarily take over a failing PHA's public housing portfolio because it will inherit the failing PHA's debt and other problems. HUD can take a series of steps to make it easier for PHAs to form a range of partnerships and/or mergers.

Current Proposals That Will Improve Residents' Health and Safety

The following is a description of current legislation and proposals that make necessary and welcome improvements to some of the more pressing issues facing HUD housing programs:

Carbon Monoxide Alarms Leading Every Resident to Safety Act, H.R. 1690

Residents in federally assisted housing are at a high risk for carbon monoxide (CO) poisoning. However, CO detectors are not required in any of the federally assisted housing programs. While many states have laws that require detectors in all rental units, inspectors for HUD assisted units typically do

³⁶ Section 18 of the U.S. Housing Act of 1937; 24 C.F.R. part 970.

not inspect for them because it is not required by federal protocol. In fact, all four deaths in public housing in 2019 occurred in states with CO detector mandates. The CO Alerts Act, will fund and mandate carbon monoxide detectors in all federally-assisted units, based on International Fire Code standards. This bill is a life-saving solution to an entirely preventable source of poisoning.

The HUD Inspection Oversight Act, H.R. 3745

Congress has authorized several mechanisms that HUD can use to bring properties back into compliance with physical condition standards. However, HUD rarely uses these tools to bring troubled properties back into compliance. H.R. 3745 would increase transparency and strengthen enforcement of the inspection process for project-based rental assistance properties. The bill requires that HUD work with owners, tenants and/or tenant organizations to develop remediation plans when physical defects have not been timely remediated. Additionally, the bill requires HUD to take additional enforcement action if a property continues to be in noncompliance. Finally, the bill requires HUD to conduct, on a semiannual basis, tenant surveys about the physical conditions of their building.

Lead Safe Housing for Kids Act

Despite the known dangers of lead paint poisoning and its disabling effect on children, current federal law for tenant-based housing programs only requires identification and control of lead hazards *after* children develop lead poisoning and the permanent brain damage it causes. Only ineffective visual assessments are required in the Housing Choice Voucher program and project-based Section 8 housing that receives less than \$5,000 in assistance per unit. All other federal housing programs with units built before 1978 undergo risk assessments or paint inspections that can identify lead hazards *before* children are exposed. The Lead-Safe Housing for Kids Act will close this harmful gap in policy that threatens the lives and futures of children. This bipartisan bill will require lead hazard risk assessments in *all* pre-1978 federally assisted housing prior to occupancy by a family with a child under the age of six, and give families the ability to have an emergency transfer out of a unit with an uncontrolled lead hazard without losing their housing assistance.

Tenants Empowerment Act

The Tenants Empowerment Act, based on a bill previously passed by the House Financial Services Committee, would incorporate tenants into the physical inspection process and would establish mechanisms for tenants to resolve habitability concerns. The proposal includes a provision that would permit assisted families to withhold their rent in an escrow account if HUD has determined the property has serious or repeated violations of housing standards. The Act would also allow tenants at the property, as well as the city, to request a physical inspection. Additional provisions would allow tenants to enforce the habitability requirements of specific agreements as a third-party beneficiary, would engage tenants during the physical inspection process, and would grant tenants access to building information. Finally, the proposal would require HUD to use Section 514 funds to support tenant capacity building.

The passage of these bills would make significant improvements to the health and safety standards of federally assisted housing. Thank you for the opportunity to submit testimony on behalf of the National Housing Law Project.