

**Petition for Rulemaking Under U.S. Department of Housing and Urban Development
“Lead Based Paint Poisoning Prevention in Certain Residential Structures” Regulations
to Prevent Lead Poisoning Among Program Participant Children**

February 11, 2016

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**Petition for Rulemaking Under U.S. Department of Housing and Urban Development
“Lead Based Paint Poisoning Prevention in Certain Residential Structures” Regulations
to Prevent Lead Poisoning Among Children**

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), and 24 C.F.R. § 10.20, ChangeLab Solutions, Childhood Lead Action Project, Children’s Defense Fund, Civitas ChildLaw Center, Coalition for Human Needs, ColorofChange.org, A Community Voice, Environmental Advocacy Center, Erie Family Health Center, Farmworker Justice, Green & Healthy Homes Initiative, Healthy Homes Collaborative, Health Justice Project, Improving Kids’ Environment, Dr. Bruce Lanphear, MD, MPH, Lawyers’ Committee for Better Housing, Lawyers’ Committee for Civil Rights Under Law, Louisiana Roundtable for the Environment, National Alliance of HUD Tenants, National Center for Medical-Legal Partnership, National Housing Law Project, National Low Income Housing Coalition, Poverty & Race Research Action Council, Professor Florence Wagman Roisman, LL.B., Dr. David Rosner, PhD, MPH, Southern United Neighborhoods, United Parents Against Lead, and Urban Justice Center petition the U.S. Department of Housing and Urban Development (“HUD”), to exercise its authorities under the Lead-Based Poisoning Prevention Act, 42 U.S.C. § 4821 *et seq.*, and the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4851 *et seq.*, to amend the “Lead-Based Paint Poisoning Prevention in Certain Residential Structures” regulations (“Regulations”) at Title 24, Part 35 of the Code of Federal Regulations in order to: (1) conform the regulations to the most current lead poisoning prevention definitions and guidance to prevent confusion and ensure early identification and immediate response to lead poisoning and lead hazards; (2) adopt primary prevention measures to protect children in federally assisted housing from lead poisoning and the resulting severe and permanent health impairments; and (3) adopt robust hazard reduction protocols to prevent lead poisoning among current and future households and further harm to lead poisoned children. Any increased expense resulting from the adoption of these amendments is far outweighed by the tremendous and certain benefits. Many costs will be offset by significant cost-savings to society and these amendments may be financed, in part, through several federal and local funding sources. These amendments will better allow HUD to realize its mission “to create strong, sustainable, inclusive communities and quality affordable homes for all,”¹ and, the purpose of the Residential Lead-Based Paint Hazard Reduction Act of 1992, “to develop a national strategy to . . . eliminate lead-based paint hazards in all housing as expeditiously as possible [and] to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.”² HUD acknowledged that lead poisoning is a “particular threat” to vulnerable populations, especially children.³ The Petitioners implore HUD to fulfill its duty to prevent lead poisoning and the devastating and permanent effect on children residing in federally assisted housing.

¹ U.S. DEP’T OF HOUS. & URBAN DEV., *Mission*, <http://portal.hud.gov/hudportal/HUD?src=/about/mission> (last visited January 28, 2016).

² 42 U.S.C. § 4851a(1) (2012).

³ 24 C.F.R. §35.40 (2016).

I. INTEREST OF THE PETITIONERS

A. ChangeLab Solutions

ChangeLab Solutions is a national nonprofit organization that creates innovative laws and policies to ensure everyday health for all, whether that is providing access to affordable, healthy food and beverages, creating safe opportunities for physical activity, or ensuring the freedom to enjoy smoke-free air and clean water. Our solutions address all aspects of a just, vital and thriving community, like food, housing, childcare, schools, transportation, public safety, jobs, and the environment. ChangeLab Solutions' Healthy Housing program supports communities in achieving stable, quality, and affordable housing.

B. Childhood Lead Action Project

Founded in 1992, the Childhood Lead Action Project works to eliminate childhood lead poisoning in Rhode Island through community-based education, parent support and advocacy. The Childhood Lead Action Project is the only organization in RI devoted primarily to this critical issue and has been a catalyst for a decline in lead poisoning over the past decade. However, since lead poisoning is 100% preventable, we have miles to go before children's lives are no longer compromised by this neurotoxin. As childhood lead poisoning is not an equal opportunity disease, disproportionately affecting low-income children, we vigorously support efforts to ensure that subsidized housing be lead-safe housing for all of its residents.

C. Children's Defense Fund

The Children's Defense Fund Leave No Child Behind[®] mission is to ensure every child has a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor children, children of color and those with disabilities. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown. CDF recognizes the enormous immediate and long term threat that lead poisoning creates for children, disproportionately children in poor neighborhoods and children of color, and its harmful effects on their futures.

D. Civitas ChildLaw Center

The Civitas ChildLaw Center and its Policy Institute at Loyola University Chicago seeks to improve the quality of justice for children and families. We promote child-centered laws, policies and practices and work to improve the functioning of the legal, social welfare, juvenile justice, health care and other systems that impact children and families. Our work includes leading a statewide initiative to eliminate lead poisoning in children, serving as the lead entity in a juvenile justice reform initiative in our state, and promoting increased use of interdisciplinary collaboration and child development principles in fashioning policies to support underserved and underrepresented children and families. For over ten years we spearheaded a successful public-

private partnership involving diverse stakeholders that resulted in Illinois' first prevention-focused response to childhood lead poisoning.

E. Coalition for Human Needs

The Coalition on Human Needs (CHN) is an alliance of national organizations working together to promote public policies, which address the needs of low-income and other vulnerable populations. The Coalition's members include service providers and faith groups, civil rights, religious, labor and professional organizations and those concerned with the well-being of children, women, the elderly and people with disabilities.

F. ColorofChange.org

ColorOfChange.org is the United States' largest online civil rights organization with more than one million people working for positive social change and racial progress. ColorOfChange.org exists to strengthen Black America's political voice. Our members are united behind a simple, powerful pledge: we will do all we can to make sure all Americans are represented, served, and protected - regardless of race or class. The lead poisoning crisis in the United States represents the worst possibilities of racial discrimination, socioeconomic inequality, and political malfeasance in recent memory. We work to support the families devastated by lead poisoning and to ensure that all communities are protected from the dangers of lead exposure.

G. A Community Voice

A Community Voice is a statewide organization of low to moderate income families organized by neighborhood chapters. The groups have won changes in neighborhood conditions and legislation from prohibition the expropriation of properties that were in a state of repair to statewide measures to increase to universal the testing of children for lead poisoning. It also directs many programs that benefit citizens of Louisiana including housing, healthcare and voter participation.

H. Environmental Advocacy Center

The Environmental Advocacy Center (EAC) of Northwestern University School of Law engages in advocacy and legal work to accomplish environmental justice in impoverished and minority neighborhoods in the Midwestern United States. The EAC has represented community organizations in the Englewood and Calumet neighborhoods of Chicago in efforts to protect residents from lead and other hazardous contaminants and exposures to heavy metals. The EAC, in coordination with the health science community, has advocated extensively for adoption of the Centers of Disease Control and Prevention reference level for lead in blood.

I. Erie Family Health Center

Erie Family Health Center delivers high-quality, culturally-sensitive, bilingual health care to 70,000 medical patients. Our community-based health care centers are portals to high-quality care – and a higher quality of life – regardless of a patient's ability to pay. Since 1957, when Erie

Family Health Center was first established as a volunteer clinic by doctors from Northwestern Memorial Hospital, it has been our mission to consider health care a right, not a privilege. A number of our patients have been exposed to lead while living in federally-assisted housing. Today, Erie serves patients from 13 sites, including seven large primary care facilities (four with integrated, on-site dental care), five school-based health centers and the only freestanding comprehensive teen health provider in the Chicagoland area.

J. Farmworker Justice

Farmworker Justice is a national advocacy organization that seeks to empower farmworkers to improve their wages, working conditions, immigration status, occupational safety, health and access to justice. The vast majority of farmworkers have low incomes, no health insurance, and limited access to health care, making them particularly vulnerable to environmental and occupational health hazards. Substandard housing conditions negatively impact the health of farmworkers and especially their children. Some health consequences associated with substandard and crowded farmworker housing include respiratory illnesses, ear infections, diarrhea, and higher occurrences of lead poisoning.

K. Green & Healthy Homes Initiative

The Green & Healthy Homes Initiative (GHHI) is dedicated to breaking the link between unhealthy housing and unhealthy children. GHHI is a leader in lead reduction and healthy homes programming and policy. GHHI replaces stand-alone housing intervention programs with an integrated, whole-house approach that produces sustainable green, healthy and safe homes. As a result, we are improving health, economic and social outcomes for families across the country.

L. Health Justice Project

The Health Justice Project is a medical-legal partnership between Erie Family Health Center, Loyola University Chicago School of Law Beazley Institute for Health Law and Policy, LAF Chicago,⁴ the Chicago Lawyers' Committee for Civil Rights Under Law, and other civil legal aid organizations. Our goal is to achieve health equity and social justice on behalf of low-income, marginalized patients. Erie delivers high-quality, culturally sensitive, bilingual healthcare to more than 57,000 medical patients and 9,500 dental patients, regardless of a patient's ability to pay. Many of Erie's patients reside in federally assisted housing, live in high-risk areas for lead poisoning, or have lead poisoning. Recognizing that lead poisoning can derail and permanently disrupt a child's future and elevate the risk for life-long disease and disability, the Health Justice Project and its partners collaborate to prevent and address lead poisoning.

M. Healthy Homes Collaborative

Healthy Homes Collaborative is an association of community-based organizations (CBOs) committed to eliminating environmental health threats in homes and communities. We do this through: 1) evidence-based policy-making: using research to draft better regulations; and

⁴ LAF is listed here to provide an accurate description of the Health Justice Project partners. LAF participates in the medical-legal partnership only through activities permissible under the regulations governing entities funded by the Legal Services Corporation and has, therefore, not been involved in creating this Petition for Rulemaking.

2) policy implementation: developing rule-enforcement infrastructure through hiring, education, and capacity building for stakeholders, collaborating with tenants, homeowners, landlords, contractors, CBOs, and government agencies.

N. Improving Kids' Environment

Improving Kids' Environment is a small nonprofit based in Indianapolis, IN that works to protect children in from environmental hazards through advocacy, education and projects that help to create environmentally healthy homes, schools and communities. The foundation of our work is in lead poisoning prevention by providing information on the problems that exposure to lead can cause especially to those most vulnerable, young children. This work has expanded into efforts to promote the holistic concepts of the Healthy Home and Healthy Schools to protect our kids where they live and play.

**O. Dr. Bruce Lanphear, MD, MPH, Professor, Faculty of Health Sciences,
Simon Fraser University**

P. Lawyers Committee for Better Housing

Lawyers' Committee for Better Housing (LCBH) is the only legal aid agency in Chicago focused on serving lower-income renters in the private (unassisted) rental market, which houses over 70% of Chicago's low-income households. In 2015, in support of LCBH's mission to protect and promote healthy, safe, and affordable housing, LCBH, in collaboration with Loretto Hospital and PCC Community Wellness Center, developed a medical-legal partnership called Healthy Housing Chicago in the Chicago's Austin neighborhood. LCBH is concerned with the continued proliferation of lead poisoning cases concentrated in Chicago low-income neighborhoods, such as Austin. In 2007, according to the Chicago Department of Health, more than 4.5% of children aged three and younger in the Austin neighborhood had an elevated blood lead levels compared to the overall rate of 2.7% in Chicago as a whole. Without modifications to HUD's current policies on lead inspections and remediation, the most vulnerable families are denied remediation and forced into the untenable choice of housing and their children's health.

Q. Lawyers' Committee for Civil Rights Under Law

The principal mission of the Lawyers' Committee for Civil Rights Under Law is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today. The Fair Housing & Community Development Project (FHCD) fights discrimination in housing through enforcement of the Fair Housing Act and promotes greater opportunity for low income people of color by ensuring that development is equitable and inclusive and low-income people of color have access to crucial resources and meaningful housing choice. Lead poisoning disproportionately affects low-income people of color and lead hazards in federally assisted housing eliminates meaningful housing choice.

R. Louisiana Roundtable for the Environment

The Louisiana Roundtable for the Environment is an alliance of agencies, university representatives and experts in lead poisoning who work on issues primarily related to lead poisoning. This group has won policy changes including the nation's second ordinance prohibiting the sanding of lead based paint in residential housing.

S. Dr. Howard W. Mielke, Ph.D., Department of Pharmacology, Tulane University School of Medicine

T. National Alliance of HUD Tenants

The National Alliance of HUD Tenants (“NAHT”) is the first national membership organization of resident groups advocating for 2.1 million lower income families in privately-owned, HUD-assisted multifamily housing. NAHT achieves its mission by providing organizing and technical assistance, public policy advocacy, training and publications to a national network of voting member tenant organizations and affiliated area wide HUD tenant coalitions or organizing projects. Today, NAHT’s membership consists of 260 voting member tenant organizations and 45 affiliated area wide groups. NAHT is the only national tenants union in the United States, representing tenants in the national arena. NAHT is committed to organizing tenants to save and improve their homes as affordable housing. NAHT represents the tenants in HUD assisted housing who are affected by lead poisoning.

U. National Center for Medical-Legal Partnership

The National Center for Medical-Legal Partnership, Department of Health & Management, The Milken Institute School of Public Health, The George Washington University, advances the health and well-being of people and communities by leading health, public health and legal sectors in an integrated upstream approach to combating health-harming social conditions. Led by a multi-sector team of experts in medicine, public health, law, evaluation methods, and communications, the National Center for Medical Legal Partnership drives the growth of medical-legal partnerships across the country and the research needed to address the health harming social conditions affecting vulnerable populations. The medical-legal partnership model has proven to be effective in preventing and addressing lead poisoning among children.

V. National Housing Law Project

The National Housing Law Project (NHLP) is a nonprofit national housing and legal advocacy center established in 1968. Our mission is to advance housing justice for poor people by: increasing and preserving the supply of decent, affordable housing; improving existing housing conditions, including physical conditions and management practices; expanding and enforcing low-income tenants' and homeowners' rights, and increasing housing opportunities for racial and ethnic minorities. Through policy advocacy and litigation, NHLP has been responsible for many critically important changes to federal housing policy and programs that have resulted in increased housing opportunities and improved housing conditions for poor people. Lead poisoning prevention in federally assisted housing is a critical component of improved housing conditions and achieving housing justice for poor people.

W. National Low Income Housing Coalition

Founded in 1974 by Cushing N. Dolbeare, the National Low Income Housing Coalition (“NLIHC”) educates, organizes and advocates to ensure decent, affordable housing for people with the lowest incomes. Our goals are to preserve existing federally assisted homes and housing resources, expand the supply of low income housing, and establish housing stability as the primary purpose of federal low income housing policy. NLIHC is dedicated to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes. Lead hazards pose enormous risks to low income families and eliminate viable low-income housing options.

X. Poverty & Race Research Action Council

The Poverty & Race Research Action Council (“PRRAC”) is a civil rights policy organization based in Washington, D.C., committed to bringing the insights of social science research to the fields of civil rights and poverty law. PRRAC’s housing work focuses on the government’s role in creating and perpetuating patterns of racial and economic segregation, the long term consequences of segregation for low income families of color in the areas of public health, education, employment, and economic mobility, and the government policies that are necessary to remedy these disparities.

Y. Professor Florence Wagman Roisman, LL.B, William F. Harvey Professor of Law, Indiana University Robert H. McKinney School of Law

Z. Dr. David Rosner, PhD, MPH, Ronald H. Lauterstein Professor, Co-Director, Center for the History & Ethics of Public Health Sociomedical Sciences, Columbia University Mailman School of Public Health

AA. The Sargent Shriver National Center on Poverty Law

The Sargent Shriver National Center on Poverty Law (“Shriver Center”) provides national leadership to promote justice and improve the lives and opportunities of people living in poverty. The Shriver Center advances laws and policies, through litigation, legislative and policy advocacy, and administrative reform, to achieve economic, racial, and social justice for our clients. The Shriver Center works across a range of specific issues, including health care, child care, housing, employment and training, asset building, criminal justice, re-entry, civil rights, early childhood development, and public benefits. The Shriver Center’s Health and Housing Justice units have seen firsthand the permanent and devastating consequences exposure to lead can have on a person’s ability to escape poverty and achieve success.

BB. Southern United Neighborhoods

Southern United Neighborhoods is a tax exempt non profit that direct programs such as a free renovation and lead safe house project for poor homeowners, as well as outreach activities to educate people about healthcare.

CC. United Parents Against Lead

United Parents Against Lead (“UPAL National”) is a networking organization of and for parents of lead poisoned children. UPAL National works to end the continuing threat of lead poisoning and other environmental hazards through education, advocacy and resource referral. Founded in 1994 initially as Parents Against Lead, UPAL National is committed first and foremost to ensuring the basic rights of all children to live in a safe and healthy environment. United by our experiences and commitment to children, we know firsthand the effects of lead poisoning and irreparable damage and suffering caused by this preventable disease. Children's health and safety is ultimately everyone's responsibility.

DD. Urban Justice Center

For 30 years, the Urban Justice Center has served New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing. We assist our clients on numerous levels, from one-on-one legal advice in soup kitchens, to helping individuals access housing and government assistance, to filing class action lawsuits to bring about systemic change. Each year, our cumulative work results in thousands of victories on behalf of individual clients, as well as groundbreaking reforms that affect public policy nationwide. The Urban Justice Center's Community Development Project represents tenant associations organized by community-based organizations to correct housing issues such as lead paint.

II. STATUTORY AUTHORITY

A. HUD has a Duty to Eliminate Lead Poisoning in Federally Assisted Housing

HUD recognizes that it has a duty to “children living in a residential property that is owned or assisted by the Federal Government”⁵ and to implement the statutory requirements of the Lead-Based Poisoning Prevention Act of 1971⁶ and the Residential Lead-Based Paint Hazard Reduction Act of 1992.⁷ The Lead-Based Poisoning Prevention Act was adopted to provide federal financial assistance to help eliminate the causes of lead poisoning, detect and treat incidents of poisoning, study the extent of the lead-based paint poisoning problem and the methods for abatement, and prohibit future use of lead-based paint in federally assisted housing.⁸ It was amended by the Residential Lead-Based Paint Hazard Reduction Act, which recognized that the Federal Government’s response to laws requiring the elimination of lead-based paint hazards in federal housing had been inadequate, as demonstrated by the widespread nature of low-level lead poisoning among children and the substantial amounts of lead-based paint in pre-1980 homes.⁹ The Residential Lead-Based Paint Hazard Reduction Act is specifically targeted to control exposure to lead-based paint hazards.¹⁰ It directs the Federal Government to “take a

⁵ Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 65 Fed. Reg. 50,140 (Sept. 15, 1999).

⁶ 42 U.S.C. § 4821 (2012).

⁷ *Id.*

⁸ 42 U.S.C. § 4821 (2012).

⁹ 42 U.S.C. § 4851(1), § 4851(3), § 4851(7).

¹⁰ 24 C.F.R. §35.40 (2016).

leadership role in building the infrastructure ... necessary to ensure that the national goal of eliminating lead-based paint hazards in housing can be achieved as expeditiously as possible.”¹¹ Under these statutes, HUD is required to establish procedures for eliminating the hazards associated with lead poisoning in federally assisted housing.¹² In adopting rules implementing the requirements of these statutes, HUD described the act as representing “a new and sweeping approach to the problem of lead-based paint poisoning in children.”¹³ The Federal Government’s charge to HUD continues today and requires amendments to the Regulations, which fail to protect children from lead poisoning and are inconsistent with the current science as it relates to lead exposure.

B. HUD has a Demonstrated Ability to Amend the Regulations to Ensure Improved Practices

HUD has consistently acknowledged its duty to ensure that its standards are up to date and based on the latest science. HUD recognized that the Residential Lead-Based Paint Hazard Reduction Act “redefined” what qualified as a lead hazard and methods of evaluation, based on scientific developments.¹⁴ Its stated goal in adopting the Regulations was to “to keep pace with changes in the scientific understanding of how childhood lead poisoning occurs, lead-based paint technology and in HUD services delivery.”¹⁵ In addition, HUD intended that the Regulations better reflect “current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices,” and ensure consistency, accuracy, and improved response.¹⁶ In furtherance of these goals, HUD’s “lead-based paint regulations have been amended from time to time in response to changes in the law, court orders, and increased knowledge about the hazards and treatment of lead-based paint.”¹⁷ Recent recommendations from the Centers for Disease Control and Prevention (“CDC”) and advances in lead poisoning prevention research require HUD to exercise its ability to amend the Regulations.

Executive Orders 12866 and 13563 state that the regulatory system “must protect public health, welfare, safety, and our environment. . .”¹⁸ Furthermore, regulations “shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected

¹¹ 42 U.S.C. § 4851(8).

¹² 42 U.S.C. § 4822(a)(1) (2012). It also requires the Secretary to conduct research to develop improved methods for evaluating, reducing, and measuring lead and lead-based paint hazards; establish performance standards for lead detection, reduction, and cleanup; and evaluate the effectiveness and efficiency of hazard identification and reduction activities. 42 U.S.C.A. § 4854(a). *See also* 64 Fed. Reg. 50,141-42. These procedures must address risk assessment, inspection, abatement, and hazard reduction of lead-based paint hazards. *Id.* The Act requires the Secretary of HUD, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Secretary of Health and Human Services (acting through the Director of the Centers for Disease Control), to issue “guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards,” based on criteria that measure the condition of the housing and the presence of children. 42 U.S.C.A. § 4852(c) (2012).

¹³ 65 Fed. Reg. 50,140.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Exec. Order No. 12,866; Exec. Order No. 13,563(1)(a).

stakeholders in the private sector, and the public as a whole.”¹⁹ This petition represents the input of former government officials, medical and scientific experts, public health practitioners, lawyers, stakeholders, and the public. In light of the emergent nature of lead poisoning, the Petitioners request that HUD and the Office of Information and Regulatory Affairs complete regulatory action and review in response to this petition within 35 days of the date of this submission. If HUD is unable to meet this deadline, the Petitioners request a detailed explanation of its inability to do so.

C. HUD has a Duty to Respond to Environmental and Racial Injustice

The Fair Housing Act and Executive Order 12,898 require HUD to reduce environmental hazards and eliminate lead poisoning disparities among program participants related to differences in housing conditions and environmental contamination by race/ethnicity, familial status, and socioeconomic status. Under the Fair Housing Act, HUD has a duty to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further the [fair housing].”²⁰ In 1994, President Clinton issued an executive order mandating that each federal agency “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.”²¹ The Executive Order details the responsibility of federal agencies to reduce exposures to environmental hazards.²² The duty is especially pertinent to federally assisted housing, in which African American and female-led households are disproportionately represented.²³ Further, children occupy more than one third of public housing and Housing Choice Voucher Program (“HCVP”) households and approximately one third of the project-based Section 8 program.

The risk of lead poisoning is high among children living in poor neighborhoods,²⁴ with Medicaid recipients having the highest risk.²⁵ More than one-fifth of children from the poorest

¹⁹ Exec. Order No. 13,563(2)(a).

²⁰ 42 U.S.C. § 3608(e)(5); Exec. Order No. 12,892 (“describe a method to identify impediments in programs or activities that restrict fair housing choice and implement incentives that will maximize the achievement of practices that affirmatively further fair housing.”)

²¹ Exec. Order No. 12,898.

²² Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1994) (requiring that data collection and analysis compare the differences in environmental and human health risks among groups identified by race, national origin, and income, that minority and low-income communities be able to participate in matters relating to human health and the environment and to have access to public information, and that minority and low-income populations be able to submit recommendations to federal agencies for incorporating principles of environmental justice into agency programs or policies).

²³ See generally *Who Lives in Federally Assisted Housing?*, NAT’L LOW INCOME HOUS. COAL. (Nov. 2012) available at <http://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf>.

²⁴ Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, 117 ENV. HEALTH PERSP. 1162, 1162 (2009).

²⁵ Jaime Raymond et al., *Lead Screening and Prevalence of Blood Lead Levels in Children Aged 1-2 Years – Child Blood Lead Surveillance System, United States, 2002-2010 and National Health and Nutrition Examination Survey, United States, 1999-2010*, 63 MORBIDITY AND MORTALITY WEEKLY REPORT 36, 36 (Sept. 12, 2014), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/su6302a6.htm> (5.3% of children 1–2 years of age with blood lead levels ≥ 5 $\mu\text{g/dL}$ are on Medicaid while merely 2.1% of children not insured by Medicaid have blood lead levels ≥ 5 $\mu\text{g/dL}$).

neighborhoods have alarming levels of lead poisoning.²⁶ The risks fall disproportionately on minority children, with African American children nearly three times more likely than Caucasian children to have highly elevated blood-lead levels, and the damaging health outcomes associated with them.²⁷ Similarly, even though the most recent National Health and Nutrition Survey demonstrates considerable progress in lowering blood lead levels in the United States, it confirms that higher blood lead levels persist in non-Hispanic black children.²⁸

III. AMENDMENTS SOUGHT PURSUANT TO HUD'S DUTIES UNDER THE LEAD-BASED POISONING PREVENTION ACT, 42 U.S.C. § 4821 *ET SEQ.*, AND THE RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT, 42 U.S.C. § 4851 *ET SEQ.*, AND SUPPORTING SCIENTIFIC EVIDENCE

The current Regulations are not sufficiently protective of children residing in federally assisted housing. The Regulations are no longer consistent with the current evidence-based approaches to lead poisoning prevention. Today, the overwhelming scientific research proves that no blood lead level is safe²⁹ and children require a wide margin of safety. HUD recognizes the prevailing approach of primary prevention.³⁰ Primary prevention requires the identification of a lead hazard before a child is exposed to it. Otherwise, there is a high likelihood that children residing in pre-1978 federally assisted housing will suffer permanent brain damage and be required to cope with the debilitating consequences of lead poisoning throughout their lives. Lead poisoning causes severe health concerns, such as significant biological and neurological

²⁶ See Michael Hawthorne, *Lead Paint Poisons Poor Chicago Kids as City Spends Millions Less on Cleanup*, CHI. TRIB. (May 1, 2015, 2:56 PM), <http://www.chicagotribune.com/news/watchdog/ct-lead-poisoning-chicago-met-20150501-story.html>.

²⁷ Robert L. Jones et al., *Trends in Blood Lead Levels and Blood Lead Testing Among US Children Aged 1 to 5 Years, 1988-2004*, NAT'L CTR. FOR ENVTL. HEALTH, CTRS. FOR DISEASE CONTROL & PREVENTION, available at <http://www.cdc.gov/exposurereport/pdf/metals1.pdf>.

²⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, ADVISORY COMM. ON CHILDHOOD LEAD POISONING PREVENTION, *LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL FOR PRIMARY PREVENTION 14–15 (2012)* [hereinafter CDC 2012 ADVISORY REPORT], available at http://www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf.

²⁹ CTRS. FOR DISEASE CONTROL & PREVENTION, *EDUCATIONAL INTERVENTIONS FOR CHILDREN AFFECTED BY LEAD* viii (2015), available at http://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf; Bruce P. Lanphear, *The Conquest of Lead Poisoning: A Pyrrhic Victory*, 115 ENVTL. HEALTH PERSP. A484 (Oct. 2007) (citing Kordas K et al., *Deficits in Cognitive Function and Achievement in Mexican First-Graders with Low Blood Lead Concentrations*, 100 ENVTL. RES. at 371, 2006; Bruce Lanphear et al., *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, 113 ENVTL. HEALTH PERSP. at 894 (Jul. 2005); Joel Schwartz, *Low-level Lead Exposure and Children's IQ: A Meta-analysis and Search for a Threshold*, 65 ENVTL. RES. at 42 (1994); Martha Tellez-Rojo et al., *Longitudinal Associations Between Blood Lead Concentrations Lower Than 10 µg/dL and Neurobehavioral Development in Environmentally Exposed Children in Mexico City*, 118 PEDIATRICS at e323 (2006) (“No evidence shows that there is a threshold for the adverse effects of lead exposure; indeed, compelling evidence indicates that lead-associated decrements in intellectual function are proportionately greater at a blood level < 10 µg/dL”).

³⁰ See U.S. DEPT. OF HOUS. & URBAN DEV., *GUIDELINES FOR THE EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING* 1–9 (July 2012, 2nd ed.), available at http://portal.hud.gov/hudportal/documents/huddoc?id=second_edition_2012.pdf [hereinafter HUD 2012 GUIDELINES] (describing how once knowledge about lead poisoning increased, Congress concluded that responding to lead poisoned children was ineffective, and began drafting legislation toward primary prevention).

damage affecting cognition, behavior, bodily functions, growth, and development.³¹ It can lead to academic failure, juvenile delinquency, high blood pressure, brain damage, learning disabilities, behavioral problems, developmental delay, and even death.³² The following amendments, which emphasize primary prevention strategies and the immediate response to lead hazards, are critical to fulfilling HUD's duty to protect children from harm.

A. Conform the Regulations to the Most Current Lead Poisoning Prevention Definitions and Guidance to Prevent Confusion and Ensure Early Identification and Immediate Response to Lead Poisoning and Lead Hazards

1. Align the definition of lead poisoning with the CDC blood lead level reference value

HUD's definition of lead poisoning has not been updated since the regulations were adopted in 1999. Relying on the CDC's 1991 Statement, HUD defined the term "environmental intervention blood lead level" as "a confirmed concentration of lead in the whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15-19 µg/dL in two tests taken at least 3 months apart."³³ Despite HUD's agreement with commenters that the standard for defining environmental intervention blood lead level "should be consistent with CDC guidance,"³⁴ it has yet to align its definition with the CDC's updated guidance.³⁵ Today,

³¹ Gould, *supra* note 24.

³² *Lead Poisoning and Health*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs379/en/> (last visited January 29, 2016). Lead exposure is a risk factor for adult onset disability and disease, including neurological disorders, adult hypertension, heart disease, stroke, kidney malfunction, elevated blood pressure, osteoporosis, cognitive decline and cardiovascular disease. Gould, *supra* note 24, at 1164; Bruce P. Lanphear, *The Conquest of Lead Poisoning: A Pyrrhic Victory*, 115 ENVTL. HEALTH PERSP. A484 (Oct. 2007) (citing Andy Menke et al., *Blood Lead Below 0.48 µmol/L (10 µg/dL) and Mortality Among US Adults*, CIRCULATION, Sept. 18, 2006, available at <http://circ.ahajournals.org/content/114/13/1388.full>; Brian S. Schwartz et al., *Occupational Lead Exposure and Longitudinal Decline in Neurobehavioral Test Scores*, 16 EPIDEMIOLOGY at 106 (2005); Marc G. Weisskopf et al., *Cumulative Lead Exposure and Prospective Change in Cognition Among Elderly Men: The VA Normative Aging Study*, 160 AM. J. EPIDEMIOLOGY at 1184 (2004).

³³ 24 C.F.R. 35.110 (2016). This definition is based on Table 6-3 from the 1991 Statement by the Centers for Disease Control. CTRS FOR DISEASE CONTROL & PREVENTION, PREVENTING LEAD POISONING IN YOUNG CHILDREN: TABLES 6-3 (Oct. 1991), available at <http://www.cdc.gov/nceh/lead/publications/books/plpyc/tables.htm#Table 6-3>.

³⁴ Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 Fed. Reg. 50,140, 50,157. (Sept. 15, 1999) (to be codified in 24 C.F.R. pt. 35).

³⁵ *Id.* at 50,180 (describing HUD's lowering of acceptable dust-lead levels in response to CDC's changes); *Id.* at 50,157 (defining environmental intervention blood lead level to conform to CDC guidelines); see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/HEHS-99-18, LEAD POISONING: FEDERAL HEALTH CARE PROGRAMS ARE NOT EFFECTIVELY REACHING AT-RISK CHILDREN 2 (1999). HUD justified the higher definition of lead poisoning because it did not believe that the CDC "intend[ed] to recommend a full home inspection or assessment in response to blood lead levels below 15 µg/dL. CDC advises that a blood lead level of 10-14 g/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not hazard control in an individual child's home." Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 Fed. Reg. 50,140, 50,156 (Sept. 15, 1999). In the proposed rule, HUD used the 20 g/dL EBL standard. 24 C.F.R. 35.110. Commenters suggested they use the 10 g/dL CDC standard. 64 Fed. Reg. 50,140, 50,156. "HUD has consulted again with CDC and has concluded . . . that CDC did not and does not intend to recommend a full home inspection or assessment in response to blood lead levels below 15 g/dL." *Id.*

HUD's definition is three to four times the level in the CDC's definition of lead poisoning. Four years ago, in 2012, the CDC replaced the term "blood lead level of concern" with a "reference value" that is updated every four years.³⁶ The prevailing approach is no longer about identifying "a 'safe' blood lead level, but on reducing blood lead levels of all children."³⁷

If HUD fails to amend the "environmental intervention blood lead level" standard it will ensure that children who have blood lead concentrations indicative of lead toxicity will continue to be exposed to lead hazards. Early intervention and hazard control are critical to mitigate damage to the child's developing brain. Negative health effects can occur at even the lowest detectable concentrations of lead in blood in children of any age.³⁸ It is not possible to identify a threshold blood lead level at which there are no cognitive defects. At blood lead levels beginning as low as 1 µg/dL, there is a negative slope relating to blood lead level and IQ.³⁹ An increase in blood lead level from 1 µg/dL to 4 µg/dL is associated with a reduction in mean IQ of approximately 2.3 to 5.2 IQ points.⁴⁰ At a blood lead level of 3 µg/dL, children demonstrate decreased end of grade test scores; at a blood lead level of 4 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 5 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.⁴¹ These outcomes thwart a child's ability to thrive and access opportunity in the future.⁴²

³⁶ CTRS. FOR DISEASE CONTROL & PREVENTION, CDC RESPONSE TO ADVISORY COMM. ON CHILDHOOD LEAD POISONING PREVENTION, LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL FOR PRIMARY PREVENTION 16 (2012), available at http://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf.

³⁷ Letter from Pamela Shubat, CHPAC Co-Chair & Sheela Sathyanarayana, CHPAC Co-Chair, Children's Health Protection Advisory Comm., to Bob Perciasepe, Acting Adm'r, Evtl. Protection Agency (Feb. 14, 2013) 4, available at http://www.epa.gov/sites/production/files/2014-10/documents/2013.02.14_chpac-childhood-lead-poisoning-letter.

³⁸ U.S. ENVTL. PROTECTION AGENCY, AMERICA'S CHILDREN AND THE ENVIRONMENT: A FIRST VIEW OF AVAILABLE MEASURES, EPA 240-R-00-006, 41 (2000), <http://www.epa.gov/sites/production/files/2014-05/documents/ace-report.pdf> (last visited Jan. 28, 2016) ("Currently, there is no demonstrated safe concentration of lead in the blood. Recent research on a national sample of children measured effects down to the lowest detectable concentrations of lead in blood, and the results suggest that health effects can occur at blood levels as low as 2.5 µg/dL").

³⁹ Bruce P. Lanphear et al., *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, 113 ENVTL. HEALTH PERSP. 894, 894 (2005) (finding a "6.9 IQ point decrement [95% confidence interval (CI), 4.2–9.4] associated with an increase in concurrent blood lead levels from 2.4 to 30 µg/dL. The estimated IQ point decrements associated with an increase in blood lead from 2.4 to 10 µg/dL, 10 to 20 µg/dL, and 20 to 30 µg/dL were 3.9 [95% CI, 2.4–5.3], 1.9 [95% CI, 1.2–2.6], and 1.1 [95% CI, 0.7–1.5], respectively"); see CDC 2012 ADVISORY REPORT, *supra* note 28, at 7 (summarizing old and new studies showing decrements in school age IQ among children whose BLLs never exceeded 10 µg/dL, and thus concluding that it is not possible to determine a threshold below which BLL is not inversely related to IQ).

⁴⁰ CDC 2012 ADVISORY REPORT, *supra* note 28, at 7–8 (noting one toxicological assessment study "asserted that there is a negative slope relating BLL and IQ down to concurrent BLLs of 1 µg/dL"). The toxicological assessment study further noted that "[a]n increase in concurrent BLL from 1.0 to 4.0 µg/dL is associated with a change in mean IQ of approximately -2.3 to -5.2 IQ points, with a best estimate of -3.7 IQ points. The German Human Biomonitoring Commission concluded that it is not possible to identify a threshold BLL below which there are no cognitive deficits." *Id.* at 7.

⁴¹ *Id.*

⁴² U.S. DEP'T OF HOUSING & URBAN DEV., OFFICE OF LEAD HAZARD CONTROL, NATIONAL SURVEY OF LEAD AND ALLERGENS IN HOUSING (2001). Final Report. Office of Lead Hazard Control. Wash., DC: U.S. Department of Housing and Urban Development. Ch. 4. American Healthy Homes Survey. Lead and Arsenic Findings. 2011. Office of Healthy Homes and Lead Hazard Control. Wash., DC: U.S. Department of Housing and Urban Development, Ch. 4

HUD must immediately conform its regulations to the most recent guidance and recommendations by redefining the “environmental intervention blood lead level” to the CDC’s standard, which is currently set at 5 µg/dL.⁴³ To ensure the regulations are consistent with CDC’s regular updates to the standards, both new sections (a) and (b) are necessary in the amendment to the definition.⁴⁴ The Petitioners request the following amendment to 24 C.F.R. §§ 35.110.

§35.110 Definitions

Environmental intervention blood lead level means a confirmed concentration of lead in whole blood equal to or greater than ~~20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart.~~

(a) 5 micrograms/deciliter (µg/dL); or

(b) the current blood lead reference level recommended by the Centers for Disease Control and Prevention.

2. Update the dust and soil lead risk assessment and clearance standards with scientifically supported levels

The current dust and soil-lead risk assessment and clearance standards should be lowered to sufficiently protect children from lead poisoning. Dust and soil lead risk assessment prior to occupancy and clearance testing following interim controls, renovation, or abatement is essential to preventing childhood lead exposure.⁴⁵

Settled, lead-contaminated house dust is a “significant source of lead exposure for urban children with low-level elevations in blood lead.”⁴⁶ HUD’s dust lead standards, which were established based on pre-1995 research,⁴⁷ are not set low enough for a risk assessment or a clearance test to identify a lead hazard and protect children from lead poisoning.⁴⁸ Dust lead levels much lower than the current floor standard “were associated with a considerable excess risk of children having blood lead levels less than or equal to 10 µg/dL.”⁴⁹ In one study, the current residential floor standard of 40 µg/ft² failed to identify 85% of housing units of children who had a blood lead concentration of 10 µg/dL.⁵⁰ Research demonstrates that “children were at 3-5 fold greater risk for having a blood lead concentration less than or equal to 10 µg/dL if they were exposed to floor dust lead levels of 5 µg/ft² to 10 µg/ft² compared with levels less than 2.5 µg/ft².”⁵¹ Similarly, children’s blood lead concentrations increase by 2.4 µg/dL to 3.5 µg/dL per

⁴³ CDC 2012 ADVISORY REPORT, *supra* note 28, at x (citing the executive summary).

⁴⁴ CTRS. FOR DISEASE CONTROL & PREVENTION, *Blood Lead Levels in Children*, http://www.cdc.gov/nceh/lead/acclpp/lead_levels_in_children_fact_sheet.pdf (last visited Feb. 1, 2016); The language in this amendment is based on the text of the 2008 Senate bill, Lead-Safe Housing for Kids Act of 2008, S. 3609, 110th Cong §§ 2(a)-(b) (2008).

⁴⁵ Bruce Lanphear et al., *Lead-Contaminated House Dust and Urban Children’s Blood Lead Levels*, 86 AM. J. PUB. HEALTH 1416, 1420 (1996).

⁴⁶ *Id.*

⁴⁷ Sherry Dixon et al., *Exposure of US Children to Residential Dust Lead, 1999-2004*, 117 ENVTL. HEALTH PERSP. 468, 472 (2009).

⁴⁸ Bruce Lanphear et al., *Screening Housing to Prevent Lead Toxicity in Children*, 120 PUB. HEALTH REPORTS 305, 308 (2005).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 307.

1000 ppm increase in soil lead concentration.⁵² Given the significance of dust- and soil-lead hazards as a source for lead poisoning and because no level of lead in the blood is safe, dust- and soil-lead standards should be as low as possible.⁵³ The Petitioners request the following amendments to 24 C.F.R. § 35.1320(b).

§35.1320 Lead-based paint inspections, paint testing, risk assessments, lead-hazard screens, and reevaluations.

[. . .]

(i) *Dust.* A dust-lead hazard is surface dust that contains a mass-per-area concentration (loading) of lead, based on wipe samples, equal to or exceeding the applicable level in the following table:

DUST LEAD STANDARDS

Evaluation method	Surface		
	Floors, µg/ft ² (mg/m ²)	Interior window sills, µg/ft ² (mg/m ²)	Window troughs, µg/ft ² (mg/m ²)
Risk Assessment	540 (0.43)	25250 (2.7)	50Not Applicable.
Lead Hazard Screen	525 (0.27)	25125 (1.4)	50Not Applicable.
Reevaluation	540 (0.43)	25250 (2.7)	50Not Applicable.
Clearance	2.540 (0.43)	25250 (2.7)	50400 (4.3).

(ii) *Soil.* (A) A soil-lead hazard for play areas frequented by children under six years of age is bare soil with lead equal to or exceeding ~~50~~ 400-parts per million (micrograms per gram).

3. Update the definition of lead-based paint to conform with prevailing science

The current standards for lead-based paint are insufficient to protect children from lead poisoning. The definition of lead-based paint should be reduced to 0.06 percent by weight (600 ppm) with a corresponding reduction in the 1.0 milligram per square centimeter standard. The technology and science on lead-based paint has dramatically improved since the standards for lead-based paint were last reviewed in 1992. According to a 2009 petition for rulemaking to the Environmental Protection Agency (“EPA”), “under the current standards, paint that contains less than 5,000 ppm of lead would not be considered lead-based paint. As a result, when a lead inspector or lead risk assessor documents levels of 4,500 ppm of lead in the paint, the buyer or tenant would be told that lead-based paint is not present. The buyer or tenant would be unaware

⁵² Bruce Lanphear et al., *The Effect of Soil Abatement on Blood Lead Levels in Children Living Near a Former Smelting and Milling Operation*, 118 120 PUB. HEALTH REPORTS 83, 87 (2003).

⁵³ Dixon, *supra* note 47.

of the potential dangers of disturbing the paint.”⁵⁴ The EPA granted the petitioner’s request and agreed to revise the regulations.⁵⁵ The Petitioners urge expediency in the amendments to the definition of lead-based paint.

4. Update the reference to “HUD Guidelines” to the most recent version

The current regulations incorporate HUD’s 1997 Guidelines. To prevent confusion, the Regulations must require adherence to the most recent Guidelines. The Petitioners request the following amendment to 24 CFR §35.115.

§35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

[. . .]

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with 35.1320(a) (for more information regarding inspection procedures consult the ~~1997~~ 2012 or most recent edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

5. Remove the exemption for a zero-bedroom dwelling unit

In many jurisdictions where affordable housing is scarce, families and single parent households commonly reside in efficiency units. If these units were built before 1978 there is a risk that pregnant women or children will be exposed to a lead hazard. The Petitioners request the following amendments to 24 C.F.R. §§ 35.110, 35.115.

§35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

[. . .]

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit, unless the unit is occupied or to be occupied by a pregnant woman or child less than 6 years of age.

B. Adopt Primary Prevention Measures to Protect Children in Federally Assisted Housing from Lead Poisoning and the Resulting Severe and Permanent Health Impairments

In its 2012 Guidelines, HUD describes primary prevention as the most important and significant strategy to eliminating lead poisoning.⁵⁶ In the past, the child functioned as “a sensing

⁵⁴ Citizen Petition to EPA Regarding the Paint and Dust Lead Standards at 6 (Aug. 10, 2009) *available at* http://www.nchh.org/Portals/0/Contents/EPA_Lead_Standards_Petition_Final.pdf

⁵⁵ Letter from the EPA to Rebecca Morley, National Center for Healthy Housing, Patrick MacRoy, Alliance for Healthy Homes, and Tom Neltner, Sierra Club, regarding Citizen Petition to EPA Regarding the Paint and Dust Lead Standards (Oct. 22, 2009) *available at* http://www.nchh.org/Portals/0/Contents/Lead_Dust_Paint_EPA_Response_10-22-09.pdf

device for poor/contaminated housing, contaminated water and/or tainted consumer products. Thus, the child can be considered the proverbial ‘canary in the coal mine.’⁵⁷ As the CDC Advisory Commission on Childhood Lead Poisoning Prevention determined, “[t]his strategy should now be considered unacceptable, given that there is no evidence to demonstrate that remediation prevents damage from prior lead exposure.”⁵⁸ Primary prevention is necessary because the effects of lead are irreversible and ongoing.⁵⁹ Lead not only enters the bloodstream, but it lodges in a child’s bones where it continues to permanently damage the child’s brain and body.⁶⁰ “Once poisoned, the damage to a child’s developing brain is done and the focus must shift to addressing the problems caused by the poisoning and to avoiding further accumulation of lead in a child’s body.”⁶¹ HUD must amend its current lead hazard identification and remediation strategies to ensure that no federally assisted housing has lead hazards and results in the lead poisoning of children. At a minimum, primary prevention requires replacing the practice of visual assessments with risk assessments. To be clear, the cost effectiveness of risk assessments is dependent upon updated dust-lead standards, as described in part III.A.2.

1. *Replace the practice of visual assessment with risk assessment that includes the collection of dust, dirt, water, and paint samples in all pre-1978 homes during initial and annual inspection*

Visual assessments are not sufficient for identifying all lead hazards in a home. Currently, HUD only requires a visual assessment prior to approving federally assisted housing in multiple programs, including multifamily properties receiving up to \$5,000 per unit, and single family properties;⁶² programs receiving federal assistance for acquisition, leasing, supportive services, or operation;⁶³ and tenant-based rental assistance programs, such as HCVP.⁶⁴ Unless the visual assessment identifies deteriorating paint, further measures, such as a

⁵⁶ See U.S. DEP’T. OF HOUS. & URBAN DEV., GUIDELINES FOR THE EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING 1–9 (July 2012, 2nd ed.), available at http://portal.hud.gov/hudportal/documents/huddoc?id=second_edition_2012.pdf [hereinafter HUD 2012 GUIDELINES] (noting that merely responding to lead poisoning is “an ineffective solution to a nationwide program” and that the focus must be on prevention).

⁵⁷ CDC 2012 ADVISORY REPORT, *supra* note 28, at 15.

⁵⁸ CDC 2012 ADVISORY REPORT, *supra* note 28, at 16.

⁵⁹ CDC 2012 ADVISORY REPORT, *supra* note 28, at ix.

http://www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf.

⁶⁰ U.S. ENVTL. PROTECTION AGENCY, EPA 240-R-00-006, AMERICA’S CHILDREN AND THE ENVIRONMENT: A FIRST VIEW OF AVAILABLE MEASURES 31 (Dec. 2000), available at <http://www.epa.gov/sites/production/files/2014-05/documents/ace-report.pdf> (“Although the concentration of lead in blood is an important indicator for risk, it reflects only current exposures. Lead also accumulates in bone. Recent research suggests that concentrations of lead in bone may be more related to adverse health outcomes in children than concentrations in blood are.”).

⁶¹ Anita Weinberg, *A Case Study of a Partnership in Chicago to Prevent Childhood Lead Poisoning*, A CHILD’S RIGHT TO A HEALTHY ENVIRONMENT 43, 44 (James Garbarino & Garry Sigman eds., 2010) (recognizing that because new evidence suggests that no safe blood lead level exists for children, current clinical and environmental thresholds must be reexamined).

⁶² 24 C.F.R. § 35.720 (2012).

⁶³ 24 C.F.R. § 35.1015 (2012).

⁶⁴ 24 C.F.R. § 35.1215 (2010). According to HUD’s 2012 Guidance, a visual assessment is “limited to identifying deteriorated paint, both interior and exterior, and paint chips on the ground. It is not necessary to identify friction surfaces, impact surfaces, or chewable surfaces, except that the risk

risk assessment, are not required.

According to a Government Accountability Office (“GAO”) Report and subsequent scientific studies, visual inspections are insufficient for identifying a lead hazard. As the GAO Report noted, “visual inspections did not [identify] lead hazards in intact painted surfaces, such as floors, window sashes, and window sills.”⁶⁵ A visual assessment that does not identify deteriorating paint that would trigger a risk assessment and clearance exam is not an effective method for identifying lead hazards in the form of dust-lead or soil-lead, which is a “major source of lead exposure.”⁶⁶ In its own 2012 Guidelines on evaluating lead hazards, HUD states, “‘Visual Assessment’ alone is an alternative to evaluation.”⁶⁷

To ensure that no families move into a unit with a lead hazard, it is critical that HUD require robust lead hazard evaluation. Because visual assessment is not an effective method for identifying the presence of a lead hazard, HUD must amend its regulations to replace visual assessment with the more accurate evaluation tool of risk assessment in all pre-1978 construction. Risk assessment, that includes the collection of dust, dirt, water, and paint samples in homes, is proven to more accurately identify lead hazards than visual assessment alone. To be clear, risk assessment is only effective if it is conducted by a risk assessor licensed by the EPA or a state sanctioned program and if the dust-lead and lead-paint standards are updated. If a risk assessment identifies a lead hazard, hazard control activities can occur in the unit prior to occupancy by children, thereby preventing lead poisoning. More detailed evaluation tools, like lead-based paint inspection, that are already included in the regulations should remain. The Petitioners request amendments to 24 C.F.R. §§ 35.720, 35.940, 35.1015, 35.1110, 35.1215, and 35.1355 that are consistent with the following model amendments. In addition, the Petitioners request that HUD make the definition of “risk assessment” uniform throughout the regulations.

§35.1010 Definitions

[. . .]

Risk Assessment means:

- (1) An on-site investigation by a certified individual or firm to determine and report the existence, nature, severity, and location of lead-based paint hazards; including
- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) visual inspection;
- (3) Limited wipe sampling and other environmental sampling of dust, soil, water and paint;
- (4) Other activity as may be appropriate; and

assessor should attempt to identify chewable surfaces if the owner or resident indicates in the questionnaire that a young child tends to mouth or chew painted surfaces.” HUD 2012 GUIDELINES, *supra* note 56, at 5–60.

⁶⁵ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO/RCED–94–137, LEAD-BASED PAINT POISONING: CHILDREN IN SECTION 8 TENANT-BASED HOUSING ARE NOT ADEQUATELY PROTECTED (1994).

⁶⁶ HUD 2012 GUIDELINES, *supra* note 56, at 1-7. “The most common cause of poisoning is the ingestion -through hand-to-mouth transmission- of lead-contaminated surface dust.” U.S. DEP’T OF HOUS. & URBAN DEV., CONGRESSIONAL JUSTIFICATIONS 33-6 (2016), *available* at <http://portal.hud.gov/hudportal/documents/huddoc?id=FY16-CJE-EntireFile.pdf> (HUD’s 2016 Fiscal Budget notes that “the most important preventable exposure sources for children are lead hazards in their residential environment: deteriorated lead paint, house dust, and lead-contaminated soil”).

⁶⁷ HUD 2012 GUIDELINES, *supra* note 56, at 1–12.

(2)(5) The provision of a report by the certified individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

[. . .]

§35.1215 Activities at initial and periodic inspection.

(a) (1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and trained in visual risk assessment for ~~deteriorated paint surfaces~~ lead hazard in accordance with procedures established by HUD shall conduct a visual risk assessment of ~~all painted surfaces in order~~ to identify any ~~deteriorated paint~~ lead hazard.

(2) For tenant-based rental assistance provided under the HOME program, visual risk assessment shall be conducted as part of the initial and periodic inspections required under §92.209(i) of this title.

2. *Require federally assisted housing to adhere to local definitions of terms if they are more protective than HUD's definitions*

To protect participant children from lead poisoning, HUD must underscore the requirement that federally assisted housing adhere to local definitions that are more protective than the Regulations. HUD's ability to do this is well established as the existing Regulations require participants to comply with State, tribal or local law, ordinance, code or regulation defining "lead-based paint" more protectively than the Regulations do.⁶⁸ In order to provide the greatest level of protection to children, the rule on compliance with other State, tribal and local laws must be extended to all terms related to lead poisoning prevention and hazard reduction activities, such as lead poisoning, lead inspections, blood lead reference value, and lead hazard reduction activities. Many jurisdictions define certain terms related to lead poisoning prevention in a way that offers greater protection to residents.⁶⁹ If participants can continue receiving funding or assistance without adhering to local laws, there is little incentive to do so. HUD must require participants to comply with definitions for all relevant terms when such definitions offer greater protection. The Petitioners request the following amendment to 24 C.F.R. § 35.150.

§35.150 Compliance with other State, tribal, and local laws.

(b) Participant responsibility. Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines terms, such

⁶⁸ 24 C.F.R. § 35.150(b).

⁶⁹ For example, multiple cities defined the term elevated blood lead level a 5 µg/dL before the CDC's reference level was lowered to 5 µg/dL in 2012. CHICAGO, ILL., MUN. CODE § 7-4-130 (2008) (noting that Chicago law define lead poisoning as "confirmed level of lead in human blood of greater than 5 ug/dL"); *see* Childhood Lead Poisoning Prevention Act of 1991, CAL. HEALTH & SAFETY CODE § 105280 (noting that California law define lead poisoning as "the disease present when the concentration of lead in whole venous blood reaches or exceeds levels constituting a health risk, as specified in the most recent United States Centers for Disease Control guidelines"); *see also* Lead Poisoning Control Act, ME. REV. STAT. tit. 22, § 1315 (2011) (noting that Maine law define lead poisoning as "a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the department using reference levels no higher than the 97.5th percentile of blood lead levels in children established by a national health and nutrition examination survey adopted by the federal Department of Health and Human Services, Centers for Disease Control and Prevention").

as, but not limited to, lead-based paint, lead-soil, lead-dust, lead-water levels, lead poisoning, blood lead level reference value, or lead hazard reduction activities, differently than the Federal definition, the more protective definition (i.e. the lower level) shall be followed in that State, tribal or local jurisdiction.

3. Require periodic inspections and the immediate re-inspection and risk assessments in all properties built before 1978 and in high risk areas unless the property owner can provide certification that that property is lead safe

Individuals and families living in pre-1978 housing are particularly at-risk to lead hazards and require additional protections. It wasn't until 1978 that the government banned consumer uses of lead-based paint.⁷⁰ Therefore, most homes constructed before 1978 contain lead-based paint. According to the Environmental Protection Agency, 87% of homes constructed before 1940, 69% of homes constructed between 1940 and 1959, and 24% of homes constructed between 1960 and 1977 contain lead-based paint.⁷¹ Paint deteriorates over time and even if lead-based paint is coated with a layer of unleaded paint, it still presents a lead hazard for occupants.⁷² As this paint peels or is disturbed through renovation, it “contaminates house dust and soil and is ingested by young children during normal hand-to-mouth activities.”⁷³

Periodic inspections and increased enforcement are important components of a successful lead poisoning prevention strategy. With the exception of homes that have undergone complete paint removal, ongoing maintenance is critical in preventing a lead hazard from redeveloping. Interim controls and abatement can only be an effective lead poisoning prevention strategy if there is ongoing maintenance of the property to ensure the lead-based paint remains controlled in a stable condition. Periodic reinspection, at intervals that are sufficiently protective of occupants, are necessary to identifying the emergence of a lead hazard.

In order to ensure that pre-1978 homes will not cause lead poisoning, HUD regulations must require immediate re-inspection and risk assessment in all pre-1978 properties under Subparts G, H, L, and M unless the property owner can provide certification that the property is lead free or received lead safe certification in the previous six months. It is likely that a large number of federally assisted housing has lead hazards despite having passed the visual assessment or the clearance exam.⁷⁴

⁷⁰ U.S. ENVTL. PROTECTION AGENCY, *Protect Your Family*, <http://www.epa.gov/lead/protect-your-family#sl-home> (last visited Feb. 1, 2016).

⁷¹ U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF HEALTHY HOMES & LEAD HAZARD CONTROL, *American Healthy Homes Survey: Lead and Arsenic Findings* (2011), at http://portal.hud.gov/hudportal/documents/huddoc?id=AHHS_Report.pdf.

⁷² GERALD MARKOWITZ & DAVID ROSNER, *THE POLITICS OF SCIENCE: LEAD WARS AND THE FATE OF AMERICA'S CHILDREN*, U.C. PRESS (2013).

⁷³ Berlinda Yeoh et al., *Household interventions for preventing domestic lead exposure in children*, COCHRANE LIBR. (Dec. 15, 2014),

⁷⁴ Jessica Mendoza, *Can Flint Crisis Spotlight Need for Action on Lead Nationwide?*, CHRIST. SCI. MONIT., Jan. 28, 2016 available at <http://www.csmonitor.com/USA/Society/2016/0128/Can-Flint-crisis-spotlight-need-for-action-on-lead-nationwide>; Michael Hawthorne, *Durbin Urges Action on Lead Threat to Children*, CHI. TRIB. Jan. 26, 2016 available at <http://www.chicagotribune.com/news/ct-durbin-hud-letter-20160126-story.html>; Sebastian Kitchen, *Senator Rubio Pushes HUD for Urgent Action on Eureka Garden*, THE FL. TIMES-UNION, Jan. 21, 2016 available at <http://jacksonville.com/news/florida/2016-01-21/story/senator-rubio-pushes-hud-urgent-action-eureka-garden>; Michael Hawthorne, *Federal Housing Policy Leaves Poor Kids at Risk of Lead Poisoning*, CHI. TRIB., Dec. 31, 2015, available at <http://www.chicagotribune.com/news/watchdog/ct-cha-lead-paint-hazards-met-20151231->

If a household member is diagnosed with lead poisoning or a lead hazard is identified in a multi-family dwelling where multiple units receive federal assistance, the public housing authority must immediately conduct risk assessments in all other units. Risk assessment is critical for the prevention of lead poisoning, as HCVP households are often clustered within the same building or set of buildings managed by the same owner.

While all properties that cannot prove lead free or lead safe status require re-inspection, HUD should prioritize risk assessments in properties located in high-risk neighborhoods. Observations by health departments and peer-reviewed studies indicate that specific addresses are often linked to repeated cases of lead poisoning in children.⁷⁵ For example, in Jefferson County, Kentucky, 79 homes housed 35% of the 524 cases identified in one five-year period.⁷⁶ Another study demonstrated census tracts prediction for elevated BLLs among children. Rental status, along with other housing characteristics, is also a predictor of BLLs greater than 10 µg/dL.⁷⁷ Such information can be used to focus initial risk assessments on homes where lead hazards are more likely to be found.⁷⁸ The Petitioners request amendments to 24 CFR §§ 35.620, 35.625, 35.715, 35.720, 35.1115, and 35.1215 that are consistent with the following model amendments.

§35.1215 Activities at initial and periodic inspection.

(a) (1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and ~~trained in visual~~ certified in risk assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a ~~visual risk~~ assessment of all painted surfaces in order to identify any deteriorated paint.

(2) For tenant-based rental assistance provided under the HOME program, ~~visual risk~~ assessment shall be conducted as part of the initial and periodic inspections required under §92.209(i) of this title.

[. . .]

(d) The designated party may grant the owner an extension of time to complete paint stabilization and clearance for reasonable cause, but such an extension shall not extend beyond 90 days after the date of notification to the owner of the results of the ~~visual risk~~ assessment.

(e) Risk assessments shall be repeated on a periodic basis and no less than biannually.

(f) If a risk assessment identifies a lead hazard, risk assessments shall be conducted in all other federally assisted housing units on the property.

story.html; Liam Ford, *CHA Settles Suit Over Lead Paint*, CHI. TRIB., Feb. 20, 2002, available at http://articles.chicagotribune.com/2002-02-20/news/0202200036_1_lead-based-vouchers-blood-lead.

⁷⁵ CDC 2012 ADVISORY REPORT, *supra* note 28, at 41-42.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* J. Gasana. 2007. Use of GIS and childhood lead poisoning in South Florida. *Epidemiology* 18: S192.

M.L. Miranda, D.C. Dolinay, M.A. Overstreet. 2002. Mapping for prevention: GIS models for directing childhood lead poisoning prevention programs. *Environ. Health Perspect.* 110: 947-953.

U.S. CDC. 2004. Using GIS to assess and direct childhood lead poisoning prevention. Guidance for state and local lead poisoning prevention programs. www.cdc.gov/nceh/lead/publications/UsingGIS.pdf

S-L Wilkinson et al. 1999. Lead hot zones and childhood lead poisoning cases. Santa Clara County, CA. 1995. *J. Publ. Health Manage. Pract.* 5: 11-12.

4. Evaluate and Track Outcomes Related to Costs and Lead Poisoning Rates

HUD must take further action to ensure compliance with its data collection and research requirements. Pursuant to the Lead-Based Paint Hazard Reduction Act, every twenty-four months the Secretary is responsible for reporting to Congress on HUD's progress in implementing lead-based paint hazard evaluation activities. Among other things, the report must include an assessment of the extent to which infrastructure is needed to eliminate lead-based paint hazards in all housing as quickly as possible, and provide costs estimates of measures to create such infrastructure.⁷⁹ HUD must compile data on lead hazard abatement spending, lead poisoning rates, and direct and indirect costs of lead poisoning, including medical treatment, special education spending, increased expenses for the criminal justice system, lost wages and decreased tax revenue, among others. This data reporting complements HUD's request for subpoena authority for the Lead Disclosure Statute,⁸⁰ allowing HUD to obtain documents from landlords suspected of violating their obligations under the law to provide information to renters and purchasers of pre-1978 homes.⁸¹ With this authority, HUD will have the ability to conduct more timely and efficient investigations, the results of which should be included in reports to Congress. Using this empirical data, HUD will have the information necessary to design the most effective programs and interventions and secure funding to eliminate lead poisoning among children in federally assisted housing.

C. Adopt Robust Hazard Reduction Protocols to Prevent Lead Poisoning Among Current and Future Households and Further Harm to Lead Poisoned Children

Under the current Regulations, once a child is diagnosed with lead poisoning, it is unclear what assistance HUD households are eligible for and what, if any, rights they have from federally assisted housing that would address, or remove the household from exposure to, life-threatening lead hazards in the home. Programs administering federally assisted housing allow lengthy amounts of time for repairs, as well as extensions. At the same time, HCVP households are not permitted to both receive continued assistance and move from the unit that caused or could result in, brain damage to their children.⁸² As a result, children may be continuously exposed to lead hazards and at risk of increased blood lead levels. The following amendments will prevent lead poisoning if implemented prior to occupancy and further harm to lead poisoned children if implemented after occupancy.

1. Require the same minimum level of hazard reduction activities for all HUD programs

The adoption of uniform, robust standards for the elimination of lead hazards is crucial to prevent lead poisoning among children. The current Regulations include three types of hazards

⁷⁹ 42 U.S.C. § 4856.

⁸⁰ 42 U.S.C. § 4852d(a).

⁸¹ U.S. Dep't of Hous. & Urban Dev., LEAD HAZARD CONTROL AND HEALTHY HOMES LEAD HAZARD REDUCTION: 2016 Summary Statement and Initiatives (2016), available at https://portal.hud.gov/hudportal/documents/huddoc?id=37-FY16CJ_LHReduction.pdf.

⁸² 24 C.F.R. §982.354.

reduction activities for federally assisted housing: full abatement, abatement, and interim controls.

Full abatement is defined as when “lead-based paint has been abated and clearance has been achieved.”⁸³ Abatement is “a set of measures designed to permanently eliminate lead-based paint hazards . . . includ[ing] the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.”⁸⁴ Abatement also requires all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.”⁸⁵ Full abatement and abatement successfully eliminate lead hazards⁸⁶ for current and future occupants of the home.⁸⁷

Interim controls are “a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.”⁸⁸ This includes “cleaning surfaces of dust, paint film, stabilization and friction and impact surface treatments.”⁸⁹ Interim controls, “do not permanently eliminate” lead hazards and can be successful in eliminating lead hazards with ongoing risk assessment, maintenance and clearance activities.⁹⁰

To prevent lead poisoning among current and future households residing in federally assisted housing, “all sources of lead exposure for children should be controlled or eliminated.”⁹¹ Because they guarantee the elimination of lead hazards and protect future residents from becoming lead poisoned, abatement and full abatement should be the goal for all federally assisted housing. HUD should take steps to perform those types of hazard reduction activities in all properties. At a minimum, HUD should require interim controls in all properties when a lead hazard is identified.

The Petitioners request amendments to 24 C.F.R. §§ 35.100 (Table One), 35.110, 35.120, 35.125, 35.165, 35.510, 35.720, 35.820, 35.940, 35.1010, 35.1015, 35.1210, 35.1215, 35.1225, 35.1330, 35.1335, 35.1340, and 35.1355 that are consistent with the following model amendments.

§35.165 Prior evaluation or hazard reduction.

[. . .]

(c) *Interim controls.* ~~All programs must complete~~ If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation

⁸³ U.S. DEP’T OF HOUS. & URBAN DEV., GUIDELINES FOR THE EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING (2012 ed.) at 1-12 (2012), available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Jacobs, David et al. *Window Replacement and Childhood Lead Exposure: Results from the ClearWin Study*, REPORT TO U.S. DEP’T OF HOUS. & URBAN DEV (May 15, 2015) (finding that the ClearWin Program, a pilot project wherein lead infested windows were replaced in Chicago and Peoria, Illinois, resulted in a direct benefit to children from window lead abatement. As a result of the program “dust lead levels declined and reductions were sustained”).

⁸⁷ CDC 2012 ADVISORY REPORT, *supra* note 28 at 41-42.

⁸⁸ HUD 2012 GUIDELINES, *supra* note 56, at 1–12.

⁸⁹ *Id.*

⁹⁰ CDC 2012 ADVISORY REPORT, *supra* note 28 at 33.

⁹¹ US GOV’T ACCOUNTABILITY OFFICE, GAO-73-577, LEAD AND CHILDREN’S HEALTH 11 (2007).

activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, ~~and~~ the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part. If a residential property is under a program of abatement, the property shall comply with the more protective abatement requirements.

§35.720 Multifamily properties receiving up to \$5,000 per unit, and single family properties.

~~(2) *Paint stabilization.* The owner shall stabilize each deteriorated paint surface in accordance with §35.1330(a) and §35.1330(b) before occupancy of a vacant dwelling unit or, where a unit is occupied, within 30 days of notification of results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with §35.1340.~~

(b) Interim Controls. Each owner shall complete abatement in accordance with §35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with §35.1340. Interim Controls shall be completed no later than the following schedule:

(1) In units occupied by families with children and in common areas servicing those units, interim controls shall be completed no later than 30 days after the completion of the risk assessment.

(2) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 30 days after completion of the risk assessment for those units.

2. *Reduce the allowable time period to complete lead hazard reduction activities*

HUD should amend its Regulations to reduce the allowable time period for completing hazard reduction activities. Currently, HUD allows property owners as much as 90 days to complete hazard reduction activities. The number of days allowed for hazard reduction activities must be reduced to the least number possible and no more than 30 days. The Petitioners request amendments to 24 C.F.R. §§ 35.715, 35.720, 35.820, 35.1120, and 35.1215 reducing the time period for hazard reduction activities to no more than 30 days.

3. *Allow families to move, on an emergency basis, with continued assistance if a lead hazard is identified in the unit*

When a lead hazard is identified in certain federally assisted housing, residents must be allowed to move on an emergency basis with continued housing assistance. Under the current Regulations, households residing in federally assisted housing are not entitled to continued assistance if the household elects to move from a unit with a lead hazard without also meeting

other stringent requirements.⁹² HUD must require programs administering federally assisted housing, such as HCVP and site-based housing, to allow residents to move with continued assistance if a lead hazard is identified in the unit.

For the site-based programs, owners must relocate households on an emergency basis, supporting the cost of that relocation, when a lead hazard is identified provided the housing provider has a unit that is (1) not occupied and is available to the household; and (2) meets HUD's health and safety standards. HUD should make clear that these emergency housing transfers must occur within 72 hours of the household's request for a transfer or the identification of the lead hazards in a unit. If the covered housing provider does not have an available, habitable unit, the household should be transferred to a unit under the same covered program as the unit in which the household resides, a unit assisted under another covered program, or temporary, unassisted housing until a covered housing program unit can be identified. The cost of relocation, or rent or hotel payments, above the household's existing rent must be covered by the housing provider. HUD should make clear that project owners with a Housing Assistance Payments ("HAP") Contract can use the project-based subsidy to support temporary emergency relocation during remediation, as it already does for other imminent health and safety hazards.⁹³ HUD should instruct housing providers that these moves, as a result of life-threatening health and safety concerns, permit a waiver of other considerations, such as waiting lists, existing tenant preferences, or prioritization.

For HCVP, in particular, there is an enormous divide between the safety of children exposed to lead and program regulations dictating allowable moves. HCVP regulations limit the conditions under which households may move to new housing units with continued assistance.⁹⁴ Currently, there is no provision permitting families to move with continued assistance where a member of the household's health or safety is threatened as a result of lead hazards or violations of other housing quality standards.⁹⁵ As a result, families who seek to move or terminate their leases due to lead hazards may be subject to termination of assistance for violation of family obligations under the program.⁹⁶ This presents households with an impossible choice: remain in housing that is poisoning their family or lose their voucher and risk homelessness. HCVP participants should be allowed to decide whether a move is in the best interests of their children.

When a lead hazard is identified, public housing authorities must allow the HCVP participant to terminate the HAP Contract on an emergency basis, receive emergency moving papers, and continue receiving tenant-based assistance. In the event the HAP Contract is terminated, the unit should not be eligible for participation in the HCVP unless and until the unit passes a clearance exam meeting the standards enumerated herein. If a family intends to return to the unit, the public housing authority must abate the HAP Contract until the unit passes a clearance exam.

⁹² 24 C.F.R. §982.354; *See also* Michael Hawthorne, *Federal Housing Policy Leaves Poor Kids at Risk of Lead Poisoning*, CHI. TRIB., Dec. 31, 2015, available at <http://www.chicagotribune.com/news/watchdog/ct-cha-lead-paint-hazards-met-20151231-story.html>.

⁹³ *See e.g.*, U.S. DEP'T OF HOUS. & URBAN DEV., HUD HANDBOOK 4350.1: MULTIFAMILY HOUSING GUIDANCE FOR DISASTER RECOVERY CH. 38, http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_24956.doc (last visited Feb. 1, 2016).

⁹⁴ 24 C.F.R. 982.354.

⁹⁵ *Id.* (Under the Regulations, a household is permitted to move if the HAP contract is terminated by the PHA, the landlord terminates the lease, or the tenant has the right to terminate the lease).

⁹⁶ *See generally*, 24 C.F.R. 982.552.

The amendments are consistent with the current regulatory provisions relating to other housing quality violations and health and safety threats. For example, in situations where HCVP participants reside in housing units that no longer meet federal occupancy requirements due to a change in a family's household size (i.e., the birth of a child), regulations require the public housing authority to issue moving papers to the HCVP household so the family may move to an acceptable unit "as soon as possible."⁹⁷ Likewise, in cases where a member of the household's health or safety is at risk due to threats of domestic violence, dating violence, or stalking, regulations grant tenants the right to move with continued assistance or to other federally assisted housing.⁹⁸

Regulations should also ensure that occupants are protected during hazard reduction activities. Currently, the regulations only provide for temporary relocation during hazard reduction activities if no exceptions are met. To protect residents from lead exposure, we encourage HUD to include relocation before and during any hazard reduction activities, including paint stabilization, abatement, and interim control activities. At a minimum, HUD should include clearance testing in 24 C.F.R. 35.1345 before residents are permitted to reenter the unit at the end of each work shift.

The Petitioners request amendments to 24 C.F.R. §35.1360, and Subparts D, G,⁹⁹ H, L and M that are consistent with the following model amendments.

§35.1360 Move with continued tenant-based assistance.

(a) Move with continued tenant-based assistance. A family receiving tenant-based assistance may move, on an emergency basis, to a new unit that meets HUD's health and safety standards prior to the expiration of the HAP contract or lease without penalty: (1) to prevent disability or harm to the health of a household member; or (2) if a lead hazard is identified in the unit.

(b) Transfers with continued assistance within project-based housing programs. To prevent disability or harm to the health of a household member or if a lead hazard is identified in the unit, project-based housing providers must transfer, on an emergency basis, the family to another unit if the covered housing provider has a unit that is: (1) not occupied and available to the household; and (2) meets HUD's health and safety standards. If such a unit is not available, the family will be transferred to a unit under the same covered program or transferred to a unit assisted under another covered program or into temporary, unassisted housing until such time as a covered housing program unit can be identified.

(c) Emergency housing transfers shall occur within 72 hours of the family's request for a transfer or the housing provider's identification of the lead hazards in a unit. Moves as a result of life-threatening health and safety concerns permit a waiver of other considerations, such as waiting lists, existing tenant preferences or prioritization. The cost of these moves, including the families residing temporarily in unassisted housing shall be borne by the housing provider.

⁹⁷ 24 C.F.R. §982.403

⁹⁸ 24 C.F.R. §5.2005.

⁹⁹ 24 C.F.R. § 35.1360. The proposed amendments do not apply to the 202 and 811 programs because those programs do not traditionally serve households with children.

The Petitioners request the following amendments to 24 C.F.R. §982.354.

§982.354 Move with continued tenant-based assistance.

(a) *Applicability.* This section states when a participant family may move to a new unit with continued tenant--based assistance:

(b) *When family may move.* A family may move to a new unit with continued assistance if:

(1) ~~the~~ the assisted lease for the old unit has terminated. This includes a termination because:

(i) The PHA has terminated the HAP contract for the owner's breach; or

(ii) The lease has terminated by mutual agreement of the owner and the tenant.

(2) ~~the~~ the owner has given the tenant a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgment or other process allowing the owner to evict the tenant.

(3) ~~the~~ the tenant has given notice of lease termination (if the tenant has a right to terminate the lease on notice to the owner, for owner breach, or otherwise).

(4) a lead hazard is identified in the unit and in order to prevent disability or harm to health of a household member.

(5) ~~the~~ the family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking, as provided in 24 CFR part 5, subpart L, and the move is needed to protect the health or safety of the family or family member. A PHA may not terminate assistance if the family, with or without prior notification to the PHA, already moved out of a unit in violation of the lease, if such move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the dwelling unit.

4. Require notification to the local Public Health Department of when a member of the household is diagnosed with an elevated blood lead level or a lead hazard is identified in the unit in order to protect future tenants

In light of the significant health risks associated with lead hazards, it is essential the local public health department be notified if the federally assisted housing program becomes aware of lead hazards in a housing unit. Federally assisted housing must collect and report the name and address of any identified lead hazard and participant household member with lead poisoning, regardless of age, to the local public health department. This will prevent subsequent families from being affected by lead poisoning. Because “sets of preschool children are likely to move into the same housing unit,”¹⁰⁰ the number of children affected by a single lead hazardous unit is compounded by as much as ten times over a 30-50 year period.¹⁰¹ Notifying the public health

¹⁰⁰ AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, THE NATURE AND EXTENT OF LEAD POISONING IN CHILDREN IN THE UNITED STATES: A REPORT TO CONGRESS 16 (Jul. 1988), available at <http://files.eric.ed.gov/fulltext/ED324135.pdf>.

¹⁰¹ *Id.*

department will trigger the enforcement of local lead poisoning prevention laws, leading to hazard reduction activities prior to subsequent tenancies. In one study, lead hazard controls employed in select units significantly reduced the likelihood of another child being lead poisoned compared to units where hazards were not reduced.¹⁰²

While infants and toddlers are more vulnerable on the basis of added behavioral and toxicological risks, children and adolescents are not immune to the dangers of lead poisoning. Lead poisoning is also harmful to pregnant women and adults. In adults, lead exposure has been associated with some of the most prevalent diseases of industrialized society: cardiovascular disease, miscarriage, preterm birth, renal disease, and cognitive decline, stroke, and chronic kidney disease.¹⁰³ The collection and reporting of all incidents of lead poisoning will better assist local public health departments in identifying lead hazards and preventing additional exposure.

This measure is only intended to ensure that the local public health department is aware of the lead hazard and able to prevent future occupants from exposure. It is not intended to replace or supplement the CDC's data collection and analysis duty. The Petitioners request amendments to Subparts D, H, L, M, and R that are consistent with the following model amendments.

982.354 Move with continued tenant--based assistance.

[. . .]

(d) *Notice that family wants to move.*

(1) If the family wants to move to a new unit, the family must notify the PHA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial PHA jurisdiction, the notice to the initial PHA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

(2) If the family elects to move to a new unit pursuant to section (b)(4) because a lead hazard has been identified in the unit, PHA must notify the local public health department of the lead hazard in the unit.

§35.1225 Child with an environmental intervention blood lead level.

[. . .]

(f) *Data collection and record keeping responsibilities.* At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified environmental intervention blood lead level. At least quarterly, the designated party shall also report an updated list of all program participants with an identified environmental intervention blood lead level and the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the designated party shall

¹⁰² CDC 2012 ADVISORY REPORT, *supra* note 28 at 41-42

¹⁰³ *Lead and Children's Health: Hearing Before the Committee on Environment and Public Works*, 110th Cong. (2007) (statement of Bruce P. Lanphear, M.D., MPH, Director Cincinnati Children's Environmental Health Center; Professor of Pediatrics & Environmental Health).

match information on cases of environmental intervention blood lead levels with the names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure. If a match occurs, the designated party shall carry out the requirements of this section.

IV. ADOPTION OF THE PROPOSED AMENDMENTS WILL RESULT IN COST-SAVINGS TO HUD, PROPERTY OWNERS, AND SOCIETY

The effective implementation of the proposed amendments may result in increased costs. The benefits, including enormous societal cost-savings, to preventing lead poisoning among children in federally assisted housing far outweighs the costs and justifies investment. Substantial funding increases by Congress for lead hazard reduction programs are critical to achieving the elimination of childhood lead poisoning and to support the increased costs associated with the changes proposed by these amendments.¹⁰⁴ Many of the activities described in the proposed amendments may be financed, in part, through several federal and local funding sources.

A. HUD and Participant Landlords Financially Benefit from Eliminating Lead Hazards

These amendments will result in financial benefits to HUD and participant landlords. Like these amendments, the Lead-Safe Housing for Kids Act of 2008 (HR 6309) proposed amending the Regulations to align the definition of lead poisoning with the CDC definition and requiring the PHA to conduct a risk assessment any time a child blood lead level met the new, lowered, definition.¹⁰⁵ In assessing the cost estimate of HR 6309, the Congressional Budget Office (“CBO”) determined that the amendments would have no effect on direct spending or revenues, as the cost of such changes falls under budget function 600 (income security).¹⁰⁶ Likewise, because these amendments do not contain intergovernmental or private-sector mandates, they impose no cost on state, local, or tribal governments.¹⁰⁷

Even if the amendments imposed a cost to landlords, the costs would be offset by increased efficiencies and streamlining of repairs. Under the current regulations, a lead hazard risk assessment is not always required prior to a family’s occupancy in federally assisted housing. As a result, lead hazards may only be identified after a participant child is diagnosed with an elevated blood lead level. In this situation, repairs may be limited to discrete and temporary lead mitigation, as the hazards are discovered. Through these amendments, the Regulations will require risk assessments and identification and control of lead hazards before a child is lead poisoned.

An analysis of the current Regulations by the Office of Management and Budget found that implementation in the first year cost \$253 million and yielded a gross benefit of \$1.1 billion,

¹⁰⁴ HUD currently provides Lead Hazard Control Program grants. However, these funds are only available to private landlords and owners. CDC 2012 ADVISORY REPORT, *supra* note 28.

¹⁰⁵ Lead-Safe Housing for Kids Act of 2008, H.R. 6309, 110th Cong. (2008).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* (Further, “any costs to private landlords participating in the federal voucher program would be incurred voluntarily.”)

or a net benefit of \$890 million.¹⁰⁸ HUD can expect a greater return on investment under the amendments because all inspection and abatement activities occur at once, creating operational efficiencies and reducing future expenses. While there is an upfront expense associated with preventative measures, it is a one-time cost.¹⁰⁹ For example, researchers found that window replacement, a key method of reducing childhood lead exposure, resulted in economic benefits of \$1700-\$2000 per housing unit, compared to window repair (non-replacement).¹¹⁰ Making repairs at once is far more cost effective than ad hoc repairs over time.

B. Funding Sources are Available to Offset Costs of Implementation

Multiple sources of funding may be available to offset any costs incurred in the adoption of these amendments. Community Development Block Grants and HOME funds give jurisdictions broad discretion to use funding for a large range of purposes, including housing rehabilitation and lead hazard control.¹¹¹ As discussed in HUD's 2016 Fiscal Budget, dedicated grants will be provided to state and local governments as well as eligible non-profit organizations to use cost-effective interventions to eliminate lead paint in privately owned low-income dwellings.¹¹² Property owners participating in the HCVP may use these funds to abate identified lead hazards. In addition to HUD grants, several states, including Connecticut,¹¹³ Illinois,¹¹⁴ Iowa,¹¹⁵ Massachusetts,¹¹⁶ Minnesota,¹¹⁷ and New Jersey,¹¹⁸ as well as municipalities, have dedicated funding to lead hazard abatement in the past.

Jurisdictions may use Medicaid 1115 Waivers to offset the costs of lead poisoning. Under Section 1115 of the Social Security Act, the Secretary of Health and Human Services has the authority to approve experimental pilot or demonstration projects that promote the objectives of

¹⁰⁸ Jacobs DE et al., *The High Cost of Improper Lead-Based Paint Removal*, 111 ENVTL. HEALTH PERSP. 185, 185–186 (2003).

¹⁰⁹ See Nevin R et al., *Monetary benefits of preventing childhood lead poisoning with lead-safe window replacement*, 106 ENVTL. RES. 410, 410 (2008) (“Credits or payments of \$100 per window up to \$1000 per housing unit would entail a maximum one-time federal expenditure of \$22 billion if this incentive resulted in lead-safe window replacement in each of the 22 million pre-1960 homes with single-pane windows. By comparison, the No Child Left Behind program provides States and local school districts with more than \$22 billion of federal funds per year”).

¹¹⁰ Dixon, S, Jacobs, D, Wilson, J, et al. *Window Replacement and Residential Lead Paint Hazard Control 12 Years Later*, Environmental Research 113, 14-20 (2012).

¹¹¹ U.S. DEP'T OF HOUS. & URBAN DEV., HOME INVESTMENTS PARTNERSHIPS PROGRAM FAQs 26 (2015), available at <https://www.hudexchange.info/onecpd/assets/File/HOME-FAQs.pdf> (explaining that the HOME funds are not available for public housing).

¹¹² U.S. DEP'T OF HOUS. & URBAN DEV., CONGRESSIONAL JUSTIFICATIONS 33-1 (2016), available <http://portal.hud.gov/hudportal/documents/huddoc?id=FY16-CJE-EntireFile.pdf>.

¹¹³ CONN. GEN. STAT. ANN. §§ 8-219e (West 1989 & Supp.1998) (providing loans and grants up to two-thirds of the cost of abatement of hazards).

¹¹⁴ Comprehensive Lead Education, Reduction, and Window Replacement Program Act, 410 Ill. Comp. Stat. Ann. 43/10 (2008).

¹¹⁵ IOWA CODE ANN. §§ 135.100 -105c (West 1997 & Supp. 2001) (providing matching funds for community lead abatement programs).

¹¹⁶ MASS. GEN. L. ch. 111 §§ 189A to 199B (1996 & West Supp. 1998) (establishing a loan program lead abatement).

¹¹⁷ MINN. STAT. ANN. § 462A.21 (1991 & West Supp. 2003) (making available grants for abatement of hazardous lead levels).

¹¹⁸ N.J. REV. STAT. ANN. §§ 26:2-130 - 137.7 (West 1996 & Supp. 1998) (establishing a grant program to provide loans to local boards of health to abate lead paint nuisances).

the Medicaid and CHIP programs.¹¹⁹ Section 1115 waivers give states the flexibility to improve their programs. States, like Illinois, have already applied for Section 1115 waivers for housing related services.¹²⁰ States may apply for Section 1115 waivers to use Medicaid and CHIP dollars to eliminate lead hazards in federally assisted housing, thereby absorbing any costs associated with implementing these amendments. Data from the National Health and Nutrition Examination Survey indicates that Medicaid children constitute the majority of children with elevated blood lead levels.¹²¹ Although Medicaid children represented one third of the U.S. population of children aged 1 through 5, they represented about sixty percent of children with elevated blood lead levels.¹²² The majority of treatment costs, including abatement, after lead exposure may be absorbed by Medicaid.

C. The Amendments will Result in Substantial Savings to Society

Every dollar spent on lead hazard control yields a return of \$17 to \$221.¹²³ The proposed amendments must be regarded as a long-term and permanent solution to a problem that has severe and detrimental effects on a significant portion of the population. The long-term financial benefits of implementing the amended policies greatly outweigh any costs of implementation. Lead poisoning results in extreme costs to society. Children with lead poisoning require ongoing medical treatment, and special education services. Lead poisoning eliminates natural leaders by shifting the population IQ by five points, which decreases the five percent of the population with an IQ above 120 and doubles the number of people with an IQ below eighty, who qualify for special education.¹²⁴ This results in \$11-53 billion in additional healthcare costs,¹²⁵ \$165-233 billion in lost lifetime earnings,¹²⁶ \$25-35 billion in lost tax revenue, and \$30-146 million in special education expenses.¹²⁷ Another \$11.6 billion is lost to medical treatment for physiological and physical damage as well as preventive measures.¹²⁸ The costs associated with lead poisoning are not limited to poisoned children themselves. Children exposed to lead hazards are more likely to develop Attention Deficit/Hyperactivity Disorder (“ADHD”).¹²⁹ Caregivers of children with ADHD “collectively incur approximately \$5 billion in work and productivity losses.”¹³⁰

¹¹⁹ Social Security Act §1115, 42 U.S.C. § 1315 (2011).

¹²⁰ ILL. DEP’T OF HEALTHCARE & FAM. SERVS., THE PATH TO TRANSFORMATION: ILLINOIS 1115 WAIVER PROPOSAL (June 4, 2014), available at <http://www.illinois.gov/hfs/SiteCollectionDocuments/1115waiversubmission.pdf>.

¹²¹ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO/HEHS-98-78, BLOOD LEAD LEVELS IN MEDICAID CHILDREN (1998), available at <http://www.gao.gov/assets/230/225261.pdf>.

¹²² *Id.*

¹²³ Gould, *supra* 24, at 1166.

¹²⁴ Hilary A. Godwin, *Lead Exposure and Poisoning in Children*, UCLA INST. OF THE ENV’T & SUSTAINABILITY (2009), <http://www.environment.ucla.edu/reportcard/article3772.html>.

¹²⁵ When children with even higher levels of lead are included, the total costs of lead treatment (excluding the cost of chronic conditions resulting from lead poisoning) is between 10.8 and \$53.1 million. Gould, *supra* note 24.

¹²⁶ Because of the damage that lead poisoning causes to children’s developing brains, it causes a loss in IQ points. Each IQ point lost roughly correlates into a loss of almost \$18,000 in lifetime earnings. All told, lead poisoning causes 9.3-13.1 million points, which correlates to roughly \$165-\$233 billion. Gould, *supra* note 24.

¹²⁷ Gould, *supra* note 24, at 1165.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

Lead exposure also increases criminal behavior. Lead exposure causes permanent loss of grey matter in the brain's frontal cortex, which is associated with aggression control and executive functions such as emotional regulation, impulse control, attention, verbal reasoning, and mental flexibility.¹³¹ As a result, lead poisoning leads to criminal activity that costs society over \$1.8 billion.¹³² This includes direct costs to the victim, costs associated with the criminal justice system, such as legal proceedings and incarceration, and lost wages for both the victim and the criminal.¹³³ A reduction in the average preschool blood lead level of 1 µg/dL “results in 116,541 fewer burglaries, 2,499 fewer robberies, 53,905 fewer aggravated assaults, 4,186 fewer rapes, and 717 fewer murders,” and their attendant costs.¹³⁴

The amendments would reduce the staggering societal costs that result from lead poisoning in private and federally assisted housing alike. Moreover, every dollar spent on controlling lead hazards, “would be returned in health benefits, increased IQ, higher lifetime earnings, tax revenue, reduced spending on special education, and reduced criminal activity.”¹³⁵ Most importantly, lead poisoning prevention preserves a child's ability to reach his or her fullest potential. Implementing the proposed amendments will not only result in cost-savings to the federal government, but will also result in lasting savings to society.

V. CONCLUSION

HUD is duty bound to ensure the elimination of lead hazards and the prevention of lead poisoning in its programs. The current Regulations fail to identify lead hazards in all federally owned and assisted housing and, as a result, do not protect participant children from the debilitating and life-threatening effects of lead poisoning. HUD must immediately align the Regulations with the standards set by the CDC and the prevailing science. Failure to adopt the proposed amendments will result in the continued lead poisoning of participant children and the related costs to society. The Petitioners implore HUD to immediately adopt these amendments, thereby fulfilling its duty to affirmatively further fair housing and protect the lives of children in federally assisted housing.

CC: Julian Castro, Secretary
Edward L. Golding, Principal Deputy Assistant Secretary for the Office of Housing
Katherine M. O'Regan, Assistant Secretary for Policy and Research
Matthew Ammon, Director, Office of Healthy Homes and Lead Hazard Control

¹³¹ Kevin Drum, *America's Real Criminal Element: Lead* (2013),
<http://www.mothersjones.com/environment/2013/01/lead-crime-link-gasoline>.

¹³² Gould, *supra* note 24, at 1164–65; see Deborah W. Denno, *Considering Lead Poisoning as a Criminal Defense*, 20 *FORDHAM URB. L.J.* 377, 393–94 (1993) (advocating for a lead poisoning defense to mitigate criminal charges because lead poisoning has been linked to disciplinary problems, aggression, and crime).

¹³³ Gould, *supra* note 24, at 1165.

¹³⁴ *Id.*

¹³⁵ *Id.* at 1166.