LOYOLA UNIVERSITY CHICAGO SCHOOL of LAW
Health Justice Project

NATIONAL HOUSING LAW PROJECT
advancing housing justice

SHRIVER CENTER
Sargent Shriver National Center on Poverty Law

July 5, 2016

Regulations Division
Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW., Room 10276
Washington, DC 20410–0500

RE: Comments to Notice of Demonstration to Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing (24 CFR Part 982, Docket No. FR-5928-N-01)

Dear Secretary Castro,

We respectfully submit through this letter comments on the U.S. Department of Housing and Urban Development's (HUD) "Notice of Demonstration to Test Proposed New Method of Assessing the Physical Conditions of Voucher-Assisted Housing."[1]

Over the past six months and under your leadership, HUD has taken important steps towards ending lead poisoning in federally assisted housing. HUD promulgated rules to align the agency's definition of lead poisoning with the Centers for Disease Control and Prevention and launched a Lead-Safe Homes Lead-Free Tool Kit outlining progressive initiatives. The Universal Physical Condition Standards for Vouchers (UPCS-V) demonstration project presents an unparalleled opportunity to engage in lead poisoning prevention while collecting valuable data on the methods for identifying lead hazards. The proposed inspection protocol will not conclusively determine whether a lead hazard is present in a unit. As a result, if published and implemented without additional changes, the UPCS-V inspection will not achieve the stated goal of enabling an inspector to more consistently identify and accurately describe those items that pose the most dangerous risk to tenant health and safety in the home. Namely, it will not allow for the identification of the majority of lead hazards that result in lead poisoning and permanent neurological harm for children participating in the Housing Choice Voucher (HCV) Program.

I. Statement of Interest

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, and LAF Chicago.[2] 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 70,000 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.

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.

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 of exposure to lead on a person's ability to escape poverty and achieve success.

II. Lead Hazards Create a Health and Safety Threat in the Home and Result in Permanent and Disabling Harm to Children

Lead hazards present an urgent health and safety threat to children. Lead poisoning causes severe health concerns, such as significant biological and neurological damage affecting cognition, behavior, bodily functions, growth, and development.[3] It can lead to academic failure, juvenile delinquency, high blood pressure, brain damage, learning disabilities, behavioral problems, developmental delay, and even death.[4]

The majority of HCV Program participants reside in neighborhoods with high rates of lead poisoning and a housing stock that predates prohibitions against the use of lead-based paint. As a result, over 2.5 million homes receiving federal assistance have lead hazards, placing young occupants, who occupy more than one third of HCV Program households, at great risk of lead poisoning.[5] In fact, the risk of lead poisoning is high among children living in poor neighborhoods,[6] with Medicaid recipients having the highest risk.[7] More than one-fifth of children from the poorest neighborhoods, where HCV Program participants often reside, have alarming levels of lead poisoning.[8] The risks fall heavily on minority children who are disproportionately represented in federally assisted housing.[9] African American children are nearly three times more likely than Caucasian children to have highly elevated blood-lead levels, and their associated damaging health outcomes.[10]

III. Lead Poisoning Prevention Requires the Identification of Lead Hazards Prior to Exposure

The 2016 Senate Report accompanying the Transportation, Housing and Urban Development Appropriations Act mandated that HUD revise the outdated Housing Quality Standards (HQS) inspection protocol to "reflect recent research on health and safety threats in the home."[11] According to the Report, "modern health standards" and a "universal list of life threatening or emergency deficiencies" were among the criteria absent from the HQS.[12] In order to update the inspection protocol to reflect modern health standards and to achieve the goals of the HCV Program to "provide decent, safe and sanitary affordable housing for low-income families," it is paramount that HUD prioritizes lead poisoning prevention in the HCV Program by including risk assessments in all inspection protocols.[13]

Today, overwhelming scientific research proves that no blood lead level is safe[14] and, because no therapeutic interventions exist to ameliorate the effects of lead poisoning, children require a wide margin of safety. The American Academy of Pediatrics determined that "prevention of exposure is paramount" and remains a "major public health priority in the United States."[15] In its 2012 Guidelines for the Evaluation and Control of Lead-Based Paint Hazards, HUD recognized primary prevention as the most important and significant strategy to eliminate lead poisoning.[16] Primary prevention requires the identification of a lead hazard before a child is exposed to it. [17] Without this preventative approach, there is a high likelihood that children residing in pre-1978 federally assisted housing will suffer the permanent and disabling effects of lead poisoning.

Primary prevention and modern health standards require that HUD 1) incorporate lead hazard risk assessments into the UPCS-V inspection protocol and 2) include the presence of lead hazards as a life-threatening emergency.

a. Require Lead Hazard Risk Assessments in the UPCS-V Inspection Protocol

In order to prevent lead poisoning, HUD must incorporate lead hazard risk assessments that include the collection of dust, dirt, water, and paint samples in all pre-1978 homes in the UPCS-V inspection protocol.

In its current form, the UPCS-V Decision Trees only includes a visual inspection of lead based paint. It also includes numerous inspection items that could have "peeling paint or needs paint" and "peeling or cracking paint," including doors, walls, ceilings, floors, and windows.[18] (The inspect able item of "patio/porch/balcony" does not include a decision related to peeling or cracking paint, despite the possibility of deteriorated paint.[19]) However, the presence of peeling or cracking paint does not result in a "fail" outcome or trigger a lead hazard risk assessment. The only time a unit fails inspection for a lead hazard is when a "target unit" does not have a lead free certificate and deteriorated lead based paint is present.[20] This only captures a fraction of potential sources of lead hazards.

Visual inspections of lead paint, alone, will not identify the potential sources of lead poisoning in a home.[21] Lead inspections limited to a visual examination or solely to paint are not an effective method for identifying lead hazards in the form of lead-dust or lead-soil. The current UPCS-V inspection protocol does not include any reference to lead contaminated dust or lead contaminated soil. As a result, the majority of lead hazards that result in lead poisoning will go unnoticed and uncorrected until after a child is poisoned.[22] In its 2016 Fiscal Budget, HUD identified 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."[23] In fact, lead-dust and lead-soil are the major source of lead exposure and the greatest cause of lead poisoning.[24] Including lead hazard risk assessments with the collection of samples of dust, dirt, water, and paint samples would allow the participating PHA to determine conclusively if the deteriorated paint is in fact lead based and to identify other dangerous lead hazards.

b. Include Lead Hazards Among the Life Threatening Emergency Deficiencies

Among the goals in developing the UPCS-V inspection protocol is to create a universal list of life threatening/emergency (LTE) deficiencies.[25] According to HUD, LTE is "a deficiency that threatens life, health and/or safety of the tenant(s) and must be corrected within 24 hours."[26] As described herein, there is no safe level of lead exposure. It is well established that blood lead levels below 5 micrograms per deciliter (μg/dL) result in irreversible injury to a child's brain. Lead hazards pose a significant danger to the health of a child and can be life-threatening and must be included in the list of life threatening/emergency deficiencies.[27] By including lead hazards in the list of LTE items, HUD will ensure that PHAs have the authority to address lead hazards as quickly as possible, thereby reducing the amount of exposure and permanent injury to children participating in the HCV Program.

c. Incorporating Risk Assessments in the UPCS-V Demonstration Project Streamlines Inspection Practices and Reduces the Costs of Risk Assessments

In addition to reflecting the most recent research on health and safety threats and evidence-based guidance, the inclusion of risk assessments in UPCS-V inspection protocol would achieve HUD's goals of streamlining inspection practices and efficiency across programs. In 2014, the Senate Committee on Appropriations directed HUD to "move to a consistent inspection standard across housing assistance programs, as well as oversight of Section 8 units."[28] Risk assessments are currently conducted in other federally assisted housing programs and should be included in the Housing Choice Voucher Program for consistency.[29]

Including risk assessments in the UPCS-V inspection protocol will also allow HUD to combine the multiple inspections that currently take place to assess lead hazards and housing quality. Thus, HUD can eliminate the cost of a second inspection solely for the purpose of identifying lead hazards. To further reduce costs, HUD could include lead hazard risk assessment training in the preparation of PHA staff inspectors.

IV. HUD Should Allow PHAs that Contract with Lead Hazard Risk Assessors and Other Inspectors to Participate in the UPCS-V Demonstration Project

HUD is considering limiting participation in the demonstration project to PHAs that do not use contract inspectors. PHAs using contract inspectors, lead or otherwise, should be allowed to participate in the demonstration project. Both large and small PHAs use contractors and it is critical to the accurate assessments of the UPCS-V inspection protocol that all PHAs be considered for participation. This is especially important for PHAs that do not employ licensed lead hazard risk assessors. These PHAs will be required to contract with risk assessors in order to execute a UPCS-V inspection protocol that includes risk assessments. If HUD does not make this exception, it will exclude a significant number of PHAs across the country despite lead poisoning risks in the area.

By incorporating lead hazard risk assessments in the UPCS-V inspection protocol, HUD will fulfill its goal of focusing on health investments in HUD-assisted housing that are based on modern health and safety provisions.[30] Risk assessments that identify and allow for the correction of lead hazards allow HUD to provide decent, safe and sanitary affordable housing.[31] The UPCS-V inspection protocol presents an opportunity to take decisive action to ensure that no child in a participating PHA is endangered by a lead hazard. We urge you to protect the next generation by engaging in true primary prevention that identifies lead hazards before children are poisoned.

Thank you for your consideration and efforts to ensure that every child has a safe and healthy home.

Sincerely,

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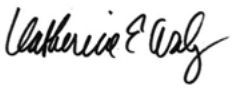

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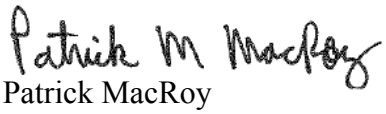

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[1] Notice of Demonstration To Test Proposed New Method of Assessing the Physical Conditions of Voucher Assisted Housing, 81 Fed. Reg. 26,759 (Apr. 27, 2016) (to be codified at 24 C.F.R. pt. 982).
[2] LAF is listed here to provide an accurate description 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 not been involved in creating these comments.

[3] Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, 117 ENV. HEALTH PERSP. 1162, 1162 (2009).
[4] *Lead Poisoning and Health*, WORLD HEALTH ORG., http://www.who.int/mediacentre/factsheets/fs379/en/ (reviewed Aug. 2015). 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 3 at 1164; Bruce P. Lanphear, *The Conquest of Lead Poisoning: A Pyrrhic Victory*, 115 ENVTL. HEALTH PERSP. A484, A484 (Oct. 2007) (citing Andy Menke et al., *Blood Lead Below 0.48 µmol/L (10 µg/dL) and Mortality Among US Adults*, 114 CIRCULATION 1388, 1388 (Sept. 18, 2006); Brian S. Schwartz et al., *Occupational Lead Exposure and Longitudinal Decline in Neurobehavioral Test Scores*, 16 EPIDEMIOLOGY 106, 106 (Jan. 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 1184, 1184 (Dec. 15, 2004)) [hereinafter *A Pyrrhic Victory*].
[5] Dean Reynolds, *Fear of lead paint in HUD housing leads family to homeless shelter,* CBS NEWS, June 21, 2016, *http://www.cbsnews.com/news/chicago-mom-chooses-homelessness-over-hud-housing-to-protect-son-from-lead-paint/; see generally Who Lives in Federally Assisted Housing?,* NAT'L LOW INCOME HOUS. COAL. (Nov. 2012), http://nlihc.org/sites/default/files/HousingSpotlight2-2.pdf.
[6] Gould, *supra* note 3.
[7] 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 CTRS. FOR DISEASE CONTROL & PREVENTION MORBIDITY & MORTALITY WEEKLY REPORT 36, 36 (Sept. 12, 2014) (stating that 5.3 percent of children 1–2 years of age with blood lead levels ≥5 µg/dL are on Medicaid while merely 2.1 percent of children not insured by Medicaid have blood lead levels ≥5 µg/dL).
[8] *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.
[9] *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.
[10] Robert L. Jones et al., CTRS. FOR DISEASE CONTROL & PREVENTION, TRENDS IN BLOOD LEAD LEVELS AND BLOOD LEAD TESTING AMONG US CHILDREN AGED 1 TO 5 YEARS, 1988-2004, http://www.cdc.gov/exposurereport/pdf/metals1.pdf (last visited July 3, 2016). 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. 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), http://www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf [hereinafter CDC 2012 ADVISORY REPORT].
[11] S. REP. No. 114-075, at 105 (2016) (Conf. Report).
[12] *Id.* at 8.
[13] U.S. DEP'T OF HOUS. & URBAN DEV., STRATEGIC PLAN 2014-2018 7 (Apr. 2014) [hereinafter STRATEGIC PLAN].
[14] CTRS. FOR DISEASE CONTROL & PREVENTION, EDUCATIONAL INTERVENTIONS FOR CHILDREN AFFECTED BY LEAD viii (2015), http://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf; *A Pyrrhic Victory*, *supra* note *4.* (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. 42, 53 (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 e323, 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").
[15] AM. ACAD. OF PEDIATRICS, *Prevention of Childhood Lead Toxicity*, PEDIATRICS, June 20, 2016, at 1, 4.
[16] *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.), 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).

[17] *See id*. (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).

[18] UPCS-V Decision Tree *at* 6, 8, 9, 16, 17.

[19] UPCS-V Decision Tree *at* 15.

[20] UPCS-V Decision Tree *at* 18.

[21] AM. ACAD. OF PEDIATRICS, *supra* note 15 at 5. A lead hazard is "any condition that causes exposure to lead from contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated, or the presence of accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects." Lead; Identification of Dangerous Levels of Lead, 63 Fed. Reg. 30,302 (June 3. 1998) (to be codified at 40 C.F.R. pt. 745)

[22] 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).

[23] U.S. DEP'T OF HOUS. & URBAN DEV., CONGRESSIONAL JUSTIFICATIONS 33-6 *(2016),* http://portal.hud.gov/hudportal/documents/huddoc?id=FY16-CJE-EntireFile.pdf.

[24] AM. ACAD. OF PEDIATRICS, *supra* note 15 at 6.

[25] *Id.* at 8.

[26] *Id.*

[27] CDC 2012 ADVISORY REPORT, *supra* note 10.

[28] S. COMM. ON APPROPRIATIONS, No. 113-45, at 100 (2013) (Conf. Rep.).

[29] See 24 CFR 35.620, 35.715, 35.1115.

[30] STRATEGIC PLAN, supra note 13.

[31] *Id.* at 13.