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Green & Healthy Homes Initiative; National Health Law Program;
Natural Resources Defense Council; Poverty & Race Research Action Council;
Lawyers' Committee for Better Housing; Advocates for Basic Legal Equality, Inc.;
Center for Civil Justice; Cleveland Lead Safe Network; Columbia Legal Services;
Connecticut Legal Services; Elevate Energy; Empire Justice Center;
Fair Housing Council of the San Fernando Valley; Florida Legal Services;
Hawai'i Appleseed Center for Law and Economic Justice;
Kansas Appleseed Center for Law & Justice; Legal Aid Society of the District of Columbia;
Legal Council for Health Justice; Legal Services of New Jersey;
Loyola University Chicago School of Law Civitas ChildLaw Center;
Massachusetts Law Reform Institute, Inc.; Mississippi Center for Justice;
National Housing Law Project; National Low-Income Housing Coalition;
New Mexico Center on Law and Poverty; North Carolina Justice Center;
Northwestern University School of Law Bluhm Legal Clinic's Environmental Advocacy Center;
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Via electronic mail to FedLeadStrategy@nih.gov

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RE: Comments on "Drafting a New Federal Strategy to Reduce Childhood Lead Exposures and Impacts: Request for Information" Docket No. FR-6049-N-01

We respectfully submit comments in response to the request for information, "Drafting a New Federal Strategy to Reduce Childhood Lead Exposures and Impacts." We commend the

President’s Task Force on Environmental Health Risks and Safety Risks to Children (Task Force) for its commitment to developing strategies to protect children from environmental health risks and appreciate the opportunity to comment. The undersigned organizations advocate for policies to ensure individuals, families and communities have access to safe and healthy homes, including prevention against lead poisoning that results in devastating and permanent harm. Some of the undersigned organizations represent families and communities exposed to lead poisoning in East Chicago, Indiana, Flint, Michigan, and countless cities and states across the United States. Others have members concerned with the ongoing impacts of lead poisoning and work on policy solutions to ensure children are not exposed to lead in their homes and communities. With that knowledge in mind, we urge you to swiftly develop a comprehensive federal strategy to *eliminate* lead from children’s environments. At a minimum, the strategy must set as the first priority primary prevention practices to eliminate legacy lead, halt the current use of lead, and prohibit industrial processes that contaminate the environment with lead. The following recommendations focus on 1) priority risks and goals, 2) strategy development and implementation, and 3) messaging and outreach.

In addition, we support and incorporate by reference responses to this Request for Information from EarthJustice and Green & Healthy Homes Initiative and direct the Task Force to the following previously submitted comments for additional recommendations:

- 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, July 5, 2016 (submitted by Health Justice Project, Sargent Shriver National Center on Poverty Law, National Housing Law Project)
- Comments to “Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777,” Docket No. HUD-FR-6030-N-01, June 14, 2017 (submitted by Green & Healthy Homes Initiative, National Center for Healthy Housing, Environmental Defense Fund, Earthjustice, Sargent Shriver National Center on Poverty Law, National Low-Income Housing Coalition, Housing Justice Network, and National Housing Law Project, Health Justice Project, and many of the undersigned organizations)
- Comments regarding U.S. Environmental Protection Agency’s Response to Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” Docket No. EPA-HQ-OA-2017-0190-0042, May 12, 2017 (submitted by Environmental Defense Fund, Health Justice Project, Green & Healthy Homes Initiative, Sargent Shriver National Center on Poverty Law, Earthjustice)
- Comments on Proposed Rule “Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels” (Docket No. FR-5816-P-01), October 31, 2016 (submitted by Environmental Defense Fund, Green & Healthy Homes Initiative, National Center for Healthy Housing, Sargent Shriver National Center on Poverty Law, Health Justice Project, National Housing Law Project, EarthJustice, Environmental Defense Fund, National Housing Law Project)
- October 2016 Letter to the President’s Task Force on Environmental Health and Safety Risks to Children from over forty nonprofit and advocacy organizations regarding a plan of action to prevent childhood lead exposure

PRIORITY RISKS AND GOALS

We urge the Task Force to address all priority risks, including sources of lead exposure from housing, air, water, soil, food, and environment, in the new federal lead strategy. We provide recommendations for addressing each of these risks and the obligations of numerous federal agencies herein.

STRATEGY DEVELOPMENT AND IMPLEMENTATION

I. The Task Force must emphasize primary prevention as a critical strategy to protecting children from the permanent effects of lead poisoning.

Lead is a neurotoxin with no known safe level of human exposure that presents an urgent health and safety threat to children.¹ Lead poisoning causes irreversible neurological harm and results in numerous and severe morbidities, such as significant biological and neurological damage affecting cognition, behavior, bodily functions, growth, and development.² It can lead to academic failure, juvenile delinquency, high blood pressure, brain damage, learning disabilities, behavioral problems, developmental delay, and even death.³ There is no safe level of lead poisoning⁴ and the devastating harm that lead causes to children, especially in neurological development, is well documented.⁵ Negative health effects can occur at even the lowest

¹ Deborah Bennett et al., *Project TENDR: Targeting Environmental Neuro-Developmental Risks, The TENDR Consensus Statement*, 124 ENV. HEALTH PERSP. A-118, A-118 (2016) (citing Bruce P. Lanphear, *The Impact of Toxins on the Developing Brain*, 36 Ann. Rev. Pub. Health 211 (2015); Kristen Lyall et al., *Maternal Lifestyle and Environmental Risk Factors for Autism Spectrum Disorders*, 43 INT'L J. EPIDEMIOLOGY 443 (2014); Deborah Rice & Stan Barone Jr., *Critical Periods of Vulnerability for the Developing Nervous System: Evidence from Humans and Animal Models*, 108 ENV. HEALTH PERSP. 511 (2000).

² Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, 117 ENV. HEALTH PERSP. 1162, 1162 (2009).

³ WORLD HEALTH ORG., LEAD POISONING AND HEALTH (Aug. 2017), *available at* <http://www.who.int/mediacentre/factsheets/fs379/en>. 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 2, at 1164; Bruce P. Lanphear, *The Conquest of Lead Poisoning: A Pyrrhic Victory*, 115 ENV. 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*].

⁴ CTRS. FOR DISEASE CONTROL & PREV., CDC RESPONSE TO ADVISORY COMMITTEE ON CHILDHOOD LEAD POISONING PREVENTION RECOMMENDATIONS IN LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL OF PRIMARY PREVENTION, § I (June 7, 2012), *available at* https://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf (“CDC will emphasize that the best way to end childhood lead poisoning is to prevent, control or eliminate lead exposures. Since no safe blood lead level in children has been identified, a blood lead ‘level of concern’ cannot be used to define individuals in need of intervention.”); NATIONAL AMBIENT AIR QUALITY STANDARDS FOR LEAD (“2008 Lead NAAQS”), 73 FED. REG. 66,963, 66,972 (Nov. 12, 2008); AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, TOXICOLOGICAL PROFILE FOR LEAD 31 (2007), *available at* <http://www.atsdr.cdc.gov/toxprofiles/tp13.pdf> (“MRLs [minimum risk levels] were not derived for lead because a clear threshold for some of the more sensitive effects in humans has not been identified.”).

⁵ See, e.g., AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, U.S. DEP’T OF HEALTH & HUMAN SERVS., CAS#: 7439-92-1, *Public Health Statement: Lead* (Aug. 2007), *available at* <http://www.atsdr.cdc.gov/ToxProfiles/tp13-c1-b.pdf>; U.S. ENV. PROT. AGENCY, LEAD COMPOUNDS (Sept. 2011),

detectable concentrations of lead in blood in children of any age.⁶ Even at low levels of exposure, it can lead to brain damage, reduced IQ, diminished intellectual and academic abilities, academic failure, juvenile delinquency, developmental delay, and learning disabilities.⁷ At blood lead levels beginning as low as 1 µg/dL, there is a negative slope relating to blood lead level and IQ.⁸ 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.⁹ 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.¹⁰ Lead poisoning has an adverse effect on most major bodily systems, including the cardiovascular, reproductive, immune, nervous, digestive, kidney, and renal systems.¹¹ As a result, lead poisoning causes severe and permanent biological and neurological damage that affects cognition, behavior, bodily functions, growth, and development. These negative health effects thwart a child's ability to thrive and access opportunity in the future. Lead can accumulate in human bone tissue, where it can reenter

available at <https://www.epa.gov/sites/production/files/2016-09/documents/lead-compounds.pdf>.

6 U.S. ENVTL. PROTECTION AGENCY, AMERICA'S CHILDREN AND THE ENVIRONMENT: A FIRST VIEW OF AVAILABLE MEASURES EPA 240-R-00-006, 41 (2000), available at <http://www.epa.gov/sites/production/files/2014-05/documents/ace-report.pdf> (last visited Nov. 24, 2017) (“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”).

7 Bruce P. Lanphear et al., *Cognitive Deficits Associated with Blood Lead Concentrations <10 pg/dL in US Children and Adolescents*, 115 PUB. HEALTH REP. 521, 526–28 (2000); Bruce P. Lanphear et al., *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, 113 ENVTL. HEALTH PERSP. 894, 897–98 (Jul. 2005); Letter from Sheela Sathyanarayana, Chair, Children's Health Protection Advisory Committee, to Gina McCarthy, Administrator, Environmental Protection Agency (Jan. 8, 2015), (available at https://www.epa.gov/sites/production/files/2015-01/documents/naaqs_for_lead_letter.pdf) (At blood lead level of 0.1 µg/dL, lead poisoning was associated with a one-point IQ loss, as well as other neurological and other health and developmental harms.).

8 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 *Advisory Comm. on Childhood Lead Poisoning Prevention, Ctrs. for Disease Control & Prevention, Low Level Lead Exposure Harms Children: A Renewed Call for Primary Prevention 3* (2012), <https://perma.cc/FL35-REMP> 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).

9 ADVISORY COMM. ON CHILDHOOD LEAD POISONING PREVENTION, CTRS. FOR DISEASE CONTROL & PREVENTION, *LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL FOR PRIMARY PREVENTION*, 7-8 (2012), available at <https://perma.cc/FL35-REMP> (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.

10 *Id.*

11 NAT'L TOXICOLOGY PROGRAM, U.S. DEPT. OF HEALTH & HUMAN SERVS., *NTP MONOGRAPH: HEALTH-EFFECTS OF LOW-LEVEL LEAD* (2012), available at <https://perma.cc/UJ8H-R9TQ>.

the blood and organs and result in elevated blood lead levels long after exposure has ended.¹² The Centers for Disease Control & Prevention, American Academy of Pediatrics, the U.S. Department of Housing and Urban Development (HUD), and the Environmental Protection Agency (EPA) all recognize that there is no safe level of human exposure to lead.¹³

Children living in impoverished communities have the highest prevalence of lead poisoning,¹⁴ with Medicaid recipients having the greatest risk.¹⁵ In fact, more than one-fifth of children from the poorest neighborhoods in the United States have the highest levels of lead poisoning.¹⁶ The risk of lead poisoning falls disproportionately on minority children, with non-Hispanic Black children nearly three times more likely than White children to have highly elevated blood lead levels and the consequent disabling conditions.¹⁷ In one study, lead toxicity prevalence rates in Black and Hispanic neighborhoods topped 90% of the child population.¹⁸ The study determined that Black disadvantage in “toxic inequality” related to lead poisoning was pronounced relative to White and Hispanic populations in every year from 1995–2013.¹⁹ In addition, a 2012 study found that lead exposure resulted in greater cognitive detriment for children with a lower socioeconomic status, and that current air standards would not protect children with low socioeconomic status from neurological and other harm resulting from lead (such as an IQ loss of more than 2 points — a level higher than EPA decided to allow for the general exposed population).²⁰ Transferability of lead content from bone tissue to blood is increased in individuals who are calcium deficient,²¹ which creates another avenue of disparate impact on low-income communities of color that are more likely to house families that struggle

12 AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, DEP’T OF HEALTH & HUMAN SERVS., TOXICOLOGICAL PROFILE FOR LEAD, (2007) *available at* <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

13 ADVISORY COMM. ON CHILDHOOD LEAD POISONING PREVENTION, CTRS. FOR DISEASE CONTROL & PREVENTION, LOW LEVEL LEAD EXPOSURE HARMS CHILDREN: A RENEWED CALL FOR PRIMARY PREVENTION (2012), *available at* <https://perma.cc/FL35-REMP>; U.S. DEP’T OF HOUS. & URBAN DEV., HUD PROPOSES NEW RULE TO HELP CHILDREN EXPOSED TO LEAD PAINT HAZARDS (Aug. 31, 2016) *available at* https://www.hud.gov/press/press_releases_media_advisories/2016/HUDNo_16-129; U.S. ENVTL. PROTECTION AGENCY, BASIC INFORMATION ABOUT LEAD IN DRINKING WATER *available at* <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (last accessed Nov. 24, 2017) (“EPA and the Centers for Disease Control and Prevention (CDC) agree that there is no known safe level of lead in a child’s blood. Lead is harmful to health, especially for children”).

14 See Gould, *supra* note 2, at 1162–63.

15 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 & MORTALITY WKLY. REP. 36, 36 (Sept. 12, 2014), *available at* <https://perma.cc/DTX8-PHKW> (indicating that 5.3% of children one to two years of age with blood lead levels ≥ 5 $\mu\text{g}/\text{dL}$ are on Medicaid while merely 2.1% of children not insured by Medicaid have blood lead levels ≥ 5 $\mu\text{g}/\text{dL}$).

16 See Michael Hawthorne, *Lead Paint Poisons Poor Chicago Kids as City Spends Millions Less on Cleanup*, CHI. TRIB. (May 1, 2015), *available at* <https://perma.cc/P65K-C7EC>.

17 See 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, at 6 (“[A] higher percentage of children with BLLs . . . were non-Hispanic black (3.4% vs 1.2% for Mexican American and 1.2% for non-Hispanic white children”), *available at* <https://perma.cc/M4RG-9ZTH>.

18 Robert J. Sampson & Alix S. Winter, *The Racial Ecology of Lead Poisoning: Toxic Inequality in Chicago Neighborhoods, 1995–2013*, 13 DU BOIS REV.: SOC. SCI. RES. ON RACE 261, 279 (2016).

19 *Id.*

20 See R. Chari et al., *Integrating Susceptibility into Environmental Policy: An Analysis of the National Ambient Air Quality Standard for Lead*, Mar. 27, 2012, INT’L J. ENVIRON. RES. PUBLIC HEALTH 2012, 9, 1077-1096, at 1084-85 (Mar. 27, 2012) (summarized in NRDC *et al.* Follow-up and Supplement to Petition for Reconsideration on Secondary Lead Smelting (June 27, 2012)).

with access to nutritious foods. Persistent high lead poisoning rates in Black communities demonstrate the undeniable link between poverty, poor housing conditions, and racial inequality and pose a grave social justice and equality of opportunity issue.

According to the CDC, “because no level of lead in a child’s blood can be specified as safe, primary prevention must serve as the foundation of the effort.”²² “Primary prevention is necessary because the effects of lead appear to be irreversible. . . Screening children for elevated [blood lead levels] and dealing with their housing only when their [blood lead level] is already elevated should no longer be acceptable practice.”²³

II. Numerous federal agencies have a critical role in identifying, eliminating, and preventing lead in children’s environment and any strategy must engage cross-agency collaboration.

In order to fully address lead hazards and end the lead poisoning epidemic threatening families across America, the President’s Task Force on Environmental Health Risks and Safety Risks to Children must take a proactive approach that leverages the combined resources and expertise of the participating departments and agencies. Only by combining resources and expertise can participating members meet the strategy’s goal of fully eliminating lead hazards in *all* housing, including federally assisted, privately rented, or owner-occupied.

A. HUD must identify lead in housing and remove it before children are exposed and must collaborate with other federal, state, and local agencies to ensure children are protected from lead.²⁴

The most significant source of lead exposure for children is lead-based paint in pre-1978 housing and the contaminated dust and soil it generates.²⁵ Over 37 million homes in the United States have lead-based paint that will become a lead hazard if not closely monitored and maintained.²⁶ Twenty-three million homes contain significant lead hazards. 3.6 million homes with lead hazards are occupied by children under the age of six, the age group most at risk for lead poisoning.²⁷ In addition, 1.1 million of homes with significant lead hazards are low-income

21 See AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, DEP’T OF HEALTH & HUMAN SERVS., ATSDR CASE STUDIES IN ENVIRONMENTAL MEDICINE: LEAD TOXICITY *available at* <https://www.atsdr.cdc.gov/csem>.

22 CTRS. FOR DISEASE CONTROL AND PREVENTION, PREVENTING LEAD POISONING IN YOUNG CHILDREN: A STATEMENT BY THE CENTERS FOR DISEASE CONTROL AND PREVENTION (Aug. 2005), *available at* <http://www.cdc.gov/nceh/lead/publications/PrevLeadPoisoning.pdf>.

23 See *generally*, ADVISORY COMM. ON CHILDHOOD LEAD POISONING PREVENTION OF THE CTRS. FOR DISEASE CONTROL & PREVENTION, LOW LEVEL EXPOSURE HARMS CHILDREN: A RENEWED CALL FOR PRIMARY PREVENTION, (Jan. 4, 2012), *available at* http://www.cdc.gov/nceh/lead/acclpp/final_document_030712.pdf.

24 This section is drawn from previously submitted comments for *FR-6030-N-01 Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777*, submitted on June 14, 2017, by Health Justice Project, Sargent Shriver National Center on Poverty Law, and many of the undersigned organizations.

25 Lanphear B.P., Matte T.D., Rogers J., Clickner R.P., Dietz B., Bornschein R.L., Succop., Mahaffey K.R., Dixon S., Galke W., Rabinowitz M., Farfel M., Rohde C., Schwartz J. Ashley P., Jacobs D.E., *The Contribution of Lead-Contaminated House Dust and Residential Soil to Children’s Blood Lead Levels: A Pooled Analysis of 12 Epidemiological Studies*, 79 ENVIRONMENTAL RESEARCH. 51-68 (1998).

26 U.S. DEP’T OF HOUS. & URBAN DEV., AMERICAN HEALTHY HOMES SURVEY LEAD AND ARSENIC FINDINGS. 15-29 (2011) *available at* https://www.hud.gov/sites/documents/AHHS_REPORT.PDF

27 *Id.*

households where children under age 6 reside.²⁸ HUD estimates that 450,000 housing units within the federal assistance programs were built before 1978 and occupied by children under the age of 6.²⁹ Approximately 57,000 of those units have lead-based paint.³⁰

1. HUD must do more to protect children under the Lead Safe Housing Rule (24 C.F.R. part 35).

The recent amendments to the Lead Safe Housing Rule improved standards, but alone will not prevent children from being lead poisoned in federally assisted housing.³¹ HUD can, and should, do more to protect children. HUD must engage in primary prevention to end lead poisoning among children participating in federally assisted housing. Yet, HUD's Lead Safe Housing Rule does not apply primary prevention to all housing programs, placing children in the Housing Choice Voucher (HCV) Program and project-based Section 8 at risk of lead poisoning.³² In recognition of increasing reports of lead poisoning in federally assisted housing and lack of compliance with lead poisoning prevention laws, Congress included numerous directions to HUD in the recently passed Consolidated Appropriations Act of 2017, including:

- improved lead hazard inspections;
- preference for UPCS inspections;
- updated lead hazard definitions based on health standards;
- removing the Title X zero-bedroom dwelling unit exemption;
- identification of lead service lines;
- increased data collection, training, compliance, and oversight.

Congress has recognized that more is needed to protect children from lead poisoning, and has taken action accordingly. Again, HUD can, and should, do the same. We commend Secretary Carson for his stated commitment to making lead poisoning prevention a priority and these comments are intended to provide support and direction toward meeting that goal. At a minimum, HUD must comply with Congressional direction by mandating primary prevention practices to identify and remediate lead hazards before a child is poisoned.

a. Require lead hazard risk assessments in all federally assisted housing.

HUD must require lead hazard risk assessments in all federally assisted housing. Visual assessments, alone, are an insufficient screening mechanism for identifying lead-based paint or lead hazards in the form of lead-dust and lead-soil, which are a major source of lead exposure.³³

²⁸ *Id.*

²⁹ Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 FED. REG. 60,304 (Sept. 1, 2016).

³⁰ *Id.*

³¹ See Emily A. Benfer, Contaminated Childhood: *How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color*, 41 HARVARD ENV. L. REV. 493 (2017); Emily A. Benfer, *Contaminated Childhood: The Chronic Lead Poisoning of Low-Income People and Communities of Color in Federally Assisted Housing*, HEALTH AFFAIRS HEALTH EQUITY BLOG (August 8, 2017).

³² *Id.*

³³ OFF. OF LEAD HAZARD CONTROL, U.S. DEP'T OF HOUS. & URBAN DEV., GUIDELINES FOR THE EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING 1-7 (July 2012), *available at*

In fact, HUD has classified lead-dust and lead-soil in the residential environment as among “the most important preventable exposure sources for children.”³⁴ Yet, HUD only requires ineffective visual assessments in the Housing Choice Voucher (HCV) program and project-based Section 8 receiving less than \$5000 per unit.³⁵ HUD cited to Congressional intent to justify a tiered approach to lead hazard inspection.³⁶ Any question regarding HUD’s authority to require lead hazard risk assessments and the ineffectiveness of visual inspections was settled in the 2017 Consolidated Appropriations Act, where Congress expressly clarified and confirmed that HUD has the authority to provide more rigorous inspections in all federally assisted housing, stating, “HUD has the statutory authority necessary to require more stringent inspections when checking homes for lead paint. HUD’s current visual lead inspections have proven insufficient, and more rigorous standards, such as requiring risk assessments prior to a family moving into a home, should be implemented to ensure that children living in federally assisted housing are protected from lead poisoning.”³⁷

A continued reliance on visual assessments would not only ensure that lead hazard control occurs only after the child suffers permanent harm, it would also contravene Congressional intent. To ensure that no families move into a unit with a lead hazard, it is critical that HUD amend its regulations to replace visual assessment with the more accurate and reliable evaluation tool of risk assessment in all pre-1978 construction in all programs. Risk assessment, which should include visual assessment plus the collection of dust, soil, water, and paint samples in homes, is proven to more accurately identify lead hazards than visual assessment alone. Lead hazard inspections should be conducted in all federally assisted units whether or not a child is expected to reside in them. This is an important preventative measure, because children are often regular visitors to relatives’ or neighbors’ homes that do not have a permanent child resident.

b. Adopt the Universal Physical Condition Standards (UPCS) that include the identification of lead hazards in all federally assisted housing.

In May 2017, Congress indicated its preference for UPCS inspections over Housing Quality Standards inspections for the assessment of lead hazards in properties.³⁸ HUD should incorporate risk assessments into the newly created Universal Physical Condition Standards inspection protocol for HCV program homes constructed before 1978. This will eliminate the cost associated with a second inspection solely for the purpose of identifying lead hazards. In addition, PHAs can support the certification of existing staff members as risk assessors or enter

http://portal.hud.gov/hudportal/documents/huddoc?id=second_edition_2012.pdf (“The most common cause of poisoning is the ingestion -through hand-to-mouth transmission- of lead-contaminated surface dust”) [hereinafter HUD 2012 GUIDELINES]; 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> (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”). See also Bruce Lanphear et al., *Lead-Contaminated House Dust and Urban Children’s Blood Lead Levels*, 86 AM. J. PUB. HEALTH 1416, 1420 (1996).

³⁴ 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>.

³⁵ Requirements for Notification, *supra* note 29. (Commenter statements to the original Lead Safe Housing Rule in 1999 remain true today: “Letting our standards be set by appropriation levels is dreadful public policy when the health of children [is] at stake.”).

³⁶ U.S. DEP’T OF HOUS. & URBAN DEV., CONGRESSIONAL JUSTIFICATIONS, *supra* note 34.

³⁷ H. REP. 114-606, at 94 (2016).

³⁸ S. REP. 114-243, at 97-98 (2016).

into staffing or equipment sharing agreements with local public health departments. We incorporate by reference the comments submitted by the Sargent Shriver National Center on Poverty Law, Health Justice Project, and National Housing Law Project on the UPCS-V demonstration (Docket No. FR-5928-N-01) on July 5, 2016.

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

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

- d. Include the identification of lead risks from lead water service lines in Environmental Investigations and the full replacement of any lead service lines.*

In the 2017 Consolidated Appropriations Act, Congress dedicated significant funding to address lead-contaminated water and directed the General Accountability Office to assess the number of lead service lines in the United States.³⁹ It is critical that HUD identify lead exposure caused by lead service lines and subsequent lead in drinking water as part of its Environmental Investigations and ensure that full lead service lines are eliminated from federally assisted housing. While HUD guidelines have long recommended sampling water in limited circumstances, the recent findings of lead contamination in water in almost 2,000 water systems, serving more than three million Americans across the country, increased knowledge and highlighted the importance eliminating exposure to the neurotoxin in all forms.⁴⁰ HUD should require designated parties to determine the presence or absence of a lead service line and develop a timeframe for full replacement.

- e. Increase oversight and data collection to ensure Public Housing Authorities (PHAs) are in compliance with the lead poisoning prevention laws.*

Congress recently expressed concern over HUD's oversight and quality assurance capacity, especially in light of media coverage related to lead poisoning in federally assisted housing, despite a mandate to abate lead hazards in public housing and protect residents from lead poisoning. Congress directed HUD to establish and "implement a process that improves data collection and analysis of actions PHAs are taking to comply with lead-based paint regulations in housing choice voucher units by March 31, 2017."⁴¹ Congress also directed HUD to report on the incidences of lead poisoning in federally assisted housing, specifically the HCV Program and to

³⁹ H. REP. 115-632, at 5 (2016).

⁴⁰ Alison Young and Mark Nichols, *Beyond Flint: Excessive lead levels found in almost 2,000 water systems across all 50 states*, USA TODAY (Mar. 11, 2016) available at <https://www.usatoday.com/story/news/2016/03/11/nearly-2000-water-systems-fail-lead-tests/81220466/>

⁴¹ S. REP. 114-243, at 97-98 (2016).

issue Guidance and provide trainings on recent amendments to the Lead Safe Housing Rule and best practices in applying lead-safe standards, especially for maintenance and property management staff.

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

HUD should be granted subpoena authority and other enforcement tools as necessary to more effectively enforce the Lead Safe Housing Rule, Title X and other federal lead regulations. Subpoena power will enable HUD to be more efficient and impactful in its enforcing actions. The failure to grant HUD authority to subpoena non-compliant parties hampers HUD's ability to thoroughly investigate matters and obtain the documents, contracts, inspection reports and other materials relevant to its ability to conduct enforcement and potentially prosecute or reach favorable settlements in cases under the Lead Safe Housing Rule and Title X. Having to rely on other agencies to pursue cases that reach the stage where subpoenas are warranted is an inefficient process. We recommend that HUD be given subpoena power so it can compel designated parties to produce documents that may support findings essential to address non-compliance and to enforce against parties more fully.

f. Abatement, not just interim controls, must be required when addressing hazards in homes or buildings where a child with an elevated blood lead level (EBLL) is identified.

Once a child is lead poisoned in a unit and lead hazards are identified, interim controls are insufficient. The disrepair or underlying conditions that resulted in a lead hazard is an indication of poor maintenance and increases the likelihood that the hazard will return. In this case, the child has already been harmed and it is likely that other children in the building are at risk of lead poisoning. In addition, while all children should be in an environment free from lead hazards, it is especially important to restrict additional potential exposures for children who have already been exposed. For these reasons, it is critical that HUD require lead abatement in units that have poisoned a child.

g. Immediately temporarily relocate children during remediation of lead hazards in the home pursuant to Chapter 16 of the HUD Guidance.

HUD must protect children from continued exposure to lead hazards as soon as the hazard is identified and throughout the duration of hazard reduction activities. Relocation requirements, under 24 C.F.R. § 35.1345, are only triggered upon the actual commencement of

hazard reduction activities, not the discovery of a documented lead hazard, and only under certain circumstances if no exceptions are met. To protect residents from lead exposure, HUD should require designated parties to relocate families immediately upon identification of a lead hazard in their housing. This is consistent with Chapter 16 of HUD's Guidance: "In cases where lead hazard control measures are ordered, relocate the child to a lead-safe environment until the work is completed and clearance is achieved..."⁴²

2. HUD should better integrate the Lead Safe Housing Rule with EPA's Lead Renovation, Repair, and Painting Rule (RRP)

Since HUD originally promulgated the Lead Safe Housing Rule, EPA, as directed by Title X, issued regulations under section 402(c) of Toxic Substances Control Act (TSCA) regulating renovation, repair and painting activities in all target housing. While HUD's Lead Safe Housing Rule as originally promulgated clearly worked hand-in-hand with EPA's rules under 402(b) governing abatement, this same degree of coordination is now lacking for interim controls. In various public statements and web posts since EPA promulgated its 402(c) rule, HUD staff have sought to clarify how to address the overlap and gaps between HUD's interim control requirements and EPA's rules. HUD neglected, however, to propose any rule changes to codify this advice, support EPA's requirements, or clarify conflicts.

It is imperative, however, that any effort to integrate the Lead Safe Housing Rule or other HUD lead regulations with the RRP Rule does not result in the lowering of lead safety standards and practices for HUD assisted housing. While maintaining the additional protections in its rules as appropriate for federally assisted projects, HUD should better integrate the Lead Safe Housing Rule with EPA's. We strongly support HUD's existing provisions that are more protective than EPA's – including the requirement for quantitative lead risk assessment and lead and dust testing (clearance) procedures, smaller "de minimis" areas, requiring all workers to be trained, and stricter work practice requirements. However, HUD should utilize and mandate EPA's training and certification program. In particular, 24 C.F.R. § 35.1330(a)(4) should specifically require the work to be performed by a firm certified by the EPA under 40 C.F.R. § 745.89 and require all workers to be trained in accordance with 40 C.F.R. § 745.90 (unless supervised by a lead abatement supervisor). Additionally, HUD should modify its notification requirements at 24 C.F.R. § 35.125 and § 35.130 to assure compliance with, and minimize unnecessary overlap, with the EPA requirements at 40 C.F.R. § 745.84. HUD should monitor for noncompliance and routinely take appropriate remedial action to ensure compliance.

HUD should require RRP training by a certified EPA trainer for every PHA employee or contractor.

3. HUD and EPA must update the lead-based paint definition to accurately identify the presence of lead that is hazardous to health.

In addition, HUD must update the definition of lead-based paint. HUD has the express authority under LPPPA to revise its standard for lead-based paint in housing constructed prior to 1978.⁴³ LPPPA directs HUD to periodically review its standards as the technology makes lower

⁴² See HUD 2012 GUIDELINES, *supra* note 33, at 16–4.

⁴³ 42 U.S.C. § 4822(c).

detection feasible and the medical evidence warrants a lower level.⁴⁴ The technology and science on lead-based paint have dramatically improved since the standards for lead-based paint were last reviewed in 1992 and detecting paint with low content levels of lead is possible today. The current technological and medical evidence necessitate that HUD and EPA update the lead-based paint definition.

EPA indicated that it would work with HUD to establish a lower lead content in lead-based paint.⁴⁵ In 2012, in response to a request from the agency, EPA's Science Advisory Board issued a final report that supported updated standards.⁴⁶ HUD has both the statutory authority and obligation to act to ensure the standards reflect current science, and there is no rationale that could justify creating an "illusion of safety" without outdated standards and placing children in both private and federally assisted housing in grave danger.⁴⁷ HUD and EPA should act based on the information that we have and know to be true – and that could save a child's life.

4. Affirmatively further fair housing includes improving health outcomes among low-income communities of color.

We urge HUD to take action to address lead poisoning, and provide guidance to program recipients to do the same, as part of its obligation to affirmatively further fair housing. The duty to affirmatively further fair housing is codified in Section 3608 of the Fair Housing Act.⁴⁸ This mandate requires HUD and its recipients to not only refrain from discrimination but also to take actions to overcome the effects of historic patterns of segregation and other forms of discrimination, promote integration, and increase fair housing choice and access to opportunity.⁴⁹ In 2015, HUD issued the Affirmatively Furthering Fair Housing (AFFH) rule to clarify the definition of AFFH and establish a standardized framework for coordinated consultation and planning on fair housing priorities and goals to help HUD program participants meet their AFFH obligation.⁵⁰ Specifically, the AFFH rule facilitates cross-agency and sector collaboration to address fair housing issues.⁵¹

Under the rule, participants are required to conduct an Assessment of Fair Housing (AFH) that examines barriers to opportunity, including environmental health hazards, using HUD's Environmental Health Index which is based on EPA data.⁵² HUD's AFH assessment tool directs participants to analyze a variety of issues related to lead exposure. This includes

⁴⁴ *Id.*

⁴⁵ EPA RESPONSE CITIZEN PETITION TO EPA (2009), available at <https://www.epa.gov/sites/production/files/2015-10/documents/epa-response.pdf>; *In re A Community Voice, et al, v. U.S. EPA, Gina McCarthy* (U.S. App 9th Cir. 2016).

⁴⁶ EPA Science Advisory Board, *Lead Paint Hazard Standards for Residential Buildings, Public and Commercial Buildings, and Renovations of Exteriors of Public and Commercial Buildings* (2012) <https://yosemite.epa.gov/sab/sabproduct.nsf/0/9c733206a5d6425785257695004f0cb1!OpenDocument&TableRow=2.3#2>.

⁴⁷ *See generally* Council on Env'tl. Health, *Prevention of Childhood Lead Toxicity*, 138 PEDIATRICS 1 (2016), available at <https://perma.cc/KM7D-PGFT>

⁴⁸ 42 U.S.C. § 3608.

⁴⁹ 80 Fed. Reg. 42,272 (July 16, 2015).

⁵⁰ *Id.*

⁵¹ Brian Smedley and Philip Tegeler, "Affirmatively Furthering Fair Housing": A Platform for Public Health Advocates, AMER. J. PUB. HEALTH, Vo. 106, No. 6 (June 2016), http://prrac.org/pdf/place_based_interventions.pdf

⁵² 24 C.F.R. § 5.150-5.168; Poverty & Race Research Action Council, "Comments on Draft EJ 2020 Action Agenda," July 28, 2016, available at http://prrac.org/pdf/EPA_2020_AFFH_letter.pdf.

disparities in access to opportunity (specifically including access to environmentally healthy neighborhoods), patterns of residential segregation, and disproportionate housing needs.⁵³ Participants are also encouraged to evaluate “other indicators of environmental health, based on local data and local knowledge” and to evaluate contributing factors for fair housing issues, such as the location of environmental health hazards including lead-based paint.⁵⁴ To conduct an AFH, participants may use HUD’s AFFH Data and Mapping Tool which allows access to HUD-provided data and maps on environmental health, residential segregation, and other information such as racially and ethnically concentrated areas of poverty.⁵⁵ All of these data may be used to help identify areas where residents may be at risk of lead exposure and develop actions to address such exposure. In addition, the AFH process includes an enhanced community participation requirement which provides opportunities for public health officials and advocates to consult with program participants on public health issues such as lead poisoning.⁵⁶ The AFH tool also requires jurisdictions to develop a set of concrete fair housing goals and strategies that can be incorporated into future consolidated plans and public housing authority plans for the use of HUD funds.⁵⁷ The AFH process thus provides an important platform for advocates to address lead hazards nationwide. HUD should work with grantees and stakeholders and provide targeted resources to enable them to use the AFH process to protect children from lead poisoning in their homes and neighborhoods.

There are specific, concrete steps that HUD can take to prevent lead exposure and fulfill its duty under AFFH. HUD should provide further guidance to participants on how to use local data and knowledge during the AFH process to assess the impact of lead and to develop goals and strategies designed to abate lead exposure. Doing so will make the AFH process a more effective way to identify and remediate lead hazards. Additionally, HUD and its recipients should take consistent action to prevent lead exposure through siting reviews for subsidized housing, including HUD programs such as the Rental Assistance Demonstration and HOME. This is critical for protecting the safety of low-income families, particularly low-income families of color. HUD should also promote fair housing choice by increasing resources for counseling and housing mobility options to assist families that are at risk of lead exposure. In addition, HUD should make additional Housing Choice Vouchers (HCV) available for families with an EBLL child. In Baltimore, GHHI has awarded 250 vouchers to at risk families affected by lead poisoning and seen great success due to the ability to relocate from the lead hazardous home.⁵⁸ In many cases, without the HCV, the family would be unable to move.

5. Low-income families with mortgages insured through the Federal Housing Administration (FHA) Mortgage Programs need increased access to no and low-interest loan programs and grants to abate lead hazards in their homes.

⁵³ U.S. DEP’T OF HOUS. & URBAN DEV., ASSESSMENT OF FAIR HOUSING TOOL, *available at* <https://www.hudexchange.info/resource/4865/assessment-of-fair-housing-tool/>

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Smedley & Tegeler, *supra* note 49.

⁵⁷ *Id.*

⁵⁸ See Green & Healthy Homes Initiative, *Healthy Homes, Healthy Families*, 3.1 *available at* http://www.greenandhealthyhomes.org/sites/default/files/HHHF_3.1_webres1_0.pdf

HUD should ensure families purchasing and residing in FHA insured homes have access to low-interest and no-interest loans and HUD grants to remediate lead hazards.⁵⁹ FHA insured mortgages have created a pathway for low-income families, and especially families of color, to become homeowners. Many of these homes contain lead hazards that families are unable to afford to remediate. When a buyer, seller, or current homeowner does not have funds to pay for abatement, HUD should increase access to Section 203(k) loans for lead remediation.⁶⁰ HUD should proactively advertise this program as an option to increase the safety of homes insured by FHA and should work with lenders to make this available and accessible to low-income homeowners.

Additionally, FHA inspections should include risk-assessments to identify the presence of lead hazards. When families have low-incomes, it is essential that when lead hazards are identified, there are programs tailored to low-income homeowners to remediate the hazard. For many low-income families, and especially families of color, this is the sole asset. It is critical that these homes are safe and the outcome of the risk assessment includes a viable solution to protect all current and future homeowners and their families.

HUD should also collaborate with other agencies to find creative solutions to remediating hazards in FHA insured homes. Other agencies, including the USDA, have created a direct loan program specifically to repair, improve or modernize homes or remove health and safety hazards.⁶¹ CDBG funds or other eligible federal public dollars should be specifically allocated for this purpose in communities across the country. HUD could create a specific program to finance the remediation of lead hazards in FHA insured homes.

B. EPA and HUD must immediately address lead hazards from industrial contamination on or near federally assisted housing.

Over 400 lead smelting plants deposited dangerous levels of lead and other contaminants in communities across the country.⁶² About 70% of Superfund sites, with contaminants including lead, are within a mile of public housing or HUD multifamily housing.⁶³ The USS Lead Superfund Site, as the name indicates, is a lead-contaminated site in East Chicago, Indiana. Lead smelters and a lead-arsenate pesticide facility surrounded the residents' homes. Many of the homes were also built on wetlands that had been filled with contaminated material. The housing on the Superfund site is a mix of public housing, Low Income Housing Tax Credit housing, rental housing (including units rented with Housing Choice Vouchers), and single family homes. A majority of the homes were built before 1978 with known lead paint content.⁶⁴ Residents are exposed to lead in the soil and lead dust in their homes; the lead dust stems from particulate

⁵⁹ 12 U.S.C. § 1715k

⁶⁰ See U.S. DEP'T OF HOUS. & URBAN DEV., 203(K) MORTGAGE INSURANCE available at https://www.hud.gov/program_offices/housing/sfh/203k/203k--df

⁶¹ See U.S. DEP'T OF AGR., SINGLE FAMILY HOUSING REPAIR LOANS & GRANTS, available at <https://www.rd.usda.gov/programs-services/single-family-housing-repair-loans-grants>

⁶² See USA TODAY, *Ghost Factories: Poison in the Ground*, (Apr. 25 2012), available at <https://perma.cc/9NSQ-C7ZJ>

⁶³ Sylvia Carignan, *Majority of Superfund Sites Near Low-Income Housing*, BLOOMBERG, May 9, 2017.

⁶⁴ Lauren Cross and Sarah Reese, "Righting an 'Injustice' An Environmental Threat: The East Chicago Lead Crisis One Year Later," THE TIMES OF NORTHWEST INDIANA (Aug. 16, 2017) available at http://www.nwitimes.com/news/special-section/ec-lead/an-environmental-threat-the-east-chicago-lead-crisis-one-year/article_d19a5de7-5bc0-5292-9fe7-29a6e999ade4.html

being tracked and blown in from contaminated topsoil, as well as from lead-based paint. In addition, it is estimated that 90% of the East Chicago homes have lead service lines, which present an additional lead hazard. In fact, the EPA concluded that based on a drinking water pilot study it in 2016, East Chicago's drinking water had system-wide elevated lead levels due to inadequate corrosion control treatment and the presence of lead service lines. This community has unacceptable cumulative exposures to lead. The incidence of elevated blood lead levels—lead above the CDC's current 5 µg/dL standard—is notably high. Between 2005-2015, 19% of children six years of age and under tested had an elevated blood lead level.⁶⁵ Parents in this community report in high numbers that their children have been diagnosed with ADHD, have developmental problems, or require educational intervention or supports.

HUD must ensure that all residents of federally assisted housing—whether it's public housing, project-based Section 8, or through the HCV program—who live within a Superfund sites receive a disclosure explaining that they live within a Superfund site, listing the primary contaminants. The families at the West Calumet Housing Complex (WCHC) did not receive a notice that they lived on the footprint of a lead smelter plant until many years after federal officials began investigating the contamination. This lack of notice meant families were completely unaware that the soil their children were playing in was causing extreme damage to their developing bodies.

To date, HCV holders living within the Superfund site have not been notified that they live within a Superfund site and have not been given the opportunity to move. Since the contamination in East Chicago became a national story in 2016, advocates and residents have asked HUD and ECHA to offer assistance, including notice and a chance to move, to approximately 40 HCV households who live within the boundaries of the Superfund site and are not a part of the WCHC relocation. Only the landlords of these voucher holders have received any notice and that notice came from the EPA.

In March 2017, the East Chicago Housing Authority notified residents of its intention to involuntarily relocate on an emergency basis the remaining households from the West Calumet Public Housing Complex, HUD and ECHA assured all involved that the transfer units would be inspected for the presence of lead-based paint and that no residents would be moved to lead contaminated units. In fact, nearly half of the transfer units did have lead-based paint. In spite of this fact, ECHA staff signed certifications to residents that no lead-based paint was identified in the buildings. Residents relied upon those certifications to keep their children safe. We understand that HUD is reviewing compliance but has not taken any action against ECHA.

This issue is not limited to East Chicago and many housing authorities across the country are likely out of compliance with the Lead Disclosure Rule. As discussed in Section 1.e. above, we recommend that HUD conduct a thorough audit of federally assisted housing, and take appropriate enforcement action, to ensure compliance with the Lead Disclosure Rule and the Lead Safe Housing Rule.

C. The Environmental Protection Agency must eliminate lead in water, air, and soil.

At its founding and authorization, EPA was charged with protecting human health and the environment.⁶⁶ During his confirmation hearings, EPA Administrator Pruitt committed to EPA's

⁶⁵ U.S. ENV. PROT. AGENCY, ACTION MEMORANDUM – 4TH AMENDMENT, 5 (Oct. 24, 2016). Available at <https://semspub.epa.gov/work/05/929998.pdf>

⁶⁶ See U.S. ENV. PROT. AGENCY, EPA MISSION REORGANIZATION PLAN NO. 3, available at <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>

mission: “I am a firm believer in the EPA’s mission to protect the environment and look forward to the opportunity to lead the agency to help provide our future generations with a better and healthier environment.”⁶⁷ He also said, “If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans.” Administrator Pruitt pledged to move EPA “back to the basics of protecting human health and the environment.”⁶⁸ Protecting children from the debilitating effects of lead poisoning must be one of the basic priorities.

Indeed, Administrator Pruitt recognized that protecting children from lead poisoning is central to this duty. In fact, the fulfillment of this duty is statutorily required and prescribed in detail in Title IV of the Toxic Substances Control Act (TSCA) and the Residential Lead Based Paint Hazard Reduction Act (Title X).⁶⁹ Specifically, EPA must regulate the standards for performing lead-based paint activities, set the levels of lead in dust and soil based on prevailing science, and require lead disclosure for real estate or lease transactions, among other obligatory actions.

1. EPA’s lead hazard standards must be updated immediately to reflect the current science.

EPA’s current definitions of lead-contaminated dust and lead-contaminated soil are not protective enough to identify “threats to adverse health effects in pregnant women or young children,” as required by TSCA.⁷⁰ Pursuant to Title IV of TSCA, EPA must immediately update these standards based on current science and health standards. In addition, pursuant to the 2017 Omnibus appropriations bill, EPA must, in consultation with CDC and HUD, provide to Congress a report on the progress related to updating lead dust and soil standards.

Without protective standards, lead hazard inspection and clearance testing following interim control, renovation, or abatement is unreliable. EPA’s current standards, which were established based on pre-1995 research, are not set low enough for a risk assessment or a clearance test to identify a lead hazard and protect children from lead poisoning. For example, the current definition of lead paint as 5,000 ppm does not capture lead content that would create a lead dust hazard if dry sanded. In one study, dust-lead levels much lower than the current floor standard of 40 µg/ft² “were associated with a considerable excess risk of children having blood lead levels [greater than or equal to] 10 µg/dL.”⁷¹ In another, tests using the current residential floor standard failed to identify 85% of housing units of children who had a blood lead concentration of 10 µg/dL.⁷² In response to a 2009 petition for rulemaking, EPA has acknowledged the need to update the standards for lead in dust and lead in paint and EPA’s

⁶⁷ SENATE ENV. AND PUB. WORKS COM’T HEARING, “NOMINATION OF ATTORNEY GENERAL SCOTT PRUITT ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,” (Jan. 18, 2017) *available at* https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf

⁶⁸ U.S. ENV. PROT. AGENCY, EPA ADMINISTRATOR VISITS CONTAMINATED SITE EAST CHICAGO AND PLEDGES COORDINATED CLEANUP AMONG FEDERAL, STATE AND LOCAL PARTNERS (Apr. 19, 2017) *available at* <https://www.epa.gov/newsreleases/epa-administrator-visits-contaminated-site-east-chicago-pledges-coordinated-cleanup>

⁶⁹ 42 U.S.C. § 4851; 15 U.S.C. § 2681.

⁷⁰ 15 U.S.C. § 2681.

⁷¹ Bruce Lanphear et al., *Screening Housing to Prevent Lead Toxicity in Children*, 120 PUB. HEALTH REPORTS 305, 308 (2005).

⁷² *Id.*

Science Advisory Board issued a final report that supported updated standards.⁷³ Despite these agency findings, citizen complaints, and litigation, the EPA has taken no action.

TSCA requires that regulations for lead-based paint activities take into account “reliability, effectiveness, and safety.”⁷⁴ The success of all of EPA’s lead exposure reduction regulations and the ability to identify a potential lead hazard hinge on the protectiveness of the lead hazard definitions. EPA must act immediately to align these standards with the irrefutable science in a manner that will truly protect the health of workers and occupants.

2. EPA must address lead in drinking water to reduce childhood lead exposure.⁷⁵

Drinking water is a major source of lead for many of the most vulnerable, including children, infants, pregnant women and fetuses. Lead in drinking water is dangerous because drinking water can make up 20 percent or more of a person’s total exposure to lead.⁷⁶ A person’s exposure to lead starts very early, with a woman’s lead levels relevant to or impacting her fetus: “[d]uring pregnancy, lead is often remobilized from bone and may be transferred from mother to fetus. Approximately 80 percent of lead in fetal cord blood appears to derive from maternal bone stores. Maternal lead can also be transferred to infants during breastfeeding.”⁷⁷ For infants whose diet consists of baby formula made with drinking water, lead in drinking water can make up over 85 percent of total lead exposure.⁷⁸ Moreover, adding contaminated water to other significant sources of lead, such as paint, air and soil, poses an exceptional cumulative threat to public health.

As an August 2017 report by The Health Impact Project (of the Robert Wood Johnson Foundation and The Pew Charitable Trusts) notes, “a robust body of academic literature from the U.S. and Canada links lead in drinking water to increases in blood lead levels. For example, one

⁷³ U.S. ENV. PROT. AGENCY SCIENCE ADVISORY BOARD, LEAD PAINT HAZARD STANDARDS FOR RESIDENTIAL BUILDINGS, PUBLIC AND COMMERCIAL BUILDINGS, AND RENOVATIONS OF EXTERIORS OF PUBLIC AND COMMERCIAL BUILDINGS (2012) *available at*

<https://yosemite.epa.gov/sab/sabproduct.nsf/0/9c733206a5d6425785257695004f0cb1!OpenDocument&TableRow=2.3#2>.

⁷⁴ 15 U.S.C. § 2682(a)(1)

⁷⁵ See “Plan of Action to Prevent Childhood Lead Exposure” signed by four dozen community groups and public interest organizations around the country, including Earthjustice, Physicians for Social Responsibility, and United Parents Against Lead re-submitted to the Task Force on Nov. 21, 2017, available at <https://earthjustice.org/sites/default/files/files/President%27s%20Task%20Force%20Letter%20FINAL.pdf> (hereinafter “Earthjustice Plan of Action to Prevent Childhood Lead Exposure”).

⁷⁶ U.S. ENV. PROT. AGENCY, LEAD AND COPPER RULE: A QUICK REFERENCE GUIDE FOR SCHOOLS AND CHILD CARE FACILITIES THAT ARE REGULATED UNDER THE SAFE DRINKING WATER ACT (Oct. 2005), *available at* <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10058C5.txt>.

⁷⁷ CAL. ENV. PROT. AGENCY, OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, PUBLIC HEALTH GOALS FOR CHEMICALS IN DRINKING WATER: LEAD (Apr. 2009), at 6 (internal citations omitted), *available at* https://oehha.ca.gov/media/downloads/water/chemicals/phg/leadfinalphg042409_0.pdf

⁷⁸ Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 FED. REG. 26,460, 26,468 (June 7, 1991) (codified at 40 C.F.R. Part 141 Subpart I) (“Lead and Copper Rule”) (cited by Ex. 25, Triantafyllidou, S., and Edwards, M., Lead (Pb) in tap water and in blood: implications for lead exposure in the United States. *Critical Reviews in Environmental Science and Technology*, 42(13), 1297–1352 (2012), excerpt provided, in turn cited in Ex. 26, U.S. ENV. PROT. AGENCY, PROPOSED MODELING APPROACHES FOR A HEALTH-BASED BENCHMARK FOR LEAD IN DRINKING WATER, at 20, *available at* https://www.epa.gov/sites/production/files/2017-01/documents/report_proposed_modeling_approaches_for_a_health_based_benchmark_for_lead_in_drinking_water_final_0.pdf.

cross-sectional study of 183 children randomly selected from urban areas found that an increase in water lead concentrations from background levels to 15 ppb was associated with a nearly 14 percent jump in the share of children with estimated blood lead over 10 µg/dL.⁷⁹ Elevated lead levels in drinking water have been associated with an increase in the rate of individuals with elevated blood lead levels.⁸⁰ Exposure to lead-contaminated drinking water has also been associated with fetal death and reduced birth rates.⁸¹ As EPA has recognized, “[i]nfants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development.”⁸²

Lead in water is a concern due to lead-bearing plumbing in over 10 million pipes across the country. Potential sources of lead in plumbing include “lead pipes, lead solder, leaded brass, galvanized iron (which can “absorb” lead from other plumbing materials and later release it into water), and copper (which can trigger galvanic corrosion of other leaded materials); lead poses a health threat even when water is properly treated for corrosion control; and individual water consumers are expected to and must take actions on their own to protect themselves from lead in water, even when water is properly treated for corrosion control.”⁸³

EPA must educate the public about the ubiquitous sources of lead in water and improve oversight and enforcement of the revised Lead and Copper Rule (LCR) and strengthen its provisions in revisions to the LCR to remove the sources of lead in water and protect public health. Over 5,363 community water systems serving over 18 million people committed 8,093 violations of the LCR in 2015 alone. Only 11.2 percent of violations resulted in formal enforcement action by EPA.⁸⁴

EPA should require the proactive full replacement of all lead service lines (LSL). LSLs are the main source of lead in drinking water, and the problem of lead service lines is enormous and widespread. While there is no comprehensive national inventory of lead service lines, experts have estimated that 6 to 10 million lead service lines are being used in the United States, serving 15 to 22 million Americans.⁸⁵ The revised LCR should require that all water systems adopt a proactive full LSL replacement program and numeric enforceable deadlines for meeting

⁷⁹ See Health Impact Project of the Robert Wood Johnson Foundation and The Pew Charitable Trusts, “10 Policies to Prevent and Respond to Childhood Lead Exposure: An assessment of the risks communities face and key federal, state, and local solutions,” (Aug. 2017), available online at http://www.pewtrusts.org/~media/assets/2017/08/hip_childhood_lead_poisoning_report.pdf. (“hereinafter Health Impact Project, 10 Policies to Prevent Lead Exposure”)

⁸⁰ Ronnie Levin, et al., *Lead Exposure in U.S. Children, 2008: Implications for Prevention*, 116 ENVIRON. HEALTH PERSPECT. (1) 1285-93 Ex. 27, (2008), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2569084/>; CTRS. FOR DISEASE CONTROL & PREV., *Blood Lead Levels in Residents of Homes with Elevated Lead in Tap Water—District of Columbia, 2004*, 53 MMWR Weekly (No. 12) 268-70 (Apr. 1, 2004), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5312a6.htm>.

⁸¹ Marc Edwards, *Fetal Death and Reduced Birth Rates Associated with Exposure to Lead-Contaminated Drinking Water*, 48 ENVTL. SCI. & TECH. 739-40 (2013), available at <http://pubs.acs.org/doi/pdf/10.1021/es4034952>.

⁸² U.S. ENV. PROT. AGENCY, *Basic Information about Lead in Drinking Water*, available at <http://water.epa.gov/drink/contaminants/basicinformation/lead.cfm>.

⁸³ See “Plan of Action to Prevent Childhood Lead Exposure” *supra* note 72.

⁸⁴ Erik D. Olson & Kristi Pullen Frederick, Natural Resources Defense Council, *What’s In Your Water? Flint and Beyond* at 5 (June 28, 2016), available at <https://www.nrdc.org/resources/whats-your-water-flint-and-beyond>. (This figure includes failures to follow LCR provisions for testing of water, reporting of contamination, and treatment to prevent lead pipe corrosion.)

⁸⁵ David A. Cornwell, Richard A. Brown, and Steve H. Via, “National Survey of Lead Service Line Occurrence,” JOURNAL OF THE AM. WATER WORKS ASS’N. 108, no. 4 (Apr. 2016): E182-E191, available at <dx.doi.org/10.5942/jawwa.2016.108.0086>.

them. EPA must ban partial LSL replacements.⁸⁶ Under the current LCR system, homeowners are typically asked to pay out of pocket for the cost of replacing any portion of an LSL on the private property. Homeowners and landlords who cannot afford to pay this price are forced to accept partial LSL replacement, a practice that has been shown to *increase* lead levels at the tap.⁸⁷ Tens of thousands of families have thus been put at greater risk of lead contamination in their drinking water simply because of their inability to pay. Moreover, these families do not receive meaningful education regarding the risks of lead, and are not given water filters, replacement cartridges and training on how to properly install and maintain a point of use filter.⁸⁸

EPA should require more frequent and extensive monitoring for lead, and explicitly prohibit sampling techniques that result in underreporting of water lead levels. For example, many water systems have used sampling techniques that are designed to reduce lead identification, such as aerator removal, pre-flushing, and the use of small-mouthed bottles,⁸⁹ in order to avoid finding lead. Without improved sampling and monitoring techniques, violations are not recorded and reported and consumers receive false assurances regarding lead levels in their water. EPA has advised against the use of several of these misleading sampling techniques,⁹⁰ but without reform, these practices will continue.

EPA must reduce its drinking water action level, which is now set at 15 parts per billion (ppb).⁹¹ While no level of lead in water is safe, lowering the action level would help to result in more effective corrosion control, and further reduce exposure to lead in water.

Finally, EPA should collaborate with HUD to ensure that HUD develops and implements safe water requirements in its administration of its programs and makes available the provision of water testing and filters to ensure potable drinking water wherever appropriate.

3. EPA's Lead Repair, Renovation and Painting (RRP) Rule and Abatement Rule must be enforced to protect occupants and workers.

⁸⁶ EPA included this requirement when it first promulgated the LCR. *See* Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 FED. REG. 26460, 26503-09 (June 7, 1991). This provision was never enforced: In response to a challenge by the American Waterworks Association, the D.C. Circuit struck down EPA's definition of "control" in the final 1991 rule, solely on the grounds that "EPA failed to provide adequate notice that it would adopt a novel definition of control. *Am. Water Works Ass'n v. EPA*, 40 F.3d 1266, 1275 (D.C. Cir. 1994).

⁸⁷ U.S. ENV. PROT. AGENCY, SCIENTIFIC ADVISORY BOARD EVALUATION OF THE EFFECTIVENESS OF PARTIAL LEAD SERVICE LINE REPLACEMENTS at 12-13 (Sept. 28, 2011), *available at* http://www.epa.gov/sites/production/files/2015-09/documents/sab_evaluation_partial_lead_service_lines_epa-sab-11-015.pdf.

⁸⁸ Sheila Kaplan & Corbin Hiar, *Toxic Taps: Lead is Still the Problem*, AM. UNIV. INVESTIGATIVE REPORTING WORKSHOP (Aug. 8, 2012), <http://investigativereportingworkshop.org/investigations/toxic-taps/story/toxic-taps-lead-is-still-the-problem>.

⁸⁹ Oliver Milman, *US authorities distorting tests to downplay lead content of water*, THE GUARDIAN, Jan. 22, 2016, *available at* <https://www.theguardian.com/environment/2016/jan/22/water-lead-content-tests-us-authorities-distorting-flint-crisis>

⁹⁰ MEMORANDUM FROM PETER GREVATT, DIRECTOR, EPA OFFICE OF GROUND WATER AND DRINKING WATER TO WATER DIVISION DIRECTORS ON CLARIFICATION OF RECOMMENDED TAP SAMPLING PROCEDURES FOR PURPOSES OF THE LEAD AND COPPER RULE (Feb. 29, 2016), *available at* https://www.epa.gov/sites/production/files/2016-02/documents/epa_lcr_sampling_memorandum_dated_february_29_2016_508.pdf

⁹¹ 40 C.F.R. § 141.80(c).

Both the Repair, Renovation and Painting (RRP) Rule⁹² and Abatement Rule⁹³ protect children and their families by establishing the minimum standards for the level of protection from lead-based paint hazards. Home renovation and lead-based paint activities are among the greatest sources of lead contamination and lead hazard exposure to occupants. Lead in the environment does not dissipate, making it likely that a developing child will inhale or ingest it and become lead poisoned.

Both the RRP Rule and Abatement Rule are mandated by Title IV of TSCA. Title IV requires the EPA Administrator to promulgate and maintain guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead.⁹⁴ Pursuant to Title IV, EPA must maintain “regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified.”⁹⁵ In addition, TSCA mandates that such “regulations shall contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.”⁹⁶

The RRP Rule is based on EPA’s scientific study finding that renovation and repair activities that disturb lead-based paint “have the highest potential for generating lead exposure.”⁹⁷ The RRP Rule applies to 37.8 million facilities, including 37.7 million target housing units.⁹⁸ It is estimated that annually the RRP Rule protects 1.3 million children under six years of age and between five and eleven million adults and children over six years of age from lead poisoning.⁹⁹ At the same time, the lead in many of these homes was not abated and the lead hazard could return if not closely monitored or maintained. In fact, numerous homes where a lead hazard was previously identified have resulted in lead poisoning in future occupants below six years of age.¹⁰⁰ If the lead in a pre-1978 home is not abated, the home requires constant surveillance and maintenance to address the high risk of lead poisoning for future occupants.

EPA’s primary objective in promulgating the Abatement Rule was “to ensure that individuals and firms conducting lead-based paint activities in target housing and child-occupied facilities will do so in a way that safeguards the environment and protects the health of building occupants, especially children aged 6 years and under.”¹⁰¹ The Regulatory Impact Analysis of the Abatement Rule estimated the benefits to be as much as \$54 billion over 50 years.¹⁰² In the

92 40 C.F.R. § 745.80 *et seq.*

93 40 C.F.R. § 745.220 *et seq.*

94 42 U.S.C. § 2682(c)(1).

95 42 U.S.C. § 2682(a)(1).

96 *Id.*

97 U.S. ENV. PROT. AGENCY, LEAD EXPOSURE ASSOCIATED WITH RENOVATION AND REMODELING ACTIVITIES (May 1997).

98 ECONOMIC AND POLICY ANALYSIS BRANCH ECONOMICS, EXPOSURE AND TECHNOLOGY DIVISION OFFICE OF POLLUTION PREVENTION AND TOXICS, U.S. ENV. PROT. AGENCY, ECONOMIC ANALYSIS FOR THE TSCA LEAD RENOVATION, REPAIR, AND PAINTING PROGRAM FINAL RULE FOR TARGET HOUSING AND CHILD-OCCUPIED FACILITIES” Table 2-31, p. 33-4 (Mar. 2008), *available at* http://www.nchh.org/Portals/0/Contents/EPA-HQ-OPPT-2005-0049-0916_Final_Economic_Analysis_3-08.pdf.

99 *Id.*

100 Reys, *et al.*, *Identifying Housing That Poisons: A Critical Step in Eliminating Childhood Lead Poisoning*, JOURNAL OF PUBLIC HEALTH MANAGEMENT AND PRACTICE (Nov. 2006).

101 61 FED. REG. 45779 (Aug. 29, 1996).

102 Nicolaas Bouwes, U.S. ENV. PROT. AGENCY, TSCA TITLE IV, SECTIONS 402(A) AND 404: TARGET HOUSING AND CHILD-OCCUPIED FACILITIES FINAL RULE REGULATORY IMPACT ANALYSIS vii (1996). Additionally, researchers estimate that for each cohort of children aged 0-6, preventing lead poisoning saves taxpayers \$51 billion in societal

Regulatory Impact Analysis, EPA justified the federal standards as being more efficient than standards adopted independently by each individual state.¹⁰³ EPA must continue to increase education and enforcement of the RRP Rule and Abatement Rule to ensure that the burden of identifying a hazard does not rest on a developing child's blood lead levels.¹⁰⁴

4. The Lead Disclosure Rule promotes the necessary education on the risks of lead hazards and must be enforced.

The Lead Disclosure Rule¹⁰⁵ is mandated by Title X and gives “prospective home purchasers and lessees access to information that might otherwise have been unavailable or that they might have been able to acquire only through their own effort and at some cost.”¹⁰⁶ In promulgating the rule, the EPA stated that, “the information will generate health benefits by leading many purchasers and lessees to modify their behavior in a way that will reduce risks from lead-based paint.”¹⁰⁷ As a result, the rule ensures that purchasers and renters of older housing make informed housing and maintenance decisions before they become obligated under purchase or lease contracts. It also serves to educate all participants in target housing sales and leasing transactions of their rights and obligations, as well as the dangers of lead poisoning.

Ultimately, the Lead Disclosure Rule is dependent upon HUD's and EPA's diligent enforcement. At the same time, Title X mandated that EPA promulgate regulations for the disclosure of lead-based paint hazards before the sale or rental of a property and gave EPA subpoena power to enforce the disclosure rule.¹⁰⁸ We request that EPA increase enforcement activities to better educate the public and protect children from exposure to lead hazards.

EPA should improve this rule by requiring risk assessments and abatement of lead hazards in homes prior to the sale or rental of a property. At a minimum, EPA should integrate lead in drinking water into lead hazard disclosure requirements in connection with buying or renting housing, in addition to the presence of lead-based paint. This would result in much greater protections, increased business for lead hazard renovation firms and contractors, and, ultimately, the end of lead poisoning.

5. EPA should better coordinate with other federal agencies in Environmental Justice Communities and ensure that residents in lead-contaminated communities receive increased coordination to limit exposure.

Environmental Justice Communities rely on myriad environmental laws to provide protection of residents from cumulative lead hazards. TSCA, Title X, the Lead Disclosure Rule, RRP Rules and updated lead hazard standards are critical for reducing the overall risk posed to their communities by lead. Congress recognized the need for these rules when it enacted TSCA. The language of TSCA explicitly requires EPA to develop and enforce rules to further the

costs. *See* Gould, *supra* note 2.

¹⁰³ *Id.* at 3-14.

¹⁰⁴ In 2015 and 2016, EPA enforced the RRP Rule against Lowes, Sears and The Home Depot, even seeking criminal sanctions for repeated failure to use certified contractors. *See* <https://www.epa.gov/enforcement>.

¹⁰⁵ 40 C.F.R. § 745.100.

¹⁰⁶ 61 Fed. Reg. 9080 (Mar. 6, 1996).

¹⁰⁷ *Id.*

¹⁰⁸ 42 U.S.C. § 4852d (2012); 15 U.S.C. § 2689 (2012).

mission of the statute.¹⁰⁹ The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) also covers lead contamination in soil and indoor dust. EPA must address such contamination in the remediation of hazardous waste sites. When a CERCLA site involves residential homes, the TSCA and CERCLA requirements must work together to reduce the residents' cumulative exposures to lead. For instance, in the Omaha Lead Superfund Site, EPA specifically noted in its record of decision that “[s]ampling data transmittals constitute a lead hazard record under HUD and TSCA regulations, which must be disclosed by property owners to buyers prior to purchase, and must be disclosed by landlords to tenants upon lease signing and renewal.”¹¹⁰ Yet, at the USS Lead Superfund Site, many homeowners have bought homes without the proper disclosures. All lead-related programs must be better coordinated and strengthened in order to increase enforcement of the disclosure and certification requirements.

6. EPA should protect children’s health by eliminating exposure to lead in the air.¹¹¹

New lead hazards are introduced into children's environments due to a variety of industrial sources, including battery recyclers, aviation fuel, and power plants, among others. These sources emit new lead, contaminating homes, schools, parks, playgrounds, and daycare centers. Children’s exposure to lead from air pollution must be addressed.

EPA should set significantly stronger national emission standards for battery recyclers (also known as secondary lead smelters), which are currently under reconsideration at EPA.¹¹² These sources use smelting or processing techniques that emit lead. More than 80,000 people experience elevated health threats from the 14 facilities currently operating in 11 states and Puerto Rico. Children, low-income households, and communities of color are disproportionately exposed to these facilities. In the most-affected communities, children are 30 percent of the exposed population, 41 percent are people of color, and 52 percent are Latino or Hispanic.¹¹³ At the same time, EPA should create a plan to reduce children’s exposure to new lead-in-air emissions from other major industrial sources. For example, electric power plants emit about 63,711 pounds of lead per year.¹¹⁴ The Toxic Release Inventory for 2014 documented a total of 367,761 pounds per year of lead air emissions from all reporting industries.¹¹⁵ Reducing these exposures will protect children and is necessary to protect workers at these facilities.

¹⁰⁹ 15 U.S.C. § 2683; 15 U.S.C. § 2686.

¹¹⁰ *Omaha Lead Superfund Site Record of Decision*, 27 (2009), https://archive.epa.gov/region07/cleanup/npl-archive/web/pdf/record_of_decision.pdf

¹¹¹ See “Plan of Action to Prevent Childhood Lead Exposure” *supra* note 72.

¹¹² See *Sierra Club et al.*, PETITION FOR RECONSIDERATION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANT EMISSIONS FROM SECONDARY LEAD SMELTING AND SUPPLEMENTS TO THIS PETITION, 77 FED. REG. 556 (Jan. 5, 2012), Dkt. ID Nos. EPA-HQ-OAR-2011-0344-0211 (Mar. 5, 2012), EPA-HQ-OAR-2011-0344-0189 (June 21, 2012) and SUPPLEMENT TO GRANTED PETITION FOR RECONSIDERATION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FROM SECONDARY LEAD SMELTING (filed Jan. 31, 2014); see also U.S. ENV. PROT. AGENCY, OFC. OF AIR QUAL. PLANNING & STANDARDS, OFC. OF AIR & RADIATION, RESIDUAL RISK ASSESSMENT FOR SECONDARY LEAD SMELTING SOURCE CATEGORY (Dec. 2011), Dkt. ID No. EPA-HQ-OAR-2011-0344-0160.

¹¹³ EC/R INC., MEMO, PREPARED FOR U.S. ENV. PROT. AGENCY OAQPS, RISK AND TECHNOLOGY REVIEW – FINAL ANALYSIS OF SOCIO-ECONOMIC FACTORS FOR POPULATIONS LIVING NEAR SECONDARY LEAD SMELTING FACILITIES (Dec. 2011), Dkt ID No. EPA-HQ-OAR-2011-0344-0161.

¹¹⁴ See Env'tl. Integrity Project, *America’s Top Power Plant Toxic Air Polluters* (Dec. 2011), available at <http://www.environmentalintegrity.org/documents/Report-TopUSPowerPlantToxicAirPolluters.pdf>.

¹¹⁵ U.S. ENV. PROT. AGENCY, 2014 TRI NATIONAL ANALYSIS (updated Jan. 2016) available at https://www.epa.gov/sites/production/files/2016-01/documents/tri_na_2014_complete_english.pdf

EPA should immediately ban leaded aviation fuel (avgas), which contributed 59 percent of the National Emission Inventory in 2011 and is the single largest source of lead in the air.¹¹⁶ Studies have shown that children's blood lead levels increase dose-responsively in proximity to the airports used by piston engine aircraft¹¹⁷ A recent MIT study estimated nationwide economic losses of over \$1 billion annually due to the IQ deficits caused by leaded avgas emissions alone.¹¹⁸ EPA must issue an endangerment finding and ban or phase out leaded avgas in general aviation aircraft. In the meantime, EPA should require airports where leaded fuel is in use to monitor and report ambient air.

Additionally, EPA should protect children's health by strengthening the National Ambient Air Quality Standard (NAAQS) for lead to reduce ambient air levels.¹¹⁹ The Lead NAAQS established in 2008 are insufficient to protect children's health.¹²⁰ EPA must lower the NAAQS for lead, and we support the Children's Health Protection Advisory Committee's 2015 recommendations to: (1) Reduce the standard to 0.02 µg/m³ or below; (2) Require a more robust lead particulate monitoring network; and (3) Base the standard's measurements on an averaging period of one month.

The current NAAQS only seeks to avoid an air-related *population mean* IQ loss in excess of 2 *points*.¹²¹ The federal government should not accept such a significant IQ loss in children, especially when these impacts do not fall equally across the country, but hit poor children and communities of color the hardest.

D. U.S. Department of Health and Human Services (HHS) must ensure universal lead testing for children and increase funding for programs that combat the effects of lead poisoning.

1. The Centers for Medicare & Medicaid Services should enforce existing protections and increase activities to identify and treat lead hazards and exposure.

The Centers for Medicare & Medicaid Services (CMS) should enforce existing protections and use available innovations to identify and treat lead exposure in Medicaid-eligible populations, particularly children. Children served by Medicaid have the greatest risk of

¹¹⁶EMISSIONS INVENTORY & ANALYSIS GRP., OFFICE OF AIR QUALITY PLANNING & STANDARDS, U.S. ENV. PROT. AGENCY, PROFILE OF THE 2011 NATIONAL AMBIENT AIR EMISSIONS INVENTORY at 20 (Apr. 2014), *available at* https://www.epa.gov/sites/production/files/2015-08/documents/lite_finalversion_ver10.pdf

¹¹⁷ See Marie Lynn Miranda et al., *A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood Lead Levels*, 119 ENVTL. HEALTH PERSP. 1513 (Oct. 2011); Sammy Zahran et al., *The Effect of Leaded Aviation Gasoline on Blood Lead in Children* (Aug. 2014), *available at* <http://mpr.ub.uni-muenchen.de/62238/>.

¹¹⁸ See Philip J. Wolfe et al., *Costs of IQ Loss from Leaded Aviation Gasoline Emissions*, 50 ENVTL. SCI. & TECH. 9,026 (2016).

¹¹⁹ See R. Chari et al., Integrating Susceptibility into Environmental Policy: An Analysis of the National Ambient Air Quality Standard for Lead, Mar. 27, 2012, INT'L J. ENVIRON. RES. PUBLIC HEALTH 2012, 9, 1077-1096, at 1084-85 (Mar. 27, 2012) (summarized in NRDC et al. Follow-up and Supplement to Petition for Reconsideration on Secondary Lead Smelting (June 27, 2012)).

¹²⁰ LETTER FROM SHEELA SATHYANARAYANA, CHPAC TO GINA MCCARTHY, U.S. ENV. PROT. AGENCY (Jan. 8, 2015) ("CHPAC 2015 Letter"), *available at* https://www.epa.gov/sites/production/files/2015-01/documents/naaqs_for_lead_letter.pdf

¹²¹ 73 FED. REG. at 67,006 (stating that EPA set the NAAQS at 0.15 µg/m³ based on the finding that "the estimated mean IQ loss from air-related Pb in the subpopulation of children exposed at the level of the standard would generally be somewhat to well below 2 IQ points").

exposure to lead, but are currently screened at low rates despite the federal early, periodic, screening, diagnostic, and treatment (EPSDT) requirements.¹²² Adults exposed to lead also require treatment and access to ongoing care to ameliorate the effects of lead exposure as much as possible. CMS should focus on helping states meet existing requirements for children and using existing tools to innovate programs to identify and address lead exposure in high-risk areas. CMS should also coordinate with other federal programs to identify individuals at high-risk for lead exposure, screen for lead exposure and side effects, and provide treatment and appropriate services to ameliorate the effects of exposure and remediate the exposure source.

- a. *CMS should focus efforts on helping states meet the affirmative obligation to inform families of lead screening and to ensure children are screened, diagnosed, and have ongoing access to appropriate treatment.*

Under the Medicaid Act, states have an affirmative obligation to conduct outreach efforts to inform parents and caregivers about EPSDT services and the importance of preventive care and early detection of health and mental health conditions in children.¹²³ Information about EPSDT benefits and services must be provided in a format that can be easily understood, including translated written materials and oral interpretation if the child's family has difficulty reading or understanding English. States must also offer assistance in scheduling appointments prior to each due date of a child's periodic examination, as well as transportation services to get children to and from health providers.¹²⁴ However, parents, such as those in East Chicago as discussed above, often report lack of knowledge about lead screening, treatment, assistance with appointments, and transportation. In other areas, parents report that although they can get a child to the appointment, the barriers associated with getting blood test results prevent the parent from obtaining the screening results and often subsequent treatment for the child.¹²⁵

In addition to ensuring parents and caregivers understand the EPSDT benefits available, states must also ensure that children have access to providers who are qualified and willing to provide EPSDT services. States must "arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment" that a child needs.¹²⁶ Medicaid programs are required to "correct or ameliorate physical and mental illnesses and conditions" that are detected in Medicaid eligible children.¹²⁷ However, certain types of service providers, such as pediatricians, are sometimes difficult to access. Even when children have pediatricians, they may not be receiving all of the appropriate screens. Although states have this affirmative obligation, the screening rates for children receiving Medicaid benefits are shockingly low. Despite the requirements that children be screened at 12 and 24 months, no state had a screening rate of more than 10 percent for children under the age of one in 2015.¹²⁸ Citing the public health crisis in Flint, Michigan, which was identified initially through EPSDT data, CMS issued an

¹²² Jaime Raymond et al., *supra* note 15; Joshua Schneyer & M.B. Pell, *Unsafe at Any Level: Millions of American children missing early lead test, Reuters finds*, REUTERS (June 9, 2016), available at <https://www.reuters.com/investigates/special-report/lead-poisoning-testing-gaps/>.

¹²³ 42 U.S.C. § 1396a(a)(43)(A) ; 42 C.F.R. §§ 441.50-441.62.

¹²⁴ 42 U.S.C. § 1396a(a)(43)(C); *O.B. v. Norwood*, 2014 WL 5335494 (7th Cir. 2016).

¹²⁵ For example, in the District of Columbia parents are expected to take the blood sample across town to a lab. Even if the parent has transportation, this may cost the family such time and money that a significant barrier to care is created by the District's policies.

¹²⁶ *Id.*

¹²⁷ 42 U.S.C. § 1396d(r)(5).

informational bulletin in late 2016 regarding lead screening.¹²⁹ This letter reviewed the Medicaid and CHIP requirements for lead screening and some ideas for states to increase screening rates. While this information is helpful to states, CMS should take a more active role in monitoring screening rates and providing strong technical assistance to states to increase those rates, put in place robust programs for outreach and treatment, and resolve barriers to lead screening and treatment for both Medicaid and CHIP.

Medicaid is somewhat limited in what it can cover in terms of remediating the source of exposure, but most state policies only focus on the screening requirements and do not include other available related services. Policies on blood lead level screening and treatment are often not robust and at times may even be inaccurate. For example, some states have outdated policies that do not reflect the change from 10 µg/dL to 5 µg/dL or say that a child should meet risk factors before being screened for blood lead levels. We recommend that CMS direct states to adopt an action level of 5 µg/dL or lower in order to intervene early and potentially prevent lead poisoning among siblings and other children residing in the building.

Many state policies do not include the availability of an environmental survey under Medicaid which is used to identify the sources of exposure in a child's environment; such a survey is critical to minimizing further exposure. In addition, although the American Academy of Pediatrics has issued guidance on the services that a child should receive based on the screened blood lead level, most states have minimal EPSDT policies that only cite the requirements of screening at 12 and 24 months.¹³⁰ State policies as they currently exist often fail to give providers guidance as to the treatment services that will be covered at different blood levels. EPSDT requires the state Medicaid program to cover medically necessary services so this type of guidance may seem unnecessary, but it can help providers by giving them a clear indication of the services that will be covered without additional authorization hurdles.

To effectively address lead exposure, there should be strong coordination between the state Medicaid agency, housing authorities, local code enforcement, and educational entities. Such coordination would ensure a child has the best opportunity for strong development and adults have access to the services they need. Information for families and those affected about the exposure and available resources that is provided in an effective and accessible way is also critical. Many families also need assistance with understanding and accessing services targeted to remediating and preventing further lead exposure. This information and assistance should be provided to families on an ongoing basis until the exposure source is remediated. Even after a family moves out of an exposure area, they would need continued monitoring, screening, and treatment as a previously exposed child develops to check for side effects and provide appropriate services. For example, a developmental screen at the pediatrician's office may require ongoing coordination with medical services and the child's school system to ensure that child's needs are met over several years.

As explained previously, children exposed to lead are known to have an array of immediate and long-term side effects. States should not only have clear policies about the immediate services that would be authorized, but should also have longer term services identified to screen

¹²⁸ Medicaid.gov, FY 2015 EPSDT Data, *available at* <https://www.medicaid.gov/medicaid/benefits/epsdt/index.html>.

¹²⁹ CMS INFORMATIONAL BULLETIN, COVERAGE OF BLOOD LEAD TESTING FOR CHILDREN ENROLLED IN MEDICAID AND THE CHILDREN'S HEALTH INSURANCE PROGRAM (Nov. 30, 2016) *available at* <https://www.medicaid.gov/federal-policy-guidance/downloads/cib113016.pdf>.

¹³⁰ AAP COUNCIL ENVTL. HEALTH, *Prevention of Childhood Lead Toxicity*, 138(1) PEDIATRICS 1, 10 (June 2016), *available at* <http://pediatrics.aappublications.org/content/early/2016/06/16/peds.2016-1493>.

and treat known side effects of lead. Monitoring programs for children identified with elevated blood lead levels would also help ensure the state Medicaid program is meeting the ongoing EPSDT requirements. This could occur through targeted care coordination or other mechanisms. The long-term effects of EPSDT and the need for ongoing monitoring are exactly the type of issues EPSDT is intended to address, as shown by the history and purpose of the benefit.¹³¹ CMS should work with states, clinicians, and advocates to identify best practices and then provide guidance and technical assistance to states, incentivizing implementation of such practices where possible.

b. Adults eligible for Medicaid benefits must also have access to services related to lead exposure.

The State's obligation to correct or ameliorate the adverse effects of lead poisoning extends not only to the children with detectable EBLLs. Children have specific rights in regards to lead screening and treatment under EPSDT, but adult Medicaid beneficiaries must have access to covered services that are related to lead exposure.¹³² Adults must have access to providers for treating both the physical and behavioral side effects of lead exposure. As discussed previously, there are both immediate and long-term side effects to lead exposure. Not only do individuals need treatment for their own exposure, but caregivers may also need mental health services stemming from a child's exposure to lead and the lifelong, harmful effects such exposure has on a child. In addition, pregnant women and nursing mothers need access to information and services to address issues related to their exposure and any effects on a fetus or breastfeeding child. Pregnant women and children are particularly vulnerable to lead exposure, as they can absorb more ingested lead than the general adult population.¹³³

Medicaid managed care and section 1115 demonstration projects offer other mechanisms for Medicaid to provide focused efforts to identify, treat, monitor, and coordinate care for individuals exposed to lead. States that use managed care should use performance improvement projects to increase screening rates, improve treatment, and provide long-term monitoring. Depending on which authority a state uses to implement managed care, a state could direct that managed care savings or in lieu of services be used to target lead screening, treatment, and amelioration. States could also use the section 1115 demonstration authority to offer a targeted program to screen Medicaid beneficiaries and then provide services, including enhanced coordination of services and resources, and other tools to address the exposure. Currently, Michigan has a Section 1115 demonstration waiver to help address the lead exposure in Flint. While this demonstration provides expanded eligibility and services for city residents, the section 1115 demonstration authority could be used to innovate programs that would focus on areas with high exposure risks for lead. Although states have the authority under EPSDT to screen and treat

¹³¹ Sara Rosenbaum, *When old is new: Medicaid's EPSDT benefit at fifty, and the future of child health policy*, MILLBANK QUARTERLY (Dec. 2016), available at <https://www.milbank.org/quarterly/articles/old-new-medicaid-epsdt-benefit-fifty-future-child-health-policy/>. EPSDT was not part of the original Medicaid Act but was added in two years later as a policy response to the research carried out by Head Start that documented the extent of physical and mental conditions that could have lifelong consequences in the children served by the program that could be ameliorated, but were not being treated. The increased focus on services for children was also a response to the report on the high disqualification rates of Select Service draftees due to physical and mental disabilities, which illustrated the consequences for national security of child health neglect.

¹³² 42 U.S.C. § 1396d(r)(1)(B)(iv); 42 U.S.C. § 1396a(a)(43)(C); § 1396a(30)(A).

¹³³ Suzanne McDermott et al., *Probability of Intellectual Disability is Associated with Soil Concentration of Arsenic and Lead*, 84 CHEMOSPHERE 32 (2011).

children, including providing targeted case management, a section 1115 demonstration project could provide a more comprehensive program with an array of Medicaid services specific to lead exposure to more than just Medicaid eligible children and coordinate with EPSDT to provide a systemic approach to addressing areas with high risk of lead exposure. Preventing and remediating lead exposure is critical to health, especially long-term health and well-being, and should be a target of CMS and its focus on innovation and flexibility for states.

2. Centers for Disease Control and Prevention (CDC) must update the reference value for lead poisoning.

The CDC should fulfill its commitment to updating the definition of the elevated blood lead “reference value.” In 2012, the CDC stated that it would update the reference value every four years, based on the most recent NHANES data.¹³⁴ HHS and CDC should mandate that state agencies move to the more protective level, to ensure environmental investigations and medical case management services in each state follow the CDC blood lead reference level. Currently, many states utilize outdated reference levels, depriving children with elevated blood lead level access to resources and assistance to mitigate the harm from lead exposure.

3. HHS should increase funding for Head Start and Early Head Start Child Care Partnership Programs in communities with high levels of lead.

Especially in communities at risk of cumulative exposure from lead from lead in paint, soil, and/or pipes, HHS should increase funding for Head Start and the Early Head Start Child Care Partnership programs. In Flint, Michigan, HHS expanded Head Start and Early Head Start Partnership Program to address the lead epidemic in the community in an effort to combat the effects of lead poisoning.¹³⁵ It is essential that children in communities with cumulative exposure obtain all interventions that are known to help children at risk of developmental disabilities from lead poisoning.

4. The National Institute of Health should increase research on the effects of lead poisoning.

The National Institutes of Health (NIH) should continue to fund research into the effects of lead poisoning at even lower levels of lead exposure. Research has been critical to improving our understanding of the substantial impairment and long-term effects that can occur at lower lead poisoning levels. NIH should also fund research into other treatments and methodologies to mitigate the effects and impact of childhood lead poisoning on health, behavioral, education and social outcomes.

5. The Children’s Bureau should collaborate with other agencies to ensure children in foster care and in programs aimed at keeping families together receive priority access to lead abatement funds.

¹³⁴ See CTRS. FOR DISEASE CONTROL & PREV., NEW BLOOD LEAD LEVEL INFORMATION (last updated Mar. 15, 2016), http://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm. (“CDC will update the reference value every 4 years using the two most recent NHANES surveys.”).

¹³⁵ Michigan Head Start Association, “Genesee County Receives \$5.5 Million for Early Head Start” (Mar. 20, 2017) *available at* <http://michheadstart.org/news/genesee-county-receives-55-million-early-head-start>

Section 42 U.S.C. § 671(a)(10)(A) requires states to establish standards for foster family homes and child care institutions which “are reasonably in accord with recommended standards of national organizations concerned with standards for the institutions or homes, including standards related to ...safety....”¹³⁶ The Lead Safe Housing Rule does not cover foster homes and foster children are thus at risk of moving to homes with lead hazards. Federal policy should ensure that foster homes and programs that work to keep families together receive expedited access to grant programs for lead hazard abatement after receiving a risk assessment. It is vital that a strong partnership occur with foster parents to ensure education of lead hazards and abatement protocols are affordable for foster parents and incentivize families to participate in the foster program. Priority funding is likewise necessary to ensure that children who are most at risk are protected. Without this, states receiving federal funding are not adequately ensuring that children are living in lead safe homes.¹³⁷

6. The Health Resources and Services Administration’s (HRSA) Maternal and Child Bureau should should prioritize lead poisoning prevention and risk identification in all programs.

The Maternal and Child Health Services Block Grant Program (Title V) has provided critical support to improve the health of the nation’s women, mothers, children, and youth. At least 30% of federal Title V funds are designated for children with special health care needs. States can use these funds to provide education and counseling to families with EBLL at or above 5 µg/dL. Title V is an ideal vehicle for lead poisoning prevention and identification of at risk children and infants. It requires states to work collaboratively, a unique partnership between federal, state, and local entities, and includes infrastructure, population-based, enabling and direct services for the maternal and child population.¹³⁸ In addition, each state must identify priorities to comprehensively address the needs of the population and may serve as the payer of last resort for direct services. HRSA should issue guidance and best practices directing states to use Title V funds for lead poisoning prevention education and the identification of at risk children and infants. In addition, HRSA should direct states to use Title V funds to address lead poisoning and lead hazards in order to prevent poor health outcomes among women and children.

HRSA also implements the Maternal, Infant, and Early Childhood Home Visiting Program to provide pregnant women resources and skills to raise children. Professionals conducting home visits should be trained in educating families about lead poisoning prevention and identifying those families who are at high risk of lead poisoning. Social service supports

¹³⁶ See e.g. Ana Beltran and Heidi Redlich Epstein “Improving Foster Care Licensing Standards around the United States: Using Research Findings to Effect Change” (Mar. 2012) *available at* https://www.americanbar.org/content/dam/aba/administrative/child_law/FC_Licensing_Standards.authcheckdam.pdf

¹³⁷ Marissa Hauptman & Alan D. Woolf, “Lead Poisoning and Children in Foster Care: Diagnosis and Management Challenges” *CLINICAL PEDIATRICS* (Oct. 3, 2017), *available at* <https://doi.org/10.1177/0009922817734364>

¹³⁸ U.S. DEP’T OF HEALTH & HUMAN SERVS., EDUCATIONAL SERVICES FOR CHILDREN AFFECTED BY LEAD EXPERT PANEL. EDUCATIONAL INTERVENTIONS FOR CHILDREN AFFECTED BY LEAD. (2015) *Available at* https://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf (hereinafter EDUCATIONAL SERVICES FOR CHILDREN AFFECTED BY LEAD EXPERT PANEL).

should include assistance contacting providers to schedule blood lead level tests and public health departments for lead hazard risk assessments where indicated.

7. The Food and Drug Administration (FDA) should protect the public from lead in personal care products, as well as in imported food, folk medicines and cosmetics.¹³⁹

Currently, lead acetate is permitted and used in various hair dye and hair conditioning products. In 1962, Congress made clear that the FDA may only register a color additive if it finds “convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive.”¹⁴⁰ A peer-reviewed study determined that the use of these products results in the widespread contamination of household surfaces and exposes all family members to the toxin.¹⁴¹ The FDA states that lead acetate is safe because these products do not penetrate the scalp.¹⁴² The FDA’s assertions are flawed because they do not take into account the dangers to children when lead residue is spread throughout the home through the user’s hands. As one study noted, “Given the requirement to continually reapply these hair coloring agents, the user becomes a living purveyor of lead contamination.”¹⁴³ FDA should immediately withdraw approval of lead acetate as a color additive in hair dye, and in any other personal care product or cosmetic. The FDA was petitioned by 61 organizations, 217 individuals, and 26,198 signatures to ban lead acetate from hair dye and has since missed the statutory deadline to respond. The agency must fulfill its obligations under the Federal Food, Drug, and Cosmetic Act immediately.

Lead is also found in a variety of FDA-regulated products imported into this country, such as traditional folk remedies,¹⁴⁴ cosmetics, face paint, and contaminated foods—significant sources of exposure in some communities. FDA must do more to ensure that these products are lead-free.

E. The Consumer Product Safety Commission (CPSC) should protect consumers from lead in household products.¹⁴⁵

CPSC also has the authority and obligation to protect consumers from lead in household products. CPSC should use its authority under the Federal Hazardous Substances Act to ensure that all consumer products are free of lead. Although lead in excess of 100 ppm is banned in “children’s products,” lead is still used in other common household products with which children come into contact, such as popular reclaimed wood products, or are used by children but which

¹³⁹See “Plan of Action to Prevent Childhood Lead Exposure” *supra* note 72.

¹⁴⁰ 21 CFR § 70.1(i).

¹⁴¹ Mielke, Howard W. Taylor, Myiesha D. Gonzales, Chris R. et al. *Lead-Based Hair Coloring Products: Too Hazardous for Household Use*. J. AM. PHARM. ASS’N, Volume 37, Issue 1, 85 - 89.

¹⁴² FOOD & DRUG ADMIN., LEAD ACETATE IN “PROGRESSIVE” HAIR DYE PRODUCTS (last updated Mar. 13, 2014), <http://www.fda.gov/Cosmetics/ProductsIngredients/Products/ucm143075.htm>

¹⁴³ Mielkem *supra* note 138.

¹⁴⁴ U.S. DEP’T OF HEALTH & HUMAN SERVS., DC, FOLK MEDICINE (last updated Oct. 15, 2013), *available at* <https://www.cdc.gov/nceh/lead/tips/folkmedicine.htm>; DEP’T OF PUB. HEALTH, CNTY OF LOS ANGELES, TRADITIONAL AND HOME REMEDIES KNOWN TO CONTAIN LEAD, *available at* <http://publichealth.lacounty.gov/eh/docs/Lead/FolkRemediesFlyer.pdf> (last visited Nov. 24, 2017).

¹⁴⁵ EDUCATIONAL SERVICES FOR CHILDREN AFFECTED BY LEAD EXPERT PANEL, *supra* note 135.

do not fall within the definition of “children’s products,” such as novelty jewelry.¹⁴⁶ CPSC should move forward promptly to protect children by banning lead in all household products.

CPSC must do more—using its recall authority under the Federal Hazardous Substances Act—to protect children from lead in products that remain in many homes, even if they are no longer sold in this country, such as Christmas tree lights, vinyl mini-blinds and other kinds of plastic that contain lead, which release lead-contaminated dust as the plastic breaks down.¹⁴⁷

F. U.S. Department of Education must include lead poisoning as an automatic qualifier for early intervention and appropriate special education services.

The Department of Education (DOE) should issue guidance on the special education and early intervention services available to assist children who have been lead poisoned. As described above, low-level lead exposure has negative effects on the brain’s learning systems, including “overall intellectual ability, speech and language, hearing, visual-spatial skills, attention, executive functions, social behavior, and fine and gross motor skills.”¹⁴⁸ Studies demonstrate that children with, or at high risk for, developmental delays benefit most from interventions that start at an early age.¹⁴⁹ DOE administers the Individuals with Disabilities Education Act (IDEA), which provides federal funds and oversight for early intervention and special education and related services for children with disabilities. Part C of IDEA serves infants and toddlers through age 2. Part B of IDEA funds special education services for children ages 3-21 with disabilities. Child Find is an identification program that places an obligation on states to identify and evaluate children for services, including those with a history of exposure to lead or a history of EBLL. In order to qualify for services, infants or toddlers must meet their state’s eligibility definition of developmental delay or have a diagnosed condition that carries a high probability of causing developmental delays.¹⁵⁰ States have the discretion of providing services to infants and toddlers who are at risk for substantial developmental delays if they do not receive appropriate early intervention services.¹⁵¹ Established risks include “exposure to toxic substances.”¹⁵² States may include a child who is at risk for experiencing developmental delays because of biological or environmental factors that can be identified.¹⁵³ Yet, as of 2012, only eight states explicitly mention lead exposure as an eligible condition for services or tracking.¹⁵⁴ Twelve states include EBLL levels ranging from >10 µg/dL to >45 µg/dL as meeting early

¹⁴⁶ For example, a 2015 report on toxic substances in items sold in dollar stores identified earrings sold at Family Dollar containing 6,500 ppm of lead. ECOLOGY CTR., 2015 DOLLAR STORE REPORT (Feb. 4, 2015), [available at http://www.ecocenter.org/healthy-stuff/reports/dollar-store-report](http://www.ecocenter.org/healthy-stuff/reports/dollar-store-report).

¹⁴⁷ EPA has acknowledged the lead hazard posed by some vinyl mini-blinds. U.S. ENV. PROT. AGENCY, HOME DANGER ZONE FINDER (last updated Dec. 28, 2015), [available at https://www.epa.gov/lead/home-danger-zone-finder-0](https://www.epa.gov/lead/home-danger-zone-finder-0) (“Some imported, non-glossy vinyl mini-blinds can be a lead hazard. Sunlight and heat can break down the blinds and may release lead-contaminated dust.”).

¹⁴⁸ EDUCATIONAL SERVICES FOR CHILDREN AFFECTED BY LEAD EXPERT PANEL, *supra* note 135.

¹⁴⁹ *Id.*

¹⁵⁰ 20 U.S.C. §1432(5).

¹⁵¹ 20 U.S.C. § 1432(1); 20 U.S.C. § 1432(5)(B).

¹⁵² Barth, R. P., Scarborough, A., Lloyd, E. C., Losby, J., Casanueva, C., & Mann, T. *Developmental Status and Early Intervention Service Needs of Maltreated Children* U.S. DEP’T OF HEALTH & HUMAN SERVS, OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION (Washington DC, 2007) [available at http://aspe.hhs.gov/hsp/08/devneeds/apa.htm](http://aspe.hhs.gov/hsp/08/devneeds/apa.htm).

¹⁵³ 20 U.S.C. § 1432(3)(B); 34 C.F.R. § 303.10.

¹⁵⁴ *See* Appendix 2, EDUCATIONAL SERVICES FOR CHILDREN AFFECTED BY LEAD EXPERT PANEL, *supra* note 135.

intervention eligibility.¹⁵⁵ Thirteen states mention “toxic” exposures as meeting eligibility criteria.¹⁵⁶ Similarly, children with lead poisoning or a past EBLL may be eligible for Part B under the “other health impairment” category in the eligibility criteria. DOE should issue guidance recommending that all states include lead poisoning and/or “exposure to toxic substances” in the eligibility criteria for Part C and a history of lead poisoning in the “other health impairment” category for Part B eligibility.

G. U.S. Department of Agriculture (USDA) should ensure children have access to healthy foods, children not exposed to hazards while living in Rural Development (RD) housing, and families have access to loans to abate lead hazards.

1. The USDA should increase funding for programs in at-risk communities, especially in communities at high risk of cumulative exposure from lead in paint, soil, and/or pipes or where high levels are identified through any individual source.

The USDA should increase access to public benefits and funding for programs in at-risk communities, especially in communities at high risk of cumulative exposure from lead in paint, soil, and/or pipes or where high levels are identified through any individual source. It is essential that children in communities with cumulative exposure obtain all interventions that are known to help children at risk of developmental disabilities from lead poisoning.

The response in Flint, Michigan is illustrative of the type of response essential to combat the effects of lead that should be expanded to all high risk communities.¹⁵⁷ In Flint, USDA expanded programs that promote access to healthy school lunches and encouraged all eligible schools to participate the Community Eligibility Provision that ensures access to free school meals for all eligible school children. This response, when coupled with an increase in funding through the Fresh Fruit and Vegetables Program, provided healthy foods that can combat the effects of lead poisoning for vulnerable children. Additionally, the USDA granted funds to Michigan to extend Summer Electronic Benefit Transfer (EBT) funds to ensure greater access to healthy meals in the summer. Families who qualified for Women, Infants, and Children (WIC) assistance were also allowed to use WIC benefits for ready-to-feed formula that did not need to be mixed with water, and for lead testing for WIC recipients¹⁵⁸, and the the WIC Farmers Market Nutrition program was expanded to expand access to healthy foods that lead absorption.¹⁵⁹ The USDA also worked with local partners through the The Emergency Food Assistance Program (TEFAP) to deliver foods rich in calcium, iron, and Vitamin C (nutrients --which are known to help combat lead absorption in the body) -- to the local food banks. Last, USDA worked with local partners to ensure greater community nutrition education targeted to limit absorption of lead.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ U.S. DEP’T OF AGR., FACT SHEET: USDA ASSISTANCE TO RESIDENTS AFFECTED BY THE WATER EMERGENCY IN FLINT, MICHIGAN”(Last Updated: Aug. 16, 2016) *available at* <https://www.usda.gov/media/press-releases/2016/02/10/fact-sheet-usda-assistance-residents-affected-water-emergency-flint>

¹⁵⁸ U.S. DEP’T OF AGR., USDA TO TEMPORARILY ALLOW WIC FUNDS TO BE USED FOR LEAD TESTING FOR FLINT-AREA WIC RECIPIENTS, ANNOUNCES OTHER MEASURES TO EXPAND ACCESS TO HEALTHY FOODS (Last Updated: Oct. 17, 2017) *available at* <https://www.fns.usda.gov/pressrelease/2016/003716>

¹⁵⁹ U.S. DEP’T OF AGR., WIC FARMERS’ MARKET NUTRITION PROGRAM (FMNP) (Last Updated: June 8, 2017) *available at* <https://www.fns.usda.gov/fmnp/wic-farmers-market-nutrition-program-fmnp>

2. USDA Rural Development Housing should update its guidance under the Lead Safe Housing Rule and increase lead hazard remediation services in rural areas.

Rural Development should update its guidance¹⁶⁰ to comply with the recommendations set forth in Section I(1) of this letter. The USDA should also increase the level of housing repair and housing rehabilitation funding that is made available in rural areas for lead hazard remediation. The USDA should more directly market the use of those housing rehabilitation funds to owners for the permissible use on lead hazard interventions.

H. Funding for the Department of Energy Weatherization Assistance Program and the Department of Health and Human Services Low-Income Home Energy Assistance Program should be increased to allow for the replacement of leaded windows with lead free Energy Star windows under WAP and LIHEAP Programs respectively.

The Department of Energy (DOE) and HHS should recognize the expansive benefits that Weatherization Assistance Program (WAP) and the Low-Income Home Energy Assistance Program (LIHEAP) offers to reduce health and safety risks within the home. It is well established that a comprehensive housing intervention that integrates weatherization, energy efficiency, and healthy homes produces cost effective benefits that mitigate environment-related health problems and enhances the well-being of low-income households. In February 2012, HUD released the Lead-Paint Hazard Control Grant Program follow-up evaluation study, which was the first study to examine the long-term effects of window replacement. Of the 181 homes examined, most “were low-income at 12 years, with 65% under \$20,000/year, 17% from \$20,000–\$29,999/year, and 18% for \$30,000 or more per year”.¹⁶¹ Twelve years following the intervention, homes that replaced all of their windows had 41% lower interior floor dust lead and 51% lower window sill dust lead compared to homes with non-replacement.¹⁶² A testament that full window replacement yields a benefit that should be considered and funded.

Currently, under WAP’s technical manual window replacement is typically not allowed because it is not considered a justifiable cost; however, we propose the alternative, the Savings to Investment Ratio (SIR) should consider that replacing leaded windows is a justifiable cost because it directly correlates to lead prevention. Lead free windows promotes an improved healthy home that produces benefits for the life of the home and its occupants. Therefore, we highly recommend that SIR for WAP and LIHEAP allow for lead free window replacement by including the monetized health benefits of lead free window replacement, which are \$6,847 in housing units built before 1940, \$2,847 in units built from 1940-1960, and \$632 in units built from 1960-1978 (in 2005 dollars).¹⁶³

¹⁶⁰ Tony Hernandez and Lillian Salerno Administrator, *Rural Development Compliance with Lead-Based Paint Rule*, RD AN No.4780 (1924-A), (Nov. 12, 2014) available at <https://www.rd.usda.gov/files/an4780.pdf>.

¹⁶¹ Sherry L. Dixon, David E. Jacobs, Jonathan W. Wilson, Judith Y. Akoto, Rick Nevin, and C. Scott Clark. *Window Replacement and Residential Lead Paint Hazard Control 12 Years Later*. ENV’L RESEARCH 113, 14-20 (2012).

¹⁶² *Id.*

¹⁶³ *Id.*

III. Increased funding for lead hazard identification and remediation¹⁶⁴ is essential to ending the lead epidemic.

Congress allocates funding annually to address lead hazards throughout the country. All agencies described above should request increased funding for lead hazard remediation to ensure children are no longer exposed to lead poisoning. While this section primarily focuses on HUD programs, all agencies with a role in lead poisoning prevention should dedicate increased funds to ending the lead epidemic.

A. Title X – Lead-Based Paint Hazard Reduction Act of 1992.

Each year, HUD uses funds to provide grants to states for the purposes of lead hazard control and elimination. The Lead-Based Paint Hazard Control (LHC) and Lead Hazard Reduction Demonstration (LHRD) Grant Programs are the primary grant source and are vital in reducing the amount of lead-based hazards present in our housing stock. As a result of these grants, lead hazards in over 190,000 housing units have been remediated or eliminated. In 2018, HUD is proposing to use these funds to address lead hazards in at least 8,400 units. With more support, these programs can target a greater number of at-risk housing units and continue to make to reduce the prevalence of childhood lead poisoning will cease. To end lead poisoning as a major public health threat by remediating the most at risk housing in the US, low income homes with lead hazards that are occupied by children under age 6, HUD and Congress should increase the budget for lead hazard reduction funding from \$110-\$130 million to \$2.5 billion annually for the next five years.

HUD should allow grantees of the HUD Office of Lead Hazard Control and Healthy Homes and other HUD programs to use funds to replace leaded water fixtures and lead service lines in homes in addition to paint related hazards. Other recommended key revisions to Title X include: mandate that lead risk assessments and testing be performed in pre-1978 properties of paint, soil and water prior to sale for any property not previously determined to be lead free; remove the exemption for zero bedroom dwelling units; and expand eligible HUD lead hazard reduction grantees to include nonprofit organizations.

B. Healthy Homes Supplemental Funds.

The HUD Healthy Homes Supplemental Funds provide grants to supplement Lead Hazard Control and Lead Hazard Reduction Demonstration Program grants to remediate other home-based environmental health hazards that contribute to asthma episodes, cancer, and unintentional injuries. In 2018, HUD is proposing to use these important funds to mitigate unhealthy conditions in 6,700 low-income older homes that will make homes healthier while supporting the expansion of healthy homes assessment and intervention practices in the field. We strongly urge HUD to keep funding for the Healthy Homes Supplemental Funds and Healthy Homes Technical Studies Grant Program. HUD should also adopt a healthy housing standard for HUD owned and assisted properties

¹⁶⁴ This section was drawn from Green & Healthy Homes Initiative Comments to “Reducing Regulatory Burden; Enforcing the Regulatory Reform Agenda Under Executive Order 13777,” Docket No. HUD-FR-6030-N-01, June 14, 2017.

C. Community Development Block Grant Program.

The Community Development Block Grant is vital in supporting safer housing in low- and moderate-income communities. CDBG funds may be used directly to fund lead-hazard identification and abatement activities and may also be used to supply required matches to receive other lead control funding. CDBG funding is not listed in the 2016 inventory of federal programs addressing lead hazards, but should be recognized as an opportunity to provide federal support to local partnerships designed to reduce and eliminate lead hazards. In 2017, CDBG funds were expected to reach 1,200 entitlement grantees, 49 states, Puerto Rico, 3 non-entitled communities in Hawaii, and 4 Insular Areas. Many jurisdictions rely heavily on these funds to provide for lead hazard reduction grant resources and to support healthy housing measures and this program should not be eliminated from the HUD budget.

D. HOME Investment Partnerships Program.

The HOME Program provides grants to fund activities to build, buy, and rehabilitate affordable housing. The HOME Program's application and scoring criteria, along with technical assistance, should consider the proportion of housing in an applicant's jurisdiction that presents lead hazards and emphasize lead-abatement activities as a recommended use of HOME funds.

E. Improving lead standards for HUD owned or assisted housing.

HUD should require identification and lead hazard remediation of lead based paint hazards and lead service lines in all federally owned homes and homes with federally supported or insured mortgages through enhanced regulations and improved LSHR enforcement where applicable. HUD should require the remediation prior to sale of any lead hazards identified.

F. 203(k) loans and other financial incentives.

Incentivize investment in lead-based paint remediation through creating a very low or no interest loan program accessible to homeowners and rental property owners. The program should be available as a loan product or mortgage instrument as well as a program to provide a solution for owners to identify, finance, and remediate lead hazards. HUD should support greater use of 203(k) loans for lead-based paint hazard remediation.

G. Enhancing Enforcement of the Lead-Protective Laws Through Greater Information-Sharing.

The 2016 inventory includes Department of Justice (DOJ) activities around enforcing the protections secured by the Residential Lead Based Hazard Reduction Act and the Lead Renovation, Repair, and Painting Rule. The inventory notes that these actions recover funds that can be used for lead-abatement activities. By increasing information-sharing among local, state, and federal entities (e.g., local and state health departments and local building departments) about where lead hazards persist, enhanced enforcement of lead-protective laws can generate funding for abatement activities while also holding landlords accountable for identified but unaddressed lead hazards on their premises. HUD should also review local administrative plans

to ensure compliance with recently enacted changes to the Lead Safe Housing Rule and associated guidance.

IV. Continued Research in lead hazard identification, remediation, and prevention is critical to eliminating lead poisoning

The Task Force has requested recommendations for areas to focus on improving hazard controls and treatment of lead poisoning symptoms. In order to advance knowledge on the effects of lead hazards and to inform lead policies, programs, and legislation, the Task Force should analyze the likelihood that a property assessed to contain lead hazards will result in a child being poisoned by lead in the home.¹⁶⁵ The Task Force should analyze the effect of energy efficiency and weatherization on residents' health and safety outcomes as well as the value added to properties after receiving remediation services. In addition, the task force should investigate predictive modeling strategies to identify lead hazards before a child is lead poisoned.

The Task Force should work to improve public access to data that is currently not accessible.¹⁶⁶ Federal agencies should work with state and local agencies together to make lead-risk data and maps publicly available for families and policymakers alike. This data can help families and policymakers understand where there are sources of exposure, such as property-specific information on leaded drinking water pipes and lead in the water, dust, paint, and soil at or near homes, schools, and child care facilities.

Additionally, the Task Force should fill in gaps in research to better target prevention and response efforts. New studies should identify populations at greatest risk and identify the sources of lead exposure in various communities.

MESSAGING AND OUTREACH

I. Engage affected community members, state agencies and local stakeholders to address environmental health risks and safety risks of lead exposure in children.¹⁶⁷

The success and sustainability of community-based interventions are dependent upon community engagement in identifying and defining the problems as well as setting and achieving goals for improvement.¹⁶⁸ The community-based participatory approach allows the members of the community to develop strategies that will address social determinants of poor health and is well suited to public health interventions.¹⁶⁹ In order to successfully engage disadvantaged communities, it is critical to provide technical and material support as well as the transfer of

¹⁶⁵ GREEN & HEALTHY HOMES INITIATIVE, "STRATEGIC PLAN TO END CHILDHOOD LEAD POISONING: A BLUEPRINT FOR ACTION" (Oct. 2016), available at <http://www.greenandhealthyhomes.org/sites/default/files/GHHI-BlueprintforAction-Final.pdf>.

¹⁶⁶ Health Impact Project, *supra* note 76.

¹⁶⁷ This recommendation is based on the recommendations included in Emily A. Benfer & Allyson E. Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARVARD L. & POL'Y REV. 1 (2017).

¹⁶⁸ See Wilhelmine D. Miller et al., *Healthy Homes and Communities: Putting the Pieces Together*, 40 AM. J. PREVENTIVE MED. 48, 49 (2011).

¹⁶⁹ Emily Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U.L. REV. 275 (2015).

expertise, equal decision-making authority, and the ownership of the research.¹⁷⁰ “Participating in and sharing control of important events affecting their lives might be especially key for socially disadvantaged individuals, who have few opportunities to weigh in on such matters and often cannot prevent undesirable events or bring about good things.”¹⁷¹ Community based approaches that empower community members may also lead to increased political and community participation, which can result in the reduction of social inequity and improved community health common in bonded communities.¹⁷²

On the stakeholder level, numerous organizations and community development agents have worked to improve the physical and economic design of low-income neighborhoods with the goal of eliminating poverty. At the same time the public health and medical fields focus on improving the health of low-income populations through community investment and healthy homes approaches. These entities are often working in the same communities at high risk of lead hazard exposure. As David Erickson, the Director of the Center for Community Development Initiatives at the Federal Reserve Bank of San Francisco said:

There is an entire industry—community development—with annual resources in the tens of billions of dollars that is in the ‘ZIP-code- improving’ business. And in the health field, there is increasing recognition of the need to act on the social determinants of health. The time to merge these two approaches—improving health by addressing its social determinants and revitalizing low-income neighborhoods—is now.¹⁷³

The Task Force must collaborate with hospitals and health systems to identify ways to utilize their resources to measure and achieve healthy communities. In the long run, it will benefit the health system through lower readmission rates and better health outcomes for the target population. Together, the community development and health sectors can design holistic interventions to improve the health and environment of the community.¹⁷⁴

In practice, the health care entity should regard the entire neighborhood, and not just the individual, as the patient.¹⁷⁵ Hospitals spend more than \$340 billion each year on goods and services.¹⁷⁶ “Redirecting even a small portion of that spending could have a tremendous impact on helping to restore local economic vitality, providing jobs for hard-to-employ people, and rebuilding urban fabrics and rural value chains.”¹⁷⁷ In a high impact approach, “hospitals and integrated health systems are increasingly stepping outside of their walls to address social, economic and environmental conditions that contribute to poor health outcomes, shortened lives,

¹⁷⁰ See Wilhelmine D. Miller et al., *Healthy Homes and Communities: Putting the Pieces Together*, 40 AM. J. PREVENTIVE MED. 48, 49 (2011).

¹⁷¹ *Id.*

¹⁷² Emily Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U.L. REV. 275 (2015).

¹⁷³ See Ctr. on Social Disparities in Health et al., *Making the Case for Linking Community Development and Health 2* (2015), available at

http://www.buildhealthyplaces.org/content/uploads/2015/10/making_the_case_090115.pdf

¹⁷⁴ *Id.* at 15.

¹⁷⁵ Matthew E. Dupre et al., *Place-Based Initiatives to Improve Health in Disadvantaged Communities: Cross-Sector Characteristics and Networks of Local Actors in North Carolina*, 106 AM. J. PUB. HEALTH 1548, 1548 (2016).

¹⁷⁶ See Tyler Norris & Ted Howard, Can Hospitals Heal America’s Communities? “All in for Mission” is the Emerging Model for Impact,” DEMOCRACY COLLABORATIVE 1,2 (2015).

¹⁷⁷ *Id.* at 13.

and higher costs in the first place.”¹⁷⁸ For their efforts to be effective, cross-sector collaboration is critical.

It is equally important that the Task Force increase support to local initiatives to implement or expand proactive rental inspections. Many cities across the country have adopted or are contemplating enacting proactive rental inspection programs. These programs often prioritize identification and abatement of lead hazards, correctly considering lead hazards to be dangerous to residents’ present and future wellbeing. Although these programs are often designed to be self-sustaining, in smaller or less-resourced communities, federal funding or technical support could encourage additional adoption and implementation of inspection programs, or creation of an abatement fund for lower-income rental properties. Engaging the advocacy community and other interprofessional actors will be critical for success.

By highlighting these current and potential opportunities for interdepartmental, intergovernmental, and public-private collaboration, the strategy can better leverage limited funding available for lead testing and abatement activities and lift up best practices. The taskforce is in a unique position to lead a coordinated national effort to eliminate lead hazards. Rather than cataloguing individual departments’ activities, the taskforce should encourage, build, and emphasize collaborative activities essential to meeting the federal lead strategy’s ambitious goals.

CONCLUSION

We commend the President’s Task Force on Environmental Health Risks and Safety Risks to Children for its commitment to developing strategies to protect children from environmental health risks and appreciate the opportunity to comment. We urge you to swiftly develop a comprehensive federal strategy to *eliminate* lead from children’s environments and prioritize primary prevention practices to eliminate legacy lead, halt current use of lead, and prohibit industrial processes that contaminate the environment with lead. For more information, please contact Emily Coffey, Housing Justice Staff Attorney at the Sargent Shriver National Center on Poverty Law, at emilycoffey@povertylaw.org and Emily Benfer, co-principal of Health Justice Innovations, Inc., at emily.benfer@healthjusticeinnovation.com.

Sincerely,

Sargent Shriver National Center on Poverty Law
Health Justice Innovations, LLC
Green & Healthy Homes Initiative
National Health Law Program
Natural Resources Defense Council
Lawyers’ Committee for Better Housing
Poverty & Race Research Action Council

On behalf of the following organizations:

Advocates for Basic Legal Equality, Inc.
Center for Civil Justice
Cleveland Lead Safe Network

¹⁷⁸ *Id. at 1.*

Columbia Legal Services
Connecticut Legal Services
Elevate Energy
Empire Justice Center
Fair Housing Council of the San Fernando Valley
Florida Legal Services
Hawai'i Appleseed Center for Law and Economic Justice
Kansas Appleseed Center for Law and Justice
Legal Aid Society of the District of Columbia
Legal Council for Health Justice
Legal Services of New Jersey
Loyola University Chicago School of Law Civitas ChildLaw Center
Massachusetts Law Reform Institute, Inc.
Mississippi Center for Justice
National Housing Law Project
National Low-Income Housing Coalition
New Mexico Center on Law and Poverty
North Carolina Justice Center
Northwestern University School of Law Bluhm Legal Clinic's Environmental Advocacy Center
Ohio Poverty Law Center
South Carolina Appleseed Legal Justice Center
Tennessee Justice Center
Texas Appleseed
Texas Legal Services Center
Western Center on Law & Poverty