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November 22, 2011

Ms. Shelley Poticha  
Director for Office of Sustainable Housing and Communities  
U.S. Department of Housing & Urban Development  
451 7th Street S.W.  
Washington, DC 20410  
[EJStrategy@hud.gov](mailto:EJStrategy@hud.gov)

Re: **Comments on HUD's draft Environmental Justice Strategy:  
The Continuing Crisis of Lead Poisoning and Need to Do More to Reach Private, Non-  
Assisted Housing**

Dear Ms. Poticha,

Throughout HUD's proposed Environmental Justice Strategy, and in the message from Secretary Donovan that accompanies the draft, HUD highlights the progress that has been made since 1992 in reducing childhood lead poisoning. While we do not want to minimize the importance of that progress, HUD itself acknowledges that *"each year there are still over 200,000 children poisoned by lead."* At that level, any other health issue, particularly one which causes permanent injury and has lifelong consequences, would be properly identified as an urgent crisis. In fact, the number of children poisoned is unquestionably much higher since tens of thousands (or perhaps hundreds of thousands) of more children are poisoned by lead but *never identified* since only a portion children are actually screened for lead poisoning – in many areas less than 50%.

Lead poisoning is more than a critical health issue. Given its devastating impact on minority communities (schools, juvenile justice, lifelong earnings losses) it is also a critical Environmental Justice issue. More than a decade ago the Centers for Disease Prevention and Control and health professionals around the country set the year 2010 as the date by which we were to have eliminated lead poisoning. It is now nearly 2012. That target has come and gone, and while the CDC and HUD continue to highlight the overall drop in the national and state lead poisoning rates there is little to no recognition that in many minority neighborhoods those rates continue in double digits.

The HUD Environmental Justice Strategy provides an important platform for addressing this ongoing crisis and confronting these racial disparities.

### **The Number of Lead Poisoning Cases Is Underestimated.**

The problem is actually even worse than the HUD estimate of 200,000 children who continue to be poisoned each year. That number is based upon an estimate for the number of children poisoned with an “elevated blood lead level” of 10 µg/dL. That measure actually *underestimates* the extent of the danger and the need for HUD to do more to assure that municipalities adopt more effective “primary prevention” strategies. Primary prevention, of course, is the approach of finding lead hazards in housing *before* children are poisoned rather than simply inspecting the housing and finding the hazard after it is too late.

The proposed Environmental Justice Strategy needs to be revised to take into account the most recent health policy guidance available from the Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP). That body is the federal advisory committee charged with the responsibility to provide advice and guidance to the Centers for Disease Control and Prevention (CDC) and other federal agencies regarding “new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts.” On November 16, 2011 the ACCLPP voted to recommend an important change in the method used to establish the elevated blood lead level that should be used by federal programs in formulating primary prevention strategies. Their recommendation was based upon the most recent and most sound science available. That research establishes that there is no lead poisoning level that does not produce “deleterious effects.” The ACCLPP estimates that number of children impacted by lead poisoning at their recommended reference level (5 µg/dL) is actually 450,000 children -- more than twice the number described in HUD’s draft strategy.

### **Residential Segregation Creates Gross Racial and Ethnic Disparities.**

No child, regardless of race or ethnicity, should ever be poisoned by lead. Nevertheless, it is particularly troubling that the overwhelming majority of the hundreds of thousands of children who continue to be poisoned are racial and ethnic minorities. Although complete race and ethnicity data is lacking in health records, we *do* know from the race data that *is* reported (and by the predominance of lead poisoning cases in areas of high minority concentration), and that lead poisoning is a crisis that continues to impact minority children. That’s true despite the significant drop in lead poisoning rates among non-minority children. In New York State, for example, an African American child under age five is eight times more likely to live in an area of “high risk” for lead paint hazards than is a white, non-minority child. High patterns of racial segregation have conspired to produce the result that one-third of the African-American children under age five live in one of the 36 that have been identified as “high risk” for lead paint hazard. Those 36 zip codes -- out of over 1600 zip codes in New York State -- accounted

for over 41% of the children poisoned in the state outside of N.Y. City. Notwithstanding the egregious failure of health personnel to report race and ethnicity as required, anecdotal information from health care providers in the Rochester, New York area suggests that, 80% or more of the children who are poisoned are minority. There is no information suggesting that that rate is not typical.

Until we reach the point at which minorities have meaningful housing choice and opportunities to move outside of these high risk areas to more healthful housing, it is critical that HUD's strategic plan identify the tools and leverage that HUD has to address these health disparities.<sup>i</sup> HUD should include in its requirements for the local Analysis of Impediments to Fair Housing (AI) that communities conduct a specific analysis to determine the extent to which minorities are experiencing a disparate impact with respect to lead poisoning (and other health issues). HUD should assure that they have the ability and resources, such as GIS mapping and to conduct data analysis in coordination with health and social services agencies, and to establish inspection programs that will assure that private housing in high-risk areas, particularly minority neighborhoods, is inspected to eliminate lead-paint hazards.

**Now We Need to Target the Homes Where Minority Children Continue to be Poisoned: Privately-Owned, Non-Assisted Housing.**

Commendably, HUD has been largely successful in getting its own "houses" in order (public housing and the HUD-assisted multifamily housing programs) by requiring lead paint removal and lead-hazard abatement, and by then requiring ongoing inspections in its assisted housing programs. But the children who are continuing to be poisoned live in non-assisted, privately owned housing. That's the housing that needs to have an inspection mechanism for finding lead-paint hazards. That's the stock of housing relied upon by minority families living in older urban neighborhoods and in high poverty rural areas. In that housing, lead hazards remain pervasive. In most communities that housing is not even inspected for lead-paint hazards. (In fact, the International Building Codes Council's model Property Maintenance Code which has been adopted in state and local jurisdictions throughout the country, does not even include lead paint hazards as a code violation).

HUD should include in the EJ Strategy ways to assure that private housing is inspected for lead hazards. One tool in HUD's toolbox would be to provide stricter scrutiny (along with increased technical support and guidance) to communities regarding their existing Consolidated Plan and Annual Action Plans obligations under Part 91 to evaluate and reduce lead-paint hazards. Communities should be required as a condition to their receipt of Consolidated Plan funding to both certify that they have adopted systems that will assure inspections for older housing located in high-risk areas, and to specifically describe in their certifications the mechanisms they will use to do so.

HUD has other tools as well. It can reach the private housing inventory market through incentives in the SHHP program and by reviewing and adopting more effective Housing Quality Standards provisions in the Section 8 Housing Choice Voucher program. The Housing Choice

Voucher program, while still a form of assisted-housing, nevertheless offers the single greatest mechanism to get “in the door” to inspect the private housing stock. The Housing Choice Voucher program now encompasses over two million housing units, many of which are located in neighborhoods having a high risk for lead paint hazards. While HUD’s HQS regulations through Part 35 already contain requirements for visual inspections in certain units, HUD should evaluate the potential for requiring more comprehensive safeguards in areas identified through health or building records as being located in areas of high risk housing.

HUD’s Office of Fair Housing and Equal Opportunity has a critical role with respect to reaching the private housing inventory, both for Section 8 and non-Section 8 units. It is essential that FHEO take steps increase the initiatives it has recently undertaken to protect households from discrimination by landlords who will not rent to families with children because they fear they will sued because of lead poisoning or because they may be required to remediate lead hazards to comply with HQS. (Currently when a landlord drops out of the Section 8 program because a unit has failed a lead hazard inspection there is often no safeguard in place to prevent that unit from being rented to a non-Section 8 household).

**We Can’t Rely Exclusively on Hazard Elimination Grants and the Disclosure Rule, and The Exemption for Properties Transferred in Foreclosures Must Be Addressed.**

Thus far, the primary tools to reach private housing have been HUD’s Lead Hazard Elimination Grants and the HUD “Disclosure Rule” alluded to in the draft. The grant program, although a commendable and important program, has reached only 335,000 units over fifteen years. While that seems like a large number, it pales in comparison to the tens of millions of older housing units (particularly pre-1950 housing) that are estimated to contain lead-paint hazards.

Similarly, the Disclosure Rule established in the Residential Lead-Based Paint Hazard Reduction Act of 1992, and spotlighted by HUD in the draft strategic plan, does not address the enormity of the problem. Quite frankly that rule, which requires sellers and landlords to disclose known lead paint hazards, is not working. In the absence of systemic housing inspections of private housing for lead-paint hazards the federal disclosure rule is simply ineffective. Owners have no “known” hazards to disclose. Even when there is a history of a known lead hazard, the rule is more honored in the breach than the observance. For all intents and purposes, there are no EPA or HUD resources to enforce the rule.

Making matters worse, the rule has been further undermined by an exemption in that rule for properties transferred in foreclosure. HUD needs to squarely face the previously unforeseeable reality of six million foreclosures, particularly since those foreclosures are disproportionately concentrated in minority neighborhoods. The strategic plan should commit to identifying inter-departmental and inter-agency authority to assure that banks transferring foreclosed properties in high risk areas do not contain lead-paint hazards and for requiring that banks ascertain and disclose lead hazards that have been previously documented in health and building department records.

## **Conclusion.**

The HUD Environmental Justice Strategy needs to forcefully acknowledge that, despite HUD's progress, lead poisoning remains at crisis levels. The EJ strategy should also clearly emphasize that injuries from lead poisoning are permanent, that poisoned children suffer physical and intellectual damage that reduces their life opportunities; and that *minority* children continue to be poisoned in grossly disproportionate numbers. The plan should include a commitment from HUD to evaluating how its housing financing, banking and community development programs and affiliations can more effectively be used as leverage and how HUD incentives can be used to assure that every HUD- assisted community puts in place comprehensive and effective plans to find and remove the lead-paint hazards in the huge inventory of privately owned housing units that are otherwise certain continue poisoning and permanently injuring minority children.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Hanley", is centered on the page. The signature is written in a cursive style with a long, sweeping tail on the final letter.

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<sup>i</sup> See, for example, "Where You Live Can Help Determine Your Health, Studies Say," Baltimore Sun, November 14, 2011; [www.baltimoresun.com/health/bs-hs-health-neighborhood-disparities-20111114,0,2558369.story](http://www.baltimoresun.com/health/bs-hs-health-neighborhood-disparities-20111114,0,2558369.story)