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U.S. Department of Housing and Urban Development

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**Re: ADVANCING HEALTH, ENVIRONMENTAL, AND HOUSING JUSTICE TOGETHER:
RECOMMENDATIONS FOR THE U.S. DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT**

The Biden Administration has made admirable commitments to advancing both environmental justice and racial equity throughout our government's programs. We hope that Congress, too, will provide new funding to advance those ends through infrastructure investments (including affordable housing production, new housing vouchers, and funds for retrofitting and capital improvements), additional enforcement capacity, and additional block grant funding, neighborhood investment, and climate response resources. For the U.S. Department of Housing and Urban Development (HUD), this juncture presents the opportunity to embark on long-needed policy improvements to address health and environmental hazards facing the residents of our nation's subsidized housing programs.

HUD program residents still disproportionately live in areas of concentrated poverty and racial segregation¹ - which is to say, areas of concentrated racial discrimination, where land use practices and disinvestment have long yielded an inequitable (and often dangerous) share of environmental health risks.² As climate change becomes an increasing problem, subsidized housing residents will too often be

¹ See, e.g., Center on Budget and Policy Priorities, Table: Where Assisted Families with Children Live, by Poverty Concentration, noting a median poverty concentration of 22.8% across three main assisted programs of Housing Choice Vouchers, Project Based Rental Assistance, and Public Housing, with 35.1% of such public housing families and 22% of project-based rental assistance families living in extreme poverty areas of over 40% poverty (and that 66.5% and 63.4%, respectively, of families in those programs in extreme poverty areas are Black households), https://www.cbpp.org/research/creating-opportunity-for-children#_apptable1.

² See, e.g., Poverty & Race Research Action Council, The Call for Environmental Justice Legislation: An Annotated Bibliography (compiling resources describing the connections among racial segregation, historical and ongoing racial discrimination in housing and land use, and health risks), <https://prprac.org/the-call-for-environmental-justice-legislation-a-n-annotated-bibliography/>; National Community Reinvestment Coalition, Redlining and Neighborhood Health (noting a high prevalence of health risk factors (including COVID-19 risk factors) in historically redlined neighborhoods, <https://ncrc.org/holc-health/>).

at the frontline.³ As well as suffering exposure to neighborhood-level health burdens, many HUD households face risks within their very homes due to unhealthy unit and development conditions.⁴ The lack of appropriate HUD oversight, along with ongoing patterns of disinvestment, places too many in harm's way. All people deserve safe and healthy housing and neighborhoods, and HUD residents are no exception. Meeting these needs is sound governance, and it is also a matter of racial justice for the administration as a whole and for the agency. The households that HUD serves are disproportionately people of color (for example, among assisted families with children, 54.5% of public housing-assisted households, 50.2% of Project Based Rental Assistance households, and 56.8% of Housing Choice Voucher households are Black) and subsidized households of color disproportionately face conditions of concentrated poverty and environmental racism.⁵

In this letter, we call for HUD to do better, and we specify a number of concrete improvements that the agency can make. For HUD, health justice and environmental justice require a move toward expanded and invigorated enforcement. They also, however, require enacting new standards and protocols in a number of program areas. The prospect of expanded program funding (for the creation of additional subsidized housing) reinforces the need for reform: such housing should remedy, and not perpetuate, problems long embedded in HUD programs, including proximity to health hazards. New funding may also present new opportunities: providing the oversight resources for more careful placement of housing going forward, as well as providing for deeply-needed conditions improvements and neighborhood investments.

As discussed in detail below, we recommend that HUD undertake the following steps:

- Build staff expertise and capacity to engage in meaningful oversight on health and environmental justice issues, across agency divisions; create an agency leadership team, led by senior staff in the office of the Secretary and comprising high-level divisional leadership staff, to institute a commitment to environmental health within HUD's housing programs and to lead the coordination of those efforts with other key federal agencies, including the federal agencies with federal housing programs
- Improve and update its housing inspections policies to provide for reliably safe and habitable housing conditions for all HUD residents and program participants

³ See Maya Buchanan et al., Sea level rise and coastal flooding threaten affordable housing, <https://iopscience.iop.org/article/10.1088/1748-9326/abb266>; see also Natural Resources Defense Council, We Must Invest in Climate-Ready Affordable Housing Now (noting that “neighborhoods that could not attract investment due to racist housing policies starting in the 1930s are today the most vulnerable to flooding and heat waves”, citing work of Groundwork USA, available at <https://groundworkusa.org/climate-justice-for-a-hotter-wetter-segregated-world-introducing-groundwork-usas-climate-safe-neighborhoods-partnership/>); Furman Center, Housing in the U.S. Floodplains (2017), available at https://furmancenter.org/files/NYUFurmanCenter_HousingInTheFloodplain_May2017.pdf.

⁴ See, e.g., HUD's Oversight of Lead in the Water of Housing Choice Voucher and Public Housing Program Units (Aug. 21, 2020).

⁵ See CBPP Table data on relative poverty exposure and resources on segregation and environmental justice, notes 1-3, above; see also TEXAS HOUSERS, PROJECT-BASED SECTION 8 HOUSING ACROSS HOUSTON AND THE WOODLANDS 2 (2019), available at https://texashousers.org/wp-content/uploads/2019/08/PB8_Public_Report_10_23.pdf (regarding racial disparities in property conditions).

- Improve implementation of HUD’s Site and Neighborhood Standards, to ensure that subsidized housing is located in healthy areas free from toxins, flood risk, and other environmental and health burdens
- Ensure that HUD conducts thorough environmental reviews and applies consistent and robust standards and improved protocols (in application to Rental Assistance Demonstration developments and other HUD programs)
- Create better, more targeted standards for the Community Development Block Grant (CDBG) program, and increase resources for community infrastructure and investments
- Ensure a better future for our public housing and other site-based housing, working alongside Congress and other federal agencies

PRINCIPLES FOR HEALTH JUSTICE IN HUD POLICY

Below, we detail a number of concrete steps that we recommend HUD take to advance health and environmental justice in its programs and enforcement. In addition to those specific recommendations, it is important to recognize that what work is done to advance the intersection of health and housing justice must be guided by a core set of priorities and principles. First, communities adversely impacted by unhealthy environmental conditions must be centered in and made part of the decision-making processes for assessing the full nature and extent of harmful environmental conditions and remedying those conditions. For far too long, environmental justice communities have been left out of the decision making impacting their lives and homes. In order to make this possible, directly impacted communities must be provided accurate and understandable information about the potential environmental and health risks associated with their housing and/or the location of it and the resources necessary to secure their own experts and advice. HUD must provide members of those communities with meaningful, easily accessed, multi-stage opportunities for input on the decisions that affect them. Second, enforcement of environmental and health standards to protect people in their homes can only be effective if there are sufficient resources committed to ensure uniform enforcement of those standards. Third, policy solutions must include the right of households, regardless of the type of housing they live in, to exercise housing choice (including the right to move) as well as to offer place-based solutions. Fourth, HUD and EPA must lead the creation of a uniform and improved set of standards that will apply across federally subsidized housing, including when other agencies, such as the U.S. Department of Transportation (DOT) and U.S. Department of Agriculture (USDA), are involved. Fifth, interagency collaboration, through a Memorandum of Understanding, is vital to the success of this effort, and such collaboration should include data sharing, policy alignment, program coordination, joint funding levers, enforcement coordination (including in remedy design) and uniform communications across all of the relevant agencies.

It is important to recognize that the issues addressed in this document are from far exhaustive. Other reforms that could impact health and environmental outcomes, including clean energy initiatives structured to benefit low-income communities, more affordable housing in communities of opportunity free from environmental and health hazards, and the extensive reform of environmental laws and related enforcement, are also critical to the advancement of environmental justice. In addition, this document focuses largely on actions that HUD itself can take, though as noted above, interagency coordination measures are also critical.

SPECIFIC RECOMMENDATIONS FOR HUD

1. Commit agency leadership and prioritize the creation of dedicated staff capacity

Each of the recommendations that follow will be reliant on HUD making clear, from the highest level of the agency and each of its divisions, that safeguarding the environmental health of residents of HUD assisted housing is a serious priority and a true commitment. This requires that HUD develop the internal structure to generate and expeditiously follow through on policy changes and to focus staff on oversight, as well as to coordinate with other agencies and the White House to advance environmental justice and health justice for HUD subsidized households (and raise the profile of these issues). We recommend that senior staff in the office of the Secretary propel forward an agency leadership team, which should include divisional leadership staff and other high-level staff specializing in health and environmental justice. In addition, each HUD program area should ensure that it has dedicated staff to do this work. New expertise should be brought into the agency, and current staff provided with training on health and environmental issues (both at Headquarters and across HUD's regional offices). In addition to expanded and dedicated capacity within every division, we recommend that the Office of Fair Housing and Equal Opportunity be charged with a robust cross-cutting role in improving policies and oversight (given the close connections between discrimination, segregation, and health justice, and the specific needs for better oversight policies). In addition, HUD should lead the development of uniform, cross-cutting federal policy on how to identify environment challenges in HUD-supported housing and secure environmental health (including choice mobility) for all residents of federally assisted housing. HUD should take immediate action on these recommendations wherever possible, and should make specific commitments in its related public planning processes. This includes the equity plan required by Executive Order 13985 (Advancing Racial Equity and Support for Underserved Communities through the Federal Government). HUD's Environmental Justice Strategy (Executive Order 12898, Federal Actions to Address Environmental Justice) and Climate Change Adaption Plan should also be updated and should include the specific steps described below.

2. Safe and habitable housing unit conditions for federally assisted households: improve and update HUD inspections policies

Congress has passed multiple statutes to require that HUD-assisted housing be decent, safe, sanitary, and in good repair.⁶ But those statutes and implementing regulations have largely failed to address the common environmental and health risks present in the outdoor environment surrounding HUD-assisted housing unless an environmental review has been triggered under the National Environmental Policy Act.⁷

On February 21, 2021, HUD's Office of Inspector General (HUD OIG) issued a report, *Contaminated Sites Pose Potential Health Risks to Residents at HUD-funded Properties*.⁸ In this report, HUD OIG

⁶ See e.g., the United States Housing Act of 1937, 50 Stat. 888 (1937).

⁷ 42 U.S.C. 4321 et. seq. (1969); see also Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE), 86 Fed. Reg. 2582, 2585 (Jan. 13, 2021) (reinforcing HUD's intention to prioritize reviewing the effects of the built environment in its decent, safe, and healthy assessment without serious consideration of the impact of the outdoor environment).

⁸ Office of Inspector Gen., U.S. Dep't of Housing & Urban Dev., Audit Rep. No. 2020-CH-004, *HUD's Oversight of Lead in the Water of Housing Choice Voucher and Public Housing Program Units* (Aug. 21, 2020).

found that HUD's current approach to identifying and addressing contaminated sites has resulted in federally-assisted housing residents experiencing prolonged exposure to toxic contamination, including dangerously high levels of lead and proximity to Superfund sites that continue to present significant risks to human health. Even before the HUD OIG report, the independent report *Poisonous Homes* (from Earthjustice and the Shriver Center) exposed how tens of thousands of families live on or near dangerously contaminated land, including thousands of families participating in HUD's programs.⁹ But HUD's current inspection and oversight protocols remain silent on virtually all of the issues raised in both reports, including the ongoing failure of HUD inspections to address the toxic exposure these families endure.

Additionally, HUD has noted its current inspection protocols have largely remained the same since their inception; these protocols rely heavily on individual judgment, do not incorporate technological advances, and do not place an adequate amount of focus on the living conditions within individual units.¹⁰ Further, the current physical inspection processes do not include resident engagement. As a result, HUD's inspection and enforcement actions are inaccessible to residents, hampering their ability to be a partner to HUD and housing providers.

To provide decent, safe, and sanitary housing, as mandated by statute, HUD must:

Revise the physical inspection protocols for all HUD housing programs to include the assessment of environmental risks and the identification of any hazardous physical conditions including building materials.¹¹

- HUD must establish, in consultation with environmental experts, comprehensive and protective air quality standards and definitions of safe, potable water.¹² HUD must monitor each assisted unit's water quality and each property's ambient air quality to ensure compliance.
- HUD and local public housing authorities must improve their environmental assessment processes, including engaging environmental experts to handle issues related to complex hazardous waste sites.¹³ And where HUD-assisted families live in environmentally contaminated

⁹ Earthjustice & Shriver Center on Poverty Law, POISONOUS HOMES: THE FIGHT FOR ENVIRONMENTAL JUSTICE IN FEDERALLY ASSISTED HOUSING (2020), <https://www.povertylaw.org/report/poisonoushomes/> [hereinafter "Poisonous Homes"].

¹⁰ 86 Fed. Reg. at 2583.

¹¹ See Comments from National Housing Law Project and Earthjustice on Docket No. FR-6086-P-01 Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) to U.S. Dep't of Hous. and Urban Dev. 2, 4, 12-19 (Mar. 15, 2021), <https://www.regulations.gov/comment/HUD-2021-0005-0072> [hereinafter "NHLP Earthjustice Comments"]; Comments from the National Alliance of HUD Tenants on Docket No. FR-6086-P-01 Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) to U.S. Dep't of Hous. and Urban Dev. 2-5 (Mar. 15, 2021), <https://www.regulations.gov/comment/HUD-2021-0005-0072> [hereinafter "NAHT Comments"]; Poisonous Homes at 5-9, 48-69. HUD currently has physical conditions standards and inspection protocols for the following HUD housing programs-- public housing and multifamily programs (including project-based Section 8, Section 202 Supportive Housing for the Elderly, and Section 811 Supportive Housing for Persons with Disabilities), Housing Choice Voucher (HCV) program (including the Project Based Voucher (PBV) and Tenant Based Voucher (TBV) programs), HOME Investment Partnerships (HOME), the national Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), Housing for Persons with AIDS (HOPWA), and the Continuum of Care (CoC).

¹² NHLP Earthjustice Comments at 5-12; Poisonous Homes at 55; NAHT Comments at 2-5.

¹³ Poisonous Homes at 50-66.

housing, HUD must permit families to voluntarily relocate; at the families' election, either to other federally assisted housing or by providing a Tenant Protection Voucher.¹⁴

- When a new site is being considered for listing on the National Priorities List, residents should receive actual notice of the site's potential listing, as well as any subsequent inclusion on the National Priorities List, and any associated health risks from living in proximity to the proposed site.¹⁵ Health interventions, such as access to free testing and prompt medical follow-up and care, should be triggered automatically for all federally assisted households living at or near contaminated sites.¹⁶
- HUD must improve protocols for the identification, abatement, and stabilization of hazardous building materials and other hazardous conditions.¹⁷ Where inspectors have reason to suspect that an environmental hazard might exist—through their observations, reports, meetings with tenants or maintenance staff, or city agencies—inspectors should be required to document the potential presence of environmental hazards in their REAC report, triggering environmental hazards testing conducted by a professional testing company previously vetted by HUD.¹⁸

Collect and review local code enforcement records for continuous or persistent violations. As required in the NSPIRE Demonstration, housing providers should provide HUD with local code enforcement records. The responsible HUD official that provides oversight of the property should review the local code enforcement data for continuous or persistent code violations. Such reviews would ensure HUD has a fuller understanding of the local code enforcement, health department, and environmental protection agency impressions of the property. Additionally, the inclusion of this information enables physical inspection protocols to evolve by allowing HUD to observe the range of substandard housing conditions that are commonly included in local code inspections throughout the country.¹⁹

Use its authority to quickly bring properties back into compliance and ensure proper and adequate remediation of all physical deficiencies.

- After the housing provider's certification of remediation of all physical defects, HUD must reinspect the property to confirm proper and adequate remediation.
- If a property continues to be in non-compliance after the expiration of the cure period, HUD must take additional enforcement action to quickly bring the property back into compliance, including fines to problem property owners, suspension of HUD payments, foreclosure on any HUD insured mortgage and/or forced sales to non-profit preservation buyers.²⁰

¹⁴ Poisonous Homes at 58-60. Additionally, while beyond the scope of this letter, robust local fair housing enforcement and the expansion of source of income protections for tenants with Housing Choice Vouchers are critical because they reduce barriers to finding housing in communities without environmental contamination.

¹⁵ Poisonous Homes at 52-54, 62, 63.

¹⁶ Poisonous Homes at 66-68.

¹⁷ NHLP Earthjustice Comments at 12-18; NAHT Comments at 2-5.

¹⁸ NAHT Comments at 2-5. And where the presence of environmental hazards is detected, HUD must develop a remediation plan in consultation with the housing provider, resident groups (if present), and the regional HUD official tasked with daily oversight. NAHT Comments at 3.

¹⁹ An example is the requirement to have carbon monoxide detectors. Roughly, half of the states require the use of carbon monoxide detectors; however, HUD has previously not included functioning carbon monoxide detectors as part of its physical inspection standards. Collecting data on which safety considerations are becoming increasingly more important to local jurisdictions will allow HUD to determine if those considerations should be included in the HUD's inspection protocols. *See also*, NHLP Earthjustice Comments at 19; NAHT Comments at 8.

²⁰ *See* HUD, Notice H 2018-08 7-8 (Oct. 29, 2018).

- Improve HUD’s identification of owners who have a history of non-compliance with programmatic requirements, particularly with HUD’s physical conditions standards, and remove them from participating in federally funded housing programs.

Incorporate resident engagement and consultation into HUD’s oversight of assisted properties by reinstating resident surveys, directing inspectors to meet with residents, permitting residents to identify additional units to be viewed during the inspection, and providing residents the opportunity to appeal inspection findings as is presently afforded to owners.²¹

- Amend the agency’s contracts and agreements with participating housing providers to grant assisted families third-party beneficiary status.²²

Make the troubled properties list and high risk of contamination properties list publicly available. Quarterly, HUD submits to the House and Senate Appropriations committees reports concerning troubled properties. The troubled properties report lists the properties with a failing physical inspection score and, or a failed Management and Occupancy Review (MOR).²³ The report also includes a narrative that generally describes the enforcement actions the agency has taken to bring the listed properties back into compliance. While these reports can assist communities in identifying properties with poor housing conditions, they do not convey how HUD is enforcing its physical condition standards. Often it has been the efforts of residents and advocates that have resulted in the preservation of assisted properties and improved housing conditions for families. When residents and advocates are meaningfully engaged by HUD, mutually beneficial solutions are created. As such, HUD should make publicly available the troubled properties list by publishing the list on its website, as well as HUD’s enforcement action at each property, and require housing providers to post final physical inspection scores and HUD enforcement action in any common areas and management offices.

HUD must also make publicly available the list of properties that HUD’s Office of Environment and Energy has identified as at high risk of contamination in the HUD Office of the Inspector General’s February 2021 Report Contaminated Sites Pose Potential Health Risks to Residents at HUD-Funded Properties, 2019-OE-0003. Abrams Environmental Law Clinic at the University of Chicago Law School, Earthjustice, National Housing Law Project, Shriver Center on Poverty Law, and the Wake Forest Health Law Clinic’s comments on the OIG report continue to be relevant for HUD’s consideration.²⁴

In addition, NHLP, Earthjustice, and NAHT’s comments on Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) proposed rule, NHLP and NAHT’s comments on the Notice of Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols, and

²¹ See NHLP Earthjustice Comments at 21-24, 28-29; Comments from National Housing Law Project on Docket No. FR-6160-N-01: Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols to U.S. Dep’t of Hous. and Urban Dev. 2-4 (Oct. 18, 2019), <https://www.regulations.gov/comment/HUD-2019-0068-0014>, [hereinafter “NHLP NSPIRE Comments”].

²² See NHLP Earthjustice Comments at 30; NAHT Comments 6-9, 11.

²³ See Consolidated Appropriations Act, 2020, Pub. L. No. 116-260, § 219, div. H, tit. II, ___ Stat. ___ (2020).

²⁴ See Comments from the Abrams Environmental Law Clinic at the University of Chicago Law School, Earthjustice, National Housing Law Project, Shriver Center on Poverty Law, and the Wake Forest Health Law Clinic to U.S. Dep’t of Hous. and Urban Dev. Sec. Marcia L. Fudge, 4 (April 9, 2021), <https://www.povertylaw.org/article/hud-oig-report-letter/>

Shriver Center and Earthjustice’s Poisonous Homes report continue to be relevant for HUD’s consideration.²⁵

3. Improve implementation of Site & Neighborhood Standards to ensure access to healthy areas

In the 1970s, HUD developed regulatory standards for the siting of its public and subsidized housing developments, largely in response to litigation that had challenged the clustering and containment of such housing in segregated, high-poverty areas, counter to HUD’s Affirmatively Furthering Fair Housing obligation. These standards implement the Fair Housing Act and Title VI of the 1964 Civil Rights Act (prohibiting discrimination by federal funding recipients).²⁶ The current site regulations (embedded in program regulations, such as those for project-based vouchers and public housing) apply to new construction, acquisition, and rehabilitation. That this application has often been theoretical is shown by actual siting outcomes, including both new construction and redevelopment.²⁷ The problems to be addressed are multi-fold: a lack of detail and clarity as to the substantive standards; failure to implement by conducting appropriate site assessments or reviews, in part due to lack of staff capacity in HUD’s division of Fair Housing and Equal Opportunity; relatedly, delegation to funding recipients without accountability; unclear application (thus de facto failure to apply) in situations such as renovations or re-issuance of assistance, such as Project-Based Rental Assistance contracts; and the absence of standards applicable to existing housing developments (that is, in remedial standards or required action).

The current standards assert general parameters for the health of the neighborhood where the housing is to be sited. For project-based vouchers and several other programs, for example, these standards provide that “adequate utilities and streets must be available to service the site,”²⁸ and that the site “must be accessible to social, recreational, educational, commercial, and health facilities and services . . . that are at least equivalent to those typically found in neighborhoods [consisting largely of unassisted housing]”;²⁹ that

²⁵ See NHLP Earthjustice Comments; NAHT Comments; NHLP NSPIRE Comments; Comments from the National Alliance of HUD Tenants FR-6160-N-01: Notice of Demonstration to Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols to U.S. Dep’t of Hous. and Urban Dev. 2-4 (Oct. 20, 2019), <https://www.regulations.gov/comment/HUD-2019-0068-0030>; Poisonous Homes.

²⁶ HUD’s Title VI regulations specify its relevant application in the housing context: thus, a public housing authority may not select a housing site or location with the purpose or effect of excluding or denying benefits to persons in protected classes, 24 CFR § 1.4(b)(3); provide different housing or services than those provided others, 24 CFR § 1.4(b)(1)(ii); or subject a person to segregation or separate treatment in the receipt of housing or services, 24 CFR § 1.4(b)(1)(iii). HUD’s Title VI regulations also point, in general terms, toward remedial measures: see 24 CFR § 1.4(b)(6), providing that if a recipient of federal funds has previously discriminated against persons on the ground of race, color, or national origin, then the recipient must take a firmative action to overcome or correct the effects of prior discrimination in program administration; and 24 CFR § 1.4(b)(6)(ii), providing that in the absence of such prior discrimination, a recipient of federal assistance should take a firmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

²⁷ See Poisonous Homes; OIG, HUD Did Not Adequately Implement or Provide Adequate Oversight to Ensure Compliance with Environmental Requirements (2015), www.hudoig.gov/sites/default/files/documents/2015-FW-0001.pdf.

²⁸ 24 CFR § 983.57

²⁹ 24 CFR § 941.202(d)(public housing) and 24 CFR § 983.57 (PBV); see also 24 CFR 983.57(e)(2)(interim rule for the National Housing Trust Fund, incorporating PBV site standards); 24 CFR § 92.202 (HOME program incorporates PBV standards). RAD guidance refers to site selection standards, but without additional environmental requirements; the standards for PBRA conversions make no reference to environmental or other neighborhood health criteria. See Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights

“[t]he site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, vehicular traffic, rodent or vermin infestation; or fire hazards . . . or in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions”;³⁰ and that “[t]he project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements”).³¹ The Project Based Rental Assistance (PBRA) program (which the President has proposed expanding) lacks any specific environmental health criteria in its site standards.³²

In application, public housing authorities designate PBV sites in keeping with their PHA plans, which often simply reiterate the regulatory language. There is not currently a framework for integrating HUD project-specific environmental reviews (which are required under the National Environmental Policy Act (NEPA)) into other aspects of the site selection or site review process.³³ (This is in addition to the problem of the NEPA reviews themselves lacking sufficient protocols, as detailed in the following section.) With regard to the scope and implementation of the current regulations, there currently is both a substantive deficit – a lack of clear standards; and a structural deficit – an operating lack of accountability measures. Relatedly, there is a capacity deficit, in the lack of relevant expertise and direction provided to HUD staff.

Furthermore – and importantly - even egregious problems with environmental exposure that arise or are revealed *after* siting, or that were *already in place* with legacy housing (such as much of our public housing), are not addressed by specific regulatory directives and go unremedied.

Recommendations:

Create detailed substantive guidance on strong and protective environmental standards. As noted in other sections of this document, HUD should develop substantive environmental and health standards in areas where such standards are lacking. (This includes, for example, air and water quality, as well as other conditions. It should also include flood plain exposure and other climate-change related risks.) It must be made clear that these standards apply across the range of HUD subsidized programs and trigger review

Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions, PIH 2016-17, www.hud.gov/sites/documents/16-17HSGN_16-17PIHN.PDF.

³⁰ See 24 CFR § 941.202 (public housing) and 24 CFR § 983.57 (PBVs, cross-referencing the tenant-based voucher housing quality standards).

³¹ *Id.*

³² See Transferring Budget Authority of a Project-Based Section 8 Housing Assistance Payments Contract under Section 8(bb)(1) of the United States Housing Act of 1937, Notice H-2015-03 (providing only that “The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions” and that “The housing must be accessible to . . . municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of *similar market rents*.” (emphasis added)).

³³ Note that 24 CFR § 50.10(b) provides that the Assistant Secretary for Community Planning and Development is charged with overall departmental responsibility for environmental regulations, while 24 CFR 50.10(a) places responsibility on all Assistant Secretaries to assure that environmental regulations are implemented.

not only for new construction, but at any time siting is revisited, as for redevelopments, rehabilitation, transfers of assistance, and re-issuance of assistance (for example, in the Project Based Rental Assistance program). To truly meet the needs of the residents that HUD serves, it will also be critical to apply these standards to existing developments and units (see below).

Provide for a meaningful review process and ongoing accountability.

HUD should consider how best to sync NEPA reviews with its site and neighborhood standards and physical condition standards and the accompanying reviews and oversight. HUD environmental reviews requirements apply across programs (such as PBVs, public housing, and numerous others).³⁴ These reviews have generally been delegated and not properly conducted, resulting in unnecessary risks of severe environment harm to assisted residents and others.³⁵

HUD should ensure that health standards (for both neighborhoods and developments) are rigorous and are consistently used in both the environmental review process and fair housing reviews, and that this responsibility travels across HUD divisions. That is, FHEO, PIH, CPD, and FHA must provide oversight mechanisms, set aside dedicated staff capacity, and develop sufficient expertise to ensure that environmental standards are actually complied with. (Creation of a dedicated cross-cutting climate and environmental review office within HUD, in addition to these improvements within divisions, would ensure greatest vigor and expertise.) HUD should invigorate its use of its full suite of tools and platforms for accountability in this area (as in others): including reviews/audits of PHA plans and underlying PHA practices (which may not be documented in the plans), connecting this to funding provision; review of HOME, LIHTC³⁶, and other programs and subsidies through a renewed AFFH regulation (taking a more specific look at siting outcomes for subsidized housing) and HOME/CDBG reporting; as well as rigorous front-end reviews for redevelopments. (It should also be clear that on-site redevelopments cannot continue to expose residents to environmental harms, as discussed above.)

As well as HUD increasing capacity and direction for its own offices and staff, it should empower residents and legal services and other fair housing and community advocates to engage where needed. This includes issuing guidance on how HUD will review and consider administrative complaints involving NEPA and site and neighborhood standards violations, as well as, as noted below, FHEO finding it has jurisdiction over civil rights complaints challenging policies or practices that disproportionately expose protected class members residing in existing HUD funded housing to adverse environmental conditions. However, it is important that HUD itself actively and proactively monitor neighborhood environmental conditions and act upon its findings.

Provide for ongoing reviews and remedial measures, including relocation support. More meaningful forward-looking environmental criteria are critically needed to reshape how our subsidized housing is sited and ensure it will not place residents in harm's way – especially as our nation confronts an increasing affordability crisis and seeks to expand subsidized housing resources. These improvements will not be sufficient to reach many of those living in subsidized housing where harms are ongoing (or

³⁴ See PIH Notice re Environmental Review Requirements for Public Housing Agencies at <https://www.hud.gov/sites/documents/PIH2016-22.PDF>.

³⁵ See OIG audit, *supra* note 8.

³⁶ While LIHTC is operated by the U.S. Department of the Treasury, it is often cross-subsidized by HUD, and falls under the AFFH obligation for which HUD has its own leverage to promote non-discrimination; HUD should also consult with Treasury around development of LIHTC siting regulations and environmental reviews.

perhaps newly created or emergent, as with the increased risk of climate hazards). Proximity of subsidized housing to harmful environmental risks is a longstanding and continuing problem, and does not only arise when that housing is being rehabilitated or redeveloped. HUD should comprehensively assess its existing subsidized housing stock and commit to a detailed, agency-wide plan to remediate adverse environmental health conditions, including conditions arising out of the growing climate crisis.³⁷ This includes determining whether existing units meet environmental (and other) site standards, providing choice-mobility options to residents at risk of adverse health impacts, ensuring the full replacement of units (as well as the creation of sufficient new units, especially as program funding is increased) in healthier and environmentally sustainable areas.

Ensure equitable climate adaptation and access to new infrastructure investments. It is critical that HUD's site standards and environmental reviews provide new and stronger guardrails to protect HUD subsidized households from the health risks they have too often faced. HUD should also, however, consider how best to promote opportunity and security for program residents within the broader context of our nation's changing infrastructure and community investments. This includes, for example, preserving existing public, subsidized and other HUD funded affordable housing located near green space, public transportation and other infrastructure improvements likely to be lost through gentrification and the attendant displacement of lower income residents; and using relevant HUD funding streams (such as block grants and competitive community investment grant programs) to target non-housing community development resources – including improvements to utilities such as water – where the expenditure of HUD funds will advance environmental justice needs, including in areas where there is currently a concentration of subsidized housing. HUD should also coordinate with other agencies to target non-HUD funds to communities in need, including subsidized households and public housing communities.

4. Improve HUD environmental reviews under NEPA so that redevelopment and conversion policies and programs protect current and future residents.

NEPA reviews are intended to be holistic evaluations of the environmental consequences of a federal action and are generally triggered by the construction, rehabilitation, and demolition of HUD assisted housing. NEPA reviews of housing development decisions explore environmental and public health issues relevant to the decision, such as air quality, water quality, and traffic impacts. The purpose of such reviews is to allow decision-makers and the public to make fully informed, holistic, and transparent decisions. HUD or the responsible entity (RE) must examine the history and current context of any site to be developed or redeveloped for housing to assure it is safe.³⁸

HUD has a variety of forms and guidance documents to assist with HUD NEPA reviews. One such online tool that is currently being phased in, the HUD Environmental Review Online System (HEROS), standardizes the forms for conducting environmental reviews to ensure greater consistency in NEPA

³⁷ Affordable Housing at Risk of Coastal Flooding, Climate Matters, www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/08/30/climate-change-is-making-the-affordable-housing-crunch-worse.

³⁸ 24 C.F.R. § 50.3(i) & § 58.5(i)(2).

reviews and independence between contractors and HUD or the RE.³⁹ Unless a final action falls within certain exclusions, the lead federal agency is required to undertake an environmental assessment as a first step, published in “a concise public document,” to decide whether more study is necessary. If the environmental assessment finds significant environmental impacts are likely, the agency must conduct an environmental impact statement (EIS), a thorough written evaluation.⁴⁰ Determining the scope of the EIS must be an “early and open process” and include any interested persons.⁴¹ Detailed requirements set forth in general NEPA regulations promulgated by the White House Council on Environmental Quality govern EIS preparation with the aim of assuring that the EIS “provide[s] a full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of reasonable alternatives.”⁴² HUD has two sets of NEPA regulations that apply depending on whether HUD is undertaking the environmental review or has delegated its NEPA responsibilities to an RE.⁴³ The RE is usually a state or local government with authority to oversee a housing-related project; a public housing authority cannot be designated as the RE.⁴⁴

HUD regularly approves redevelopment and preservation initiatives with inadequate environmental controls in place, resulting in federal dollars being delegated despite existing and poorly assessed environmental risk. Absent clear requirements and guidance across programs and adequate technical support for PHAs and affordable housing developers, redevelopment will continue to move forward at environmentally contaminated sites without adequate controls in place to protect resident health.⁴⁵

Generally, HUD has a stated policy to “reject [housing] proposals which have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm.”⁴⁶ HUD’s policy is also aimed at ensuring “that all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.”⁴⁷

HUD should ensure all of its housing has an environmental review that safeguards residents’ health. The Rental Assistance Demonstration program serves as an example of where HUD has fallen short on improving the environmental review process so that residents are protected from environmental harm. We

³⁹ HEROS – HUD Environmental Review Online System, U.S. DEP’T OF HOUS. & URBAN Dev. <https://www.hudexchange.info/programs/environmental-review/heros>.

⁴⁰ 40 C.F.R. § 1508.9

⁴¹ 40 C.F.R. § 1501.7

⁴² 40 C.F.R. § 1502

⁴³ 24 C.F.R. § 50 (HUD NEPA review); 24 C.F.R. § 58 (NEPA review conducted by a RE).

⁴⁴ 24 C.F.R. § 58.2(7)(2)(B).

⁴⁵ The deficiency of federal oversight is at its most glaring when a housing development project’s only source of federal revenue is LIHTC funding. LIHTCs are the primary generator of new affordable housing in this country and one of the main vehicles supporting the redevelopment of affordable housing. Because LIHTC is administered as tax credit, and not through a affirmative federal distributions of financial support, the Department of Treasury considers it exempt from NEPA requirements. This Department of Treasury policy choice means that low-income housing units can be built using the most common form of federal financial assistance without any environmental review that could identify lurking environmental hazards. We encourage HUD to work with Treasury to ensure that no low-income housing is built or redeveloped on contaminated land.

⁴⁶ 24 C.F.R. § 50.3.

⁴⁷ *Id.*

are highlighting RAD as simply one example of an important area of application of these policies. In January 2020, HUD published updates to its environmental review guidance for RAD transactions.⁴⁸ The new guidance made significant strides by, for example, requiring that projects that involve rehabilitation conduct radon testing and undergo any necessary radon mitigation, but it also rolled back some significant environmental oversight. The new RAD guidance exempts projects that are not being rehabilitated from a full environmental review and instead creates a lower tier of environmental review for those transactions. This shift has the real potential to allow for RAD conversions to take place without an adequate assessment of the environmental health risks, missing a significant opportunity to ensure that RAD converted developments are healthy for the residents who live there. Simply encouraging developers to self-regulate and do a higher level of review is insufficient oversight. Additionally, while projects that include rehabilitation must have radon testing and mitigation, there are other common home-based hazards, such as mold, asbestos, lead and vermin, that HUD should require to undergo testing and, if necessary, remediation in order to convert under RAD. As HUD will likely move even more of the nation's public housing stock into the RAD program, it is critical that HUD ensure the environmental review process for RAD conversions is sufficiently protective of residents' health.

HUD should likewise ensure that its online tools are used by all of its housing providers and reflect current guidance that will result in high-quality environmental reviews. For example, not all housing programs utilize HEROS that is designed to walk housing authorities and entitlement jurisdictions through the environmental review process. All of HUD's NEPA guidance documents should reference NEPAassist, which is a critical online tool that includes data related to Resource Conservation and Recovery Act facilities, Superfund sites, Brownfields, and toxic releases. EJSCREEN is also not referenced in many vital HUD guidance documents. As a result, HUD NEPA environmental reviews are likely missing key information that could alter HUD's conclusions.

Environmental reviews should include early and diligent environmental justice community engagement. HUD should mandate that the NEPA environmental review process for these housing actions should include early and continued engagement with the public, especially residents directly affected by those actions. While the 2016 Interagency Working Group on Environmental Justice Guidance on NEPA and Environmental Justice recommends "early and diligent efforts" to engage with environmental justice communities⁴⁹, HUD's environmental justice worksheet states that "HUD strongly encourages starting the environmental justice analysis only after all other laws and authorities, including Environmental Assessment factors if necessary, have been completed."⁵⁰ The HUD environmental justice worksheet also fails to reference the 2016 NEPA and Environmental Justice Guidance, which provides factors for HUD to consider in mitigating the adverse impacts of a project. For example, given that RAD is the primary vehicle for financing housing authority redevelopment or rehabilitation, the RAD Guidance should be

⁴⁸ Environmental Review Requirements RAD Conversions (Updated January 2020)

<https://files.hudexchange.info/resources/documents/Environmental-Review-Requirements-for-RAD-Transactions.pdf>.

⁴⁹ FEDERAL INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE & NEPA COMMITTEE, PROMISING PRACTICES FOR EJ METHODOLOGIES IN NEPA REVIEWS 6 (2016),

https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.

⁵⁰ Environmental Justice, U.S. DEP'T OF HOUS. AND URBAN DEV.,

<https://www.hudexchange.info/resources/documents/EnvironmentalJustice-Worksheet.docx>.

revised to emphasize the importance of taking public participation seriously, including engaging the affected environmental justice community involved in considering site selection alternatives. To accomplish this, HUD should ensure that residents have access to experts who can review the environmental reviews by providing technical assistance funding to tenant organizations and local nonprofits supporting residents to hire experts or to conduct their own testing.⁵¹

HUD should also use its power to delegate NEPA obligations responsibly. While HUD can delegate its NEPA obligations to a responsible entity (RE) — a unit of local or state government or private entity — for certain RAD transactions and the CDBG entitlement program, HUD should delegate its responsibility to conduct NEPA environmental reviews only if it can verify that RE will conduct the reviews with the appropriate level of expertise, rigor and impacted community involvement. Before HUD delegates its NEPA responsibilities to an RE at a site, HUD should verify the ability and independence of the entity that will perform the required environmental reviews and not rely on the RE’s certification of its own or its consultants’ experience and expertise. HUD and PHAs can improve their environmental assessment process by directly retaining environmental experts to handle issues related to complex, hazardous waste sites that prioritize the protection of public health and the environment. Otherwise, the lack of environmental expertise within HUD or PHAs can lead to dangerously deficient plans that do not appropriately account for actual risks.

5. Strengthen HUD’s civil rights enforcement and clarify its application to EJ

HUD’s Office of Fair Housing and Equal Opportunity is critical to HUD’s mission, but throughout much of the agency’s history FHEO has lacked the capacity and power to transform the landscape of housing discrimination and segregation – either across HUD’s own programs or among its funding recipients. This Administration’s overarching directive that all agencies promote equity (and also promote climate justice and environmental justice) amplifies the longstanding statutory obligations to provide nondiscriminatory housing policies and to affirmatively advance fair housing. For HUD, a first principle of that work must be to invigorate and empower FHEO, as well as to ensure that the Office of General Counsel (which, like FHEO, can reach across multiple other divisions of HUD) prioritizes civil rights and fair housing measures, and that these departments are enabled to exert their full power to these ends. Enforcement must be both rigorous and appropriate in scope. This means that HUD should actively engage in enforcement activity to promote environmental justice, deploying its authority under the Fair Housing Act’s nondiscrimination provisions, its affirmatively furthering fair housing provision, and Title VI of the Civil Rights Act.

Strengthen reviews and ex-ante measures. HUD should expand and strengthen its use of front-end reviews and subsequent programmatic reviews, and include a new and rigorous focus on issues of healthy housing and environmental justice. This should include, for example, the redevelopment reviews discussed above, but also the institutionalization of deeper programmatic reviews across multiple platforms – such as PHA Plans and renewed Assessments of Fair Housing that take a close look at

⁵¹ For example, HUD previously authorized tenant organizations and local nonprofits to conduct independent environmental testing for HUD multifamily housing through Section 514 of MAHRAA, through Intermediary Technical Assistance Grants and Outreach and Training Assistance Grant programs. This program should be reinstated and expanded to ensure it covers all housing programs.

subsidized housing siting policies and practices and other housing and community-development related policies with environmental impacts (whether on subsidized housing communities or more broadly on the basis of protected characteristics).

Broaden scope of enforcement to protect against discriminatory and segregative environmental practices that are counter to fair housing. Environmental racism is often closely linked to our nation's history (and continuing landscape) of housing segregation – discriminatory environmental outcomes result from racial segregation, and also serve to perpetuate it. Environmental health risks (such as the siting of toxic waste sites) are closely associated with race and race discrimination, both intentional and due to the discriminatory effects of various policies.⁵² Disparities in access to or quality of municipal services (such as provision of clean water) are similarly rooted in segregation and discrimination.⁵³ Yet HUD has been reticent in using its authority to protect against such discrimination and to jointly investigate these matters with other federal agencies, including the EPA, DOT and DOJ.

Going forward, HUD should engage in enforcement actions and compliance reviews, including joint investigations with other federal agencies under the authority of Title VI, that will actively seek to rectify environmental injustices. HUD should clarify its jurisdiction over such complaints. HUD should also provide clarity about the scope of Fair Housing and other nondiscrimination protections (such as Title VI of the Civil Rights Act of 1964) in application to environmental racism and municipal service discrimination, through the issuance of new guidance and education for recipients and community members. This includes complaints regarding land use practices (such as industrial uses) that are counter to HUD's and its recipients' duty to affirmatively further fair housing, because they perpetuate segregation and unequal access to opportunity, and/or are discriminatory on the basis of race (due to intent or discriminatory impacts). It also includes discrimination in municipal services and other post-acquisition, environmental-health-related scenarios, which complainants or plaintiffs should be able to bring under either Title VIII (allowing for a private right of action, actions against private parties, injunctive relief and damages) or Title VI.

6. Create better standards for environmental justice and health risk in Community Development Block Grants, CDBG -Disaster Recovery, and CDBG-Mitigation funding; expand CDBG and other programs

As well as making the above improvements to its subsidized housing administration, HUD can and should use its other programs to address environmental-justice and health related needs and risks. The Community Development Block Grant program, for example, can be better targeted to ensure that it is foremost meeting the needs of low-income households. The program currently lacks sufficient standards in that regard.⁵⁴ This includes neighborhood improvements that promote health and environmental justice,

⁵² See PRRAC, Call for Environmental Justice Legislation, *supra* note 2.

⁵³ See, e.g., NAACP Legal Defense Fund Thurgood Marshall Institute, Water/Color: A Study of Race and the Water Affordability Crisis in America's Cities (May 2019), available at <https://tminstituteldf.org/publications/2383/>; NRDC, the Environmental Justice Health Alliance for Chemical Policy Reform (EJHA), and Coming Clean, Watered Down Justice, <https://www.nrdc.org/sites/default/files/watered-down-justice-report.pdf>.

⁵⁴ See Urban Institute, Taking Stock of the Community Development Block Grant (2017), available at https://www.urban.org/sites/default/files/publication/89551/cdbg_brief_finalized_1.pdf.

such as community infrastructure improvements for low income neighborhoods (including those that respond to anticipated drought or flooding). CDBG funding can also be for essential needs such as clean water access and improvements.⁵⁵ Such uses should be prioritized where there is a need, as in states where communities lack such infrastructure. Use of block grant funds for neighborhood improvements such as green space or playgrounds is also beneficial, but must be guided toward low-income communities that otherwise lack the resources or other investments to create such benefits (rather than spent in relatively high income, already healthy neighborhoods).

The CDBG and HOME program reporting requirements can be used as a platform to HUD to prompt and evaluate recipients' actions to improve health and environmental justice conditions for vulnerable residents, specifically including those in subsidized housing. Consolidated Plan reporting should be revised to include specific details regarding climate adaptation planning and infrastructure provision. This should include specific details regarding how such benefits are targeted to low income households generally, and subsidized housing residents in particular. (This is to say, planning for climate response for public housing, for example, must enlist the state or locality (as well as affected public housing residents), not only the PHA.)

Expanded grant funding across programs including CDBG, CDBG- DR (while enabling use of these funds for anticipatory adaptive measures⁵⁶), CDBG-MIT, Imminent Threats CDBG, Choice Neighborhoods Initiative, Safe & Healthy Homes (for remediation), and green retrofitting programs should also be sought, to meet the extensive need for both neighborhood-level and development-specific improvements. Moreover, those programs should not fund climate adaptation redevelopment that results in the displacement of current low income residents, as is the case with the Tidewater Gardens public housing development in Norfolk, Virginia, where Choice Neighborhood funds are being used to remove low income public housing residents from a flood prone area and rebuilding housing on that site for largely higher income residents.⁵⁷

7. HUD, other agencies, and Congress should ensure a better, healthier future for our public housing and other site-based housing

As noted above in Section 1, residents in site-based federally assisted housing often experience substandard housing conditions and environmental harms due to years of federal disinvestment and discriminatory siting decisions. These families are generally unable to leave their substandard housing without losing their affordable housing, leaving their health and well-being at the mercy of others. The federal government must offer a better and more just solution to these families and households who will need federally assisted housing in the future. First, we encourage HUD and the other federal housing agencies to create guidance to ensure that allowing resident choice does not result in a loss of site-based low income housing or the loss of rights and remedies by residents, including the maintenance of equivalent subsidies. HUD guidance should, for example, allow for transfers of project-based Section 8 budget authority pursuant to Section 8(bb) of the U.S. Housing Act and transfers of the Annual

⁵⁵ See, e.g., [NC DEQ: Community Development Block Grant-Infrastructure](#).

⁵⁶ See Integrating Climate Change Resilience into HUD's Disaster Recovery Program, by Justin Gundlach and Channing Jones [gundlach_channing_elr_2016_apr.pdf\(columbia.edu\)](#).

⁵⁷ See *Bryant et al. v. City of Norfolk et al.*, 2:20-cv-00260RCY-LRL (E.D. Va. 2020).

Contributions Contract in the public housing program, and transfers of assistance when a public housing development converts under the Rental Assistance Demonstration (RAD) or other voluntary conversion actions. Residents should have the right to remain in the deep subsidy programs and not be involuntarily moved to lesser subsidy programs such as LIHTC. Finally, should environmental hazards necessitate that residents move off site, residents should have a right to return to the site, with comparable subsidy, when the environmental hazards are cleaned up or flooding threats are reduced, to prevent environmental gentrification from occurring.

The administration and Congress must also make adequate investments to preserve and improve conditions within its site-based federally assisted housing, including public housing, and privately-owned federally-assisted housing administered by HUD, USDA, and DOT.

Public housing continues to face a longstanding capital and operating backlog, now totaling more than \$70 billion,⁵⁸ which results in hundreds of thousands of households living in substandard housing. Because nearly half of all public housing is currently ineligible for preservation tools such as the Rental Assistance Demonstration program, funds are necessary to improve the quality and conditions of the existing units and to address conditions and immediate surroundings harmful to human health. Rural development housing operated by the USDA also faces a serious backlog of capital investments totaling \$6 billion, leaving households in rural communities, where a rural housing project may be the only affordable option for low income residents.

While the Low-Income Housing Tax Credit (LIHTC) program is the largest funding source for the development of affordable housing nationally and is currently the only federal housing production tool,⁵⁹ the program has serious flaws, including the concentration of units in distressed communities, and little oversight by the Treasury over the program.⁶⁰ Finally, privately-owned HUD-supported multifamily properties continue to be plagued by poor property conditions and little HUD oversight, exposing the families in these developments to serious health hazards until they move or their housing is lost due to program violations.⁶¹

To address these serious needs, there must be increased and sustained funding across all of the federal housing programs and for the EPA. Those dollars must be prioritized to address poor housing conditions, reduce proximate environmental harms, and improve energy efficiency that directly benefits the tenants. Those funds should also be targeted to conducting environmental reviews of the many federally assisted housing projects placed in use before NEPA went into effect. Congress must also increase its oversight of the federal housing agencies concerning the poor housing conditions and proximate environmental harms. These agencies must also establish clear lines of communication with impacted tenants. Finally,

⁵⁸ See Center on Budget and Policy Priorities, An Agenda for the Future of Public Housing, www.cbpp.org/research/housing/an-agenda-for-the-future-of-public-housing.

⁵⁹ See Center on Budget and Policy Priorities, <https://www.cbpp.org/research/housing/federal-rental-assistance-factsheets#US>; <https://www.huduser.gov/portal/datasets/lihtc.html>

⁶⁰ See, e.g., Center on Budget and Policy Priorities, Low-Income Housing Tax Credit Could Do More to Expand Opportunity for Poor Families, <https://www.cbpp.org/research/housing/low-income-housing-tax-credit-could-do-more-to-expand-opportunity-for-poor>.

⁶¹ See Section 1, above.

enforcement actions must be taken, including removal, against owners who fail to maintain the housing. If the Faircloth Amendment on the development of public housing would be lifted, HUD cannot repeat the mistakes of the past and present. Housing must be built in healthy communities that are not proximate to environmental harm or contamination.

Conclusion

We appreciate your consideration of our recommendations on these important issues of racial justice and public health. We would welcome further engagement, and can be reached via email at mhaberle@naacpldf.org if you would like to discuss these issues in more detail.

Best regards,

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