



April 9, 2021

Secretary Marcia L. Fudge
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410
Secretary.Fudge@hud.gov

RE: 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

Dear Secretary Fudge:

This Administration must prioritize and improve HUD's approach to protecting people living in federally-assisted housing from environmental health hazards. We are heartened by the actions the Administration has already taken to prioritize environmental justice, such as the issuance of Executive Order 14008, the creation of the White House Environmental Justice Advisory Council, and the revamping of the White House Environmental Justice Interagency Council. The HUD Office of the Inspector General's February 14, 2021 report ("HUD OIG Report") — detailing how federally assisted housing residents face potentially severe and irreversible health effects from living on or in proximity to toxic contaminated sites — should be a call to action regarding HUD's policies, procedures, and practices addressing the contamination of HUD-assisted housing. We write this letter to continue the national conversation furthered by the HUD OIG Report, to advocate for the swift implementation of the HUD OIG Report's recommendations, and to urge HUD to take additional steps that will promote environmental justice in federal housing policy more broadly. We would like to meet with you to discuss in more detail our recommendations below.

Background

The Biden Administration should act swiftly to achieve housing and environmental justice. The urgency of this issue cannot be overstated. As made clear by the HUD OIG, residents of contaminated housing sites have been living for decades on or near contaminated land that is seriously harmful to their health. Indeed, according to the HUD OIG, as part of the implementation of a [2017 Memorandum of Understanding](#) between HUD and the EPA, HUD's Office of Energy and Environment ("OEE") found that 2,745 HUD-assisted housing sites posed particularly high contamination risks. Yet, as the HUD OIG Report notes, only *seven* developments are being addressed for remediation. Further, the HUD OIG found that HUD lacks adequate processes for evaluating and addressing these high-risk properties. It is not an

exaggeration to state that each day these hazards remain unaddressed and residents are forced to stay on these properties, their health risks increase.

Our work with residents at the USS Lead Site in East Chicago, Indiana motivated the Shriver Center on Poverty Law, Earthjustice, the University of Chicago Abrams Environmental Law Clinic, and Health Justice Clinic at Columbia Law School to release [Poisonous Homes: The Fight for Environmental Justice in Federally Assisted Housing](#). The *Poisonous Homes* report details the risks faced by many federally assisted housing residents living in close proximity to Superfund sites and provides comprehensive recommendations that the current Administration is well-positioned to take.

Much like the conclusions we came to in *Poisonous Homes*, the HUD OIG found that HUD and other federal, state, and local agencies failed to protect public housing residents from the significant environmental hazards at the West Calumet Housing Complex in East Chicago, Indiana, and that HUD's current practices and policies fail to ensure this same harm is not happening in other communities.

In East Chicago, it took nearly 40 years for residents to learn what government officials and polluters knew all along: The West Calumet Housing Complex, home to majority Black and Latinx residents, was intentionally built on the footprint of a lead smelter with extremely high levels of lead and arsenic in the soil. Generation after generation of residents suffered dangerously elevated lead levels and horrific health impacts, yet the residents were the last to know the cause. The HUD OIG identified many moments over more than thirty years when federal agencies should have informed residents about the contamination and provided comprehensive resources to address the city's decision to build housing on a toxic site. Instead, HUD continued to permit the local housing authority to move tenants into contaminated housing without disclosing the known hazards and to even further develop the site, up and until the housing authority announced plans to relocate the residents on an emergency basis and demolish the housing.

As we describe in the *Poisonous Homes* report, East Chicago was not the first federally assisted housing development to be located on a former lead smelting site. Indeed, in Portsmouth, Virginia, another public housing development was built on land severely contaminated by lead and other hazards. After residents organized and sued HUD and the EPA in 1998, HUD vowed to do more to protect federally assisted residents from environmental hazards; then-HUD Secretary Cuomo noted HUD's long history of intentionally building subsidized housing in predominately low-income, minority neighborhoods that "were more dilapidated, higher in poverty, lower in political power, and more poorly supported by necessary public services."¹

The HUD OIG report illustrates the failure of existing policies to address the problem of federally-assisted housing near contaminated land. Importantly, per the HUD OIG, East

¹ U.S. Department of Housing & Urban Development *Promoting Fairness in Public Housing* (March 2000), available at <https://archives.hud.gov/news/2000/decrept.pdf>

Chicago is not an outlier. In October 2016, the EPA shared with HUD that over 30,000² public and multifamily housing developments were within one mile of a Superfund site or non-Superfund site with potential lead contamination. The HUD OIG noted that HUD repeatedly failed to ensure its properties were free from harmful contamination because it did not access available data from the EPA and other state and federal agencies. After HUD OIG’s field work concluded, OEE identified 2,745 public housing and HUD multifamily housing developments “within 1 mile of a Superfund site on which human exposure was not under control or there was not enough information to determine human exposure status.”³ This list only includes properties within the public housing and Multifamily housing programs and omits the millions of other units within HUD’s portfolio, including those receiving Housing Choice Vouchers and project-based vouchers, tribal housing, and grant programs such as HOME, and the portfolio of other federal agencies, such as the Department of Treasury’s Low-Income Housing Tax Credits and Department of Agriculture’s Rural Development.

The HUD OIG Report concludes that HUD has inadequate controls in place to ensure that the buildings it oversees are safe for the residents who call them home. In fact, HUD OIG noted that “HUD lacked a strategy to research and review potentially contaminated properties and determine whether uncovered information should trigger a consideration of site contamination in future environmental reviews. Instead, HUD has relied on the EPA to identify contaminated HUD-funded properties and develop a mitigation strategy for those properties. Advancing federal policy to avoid and mitigate these potential harms is, thus, of urgent importance as HUD develops a strategy to review the health impacts of these 2,745 already identified sites and additional sites reviewed by HUD in concert with other federal agencies, local actors, and, most importantly, directly impacted communities (these 2,745 properties and the “additional sites reviewed by HUD” are hereinafter referred to as “high risk sites”).

The HUD OIG Report raises critical questions that must be addressed to promote environmental justice in housing policy. The HUD OIG’s revelation that federal agencies are currently focused on remediating seven high-risk properties is a vital piece of information. It remains unclear, however, what criteria HUD used to identify the seven properties and what HUD did at those seven sites after identifying them. The HUD OIG does not indicate in the report, for example, whether residents of the seven sites received any communication from HUD, the EPA, public health officials, or their housing provider about the levels of contamination at their home and what steps are being taken to mitigate such environmental hazards. Were the residents of these properties notified that they lived at high risk sites? What additional details and information did federal agencies provide or mandate that these residents be provided to help them make informed housing and medical decisions? As an immediate next step, HUD should disclose the seven sites it identified as especially high risk, explain its methodology for selecting those sites, and explain what steps HUD has taken at these sites since identifying, including how HUD (and/or its housing providers) has involved directly impacted residents in this process.

² “EPA provided HUD with a list of public housing and multifamily properties within 1 mile of a potentially contaminated site... include[ing] 18,158 properties near a Superfund site and 12,070 properties near non-Superfund sites with potential lead contamination. Of the 18,158 properties near a Superfund site, EPA identified 7,676 as the highest priority...” HUD Office of the Inspector General, *Contaminated Sites Pose Potential Health Risks to Residents at HUD-Funded Properties, 2019-OE-0003* (February 2021) available at <https://www.hudoig.gov/sites/default/files/2021-02/2019-OE-0003.pdf>

³ *Id.* at 16.

The HUD OIG Report further states that “[a]s of November 2020, EPA had cleaned up or was in the process of cleaning up six of the seven sites so that they would no longer be harmful to human health or the environment.” The nature of the cleanup process, however, remains unclear. Were residents aware that the cleanup was happening? Were residents able to participate in the formulation and administration of this process? Additional information would also be helpful regarding, for example, the extent of progress on the six properties, why the EPA had not begun cleanup on the seventh, whether the cleanup processes are thus far successful and what criteria are being used to measure that success? Further, how are residents made aware of the status of the cleanup and the extent of its progress? Were residents offered the chance to temporarily relocate? If not, what mitigation measures were taken to reduce exposure during the clean-up process? Has there been any interior testing of units or testing of lead-levels of the residents? Answers to these questions will help inform how HUD and the EPA address the remaining high risk properties and how HUD can best effectuate the HUD OIG’s recommendations.

The OIG Report further finds that HUD has done little to investigate the remaining 2,738 properties that OEE highlighted as high risk for contamination and whether there are new properties that should be added to the list of high risk sites. HUD should disclose the methodology and expertise it will rely upon to determine what properties it will investigate and prioritize now and in the future. HUD should also outline what steps will be taken this year to investigate the remaining 2,738 properties. Further, HUD should share what information was provided to the housing providers and residents of these affected sites and what steps will be taken to ensure the sites are not a risk to human health.

Our recommendations

The HUD OIG’s findings provide a useful framework for addressing the path forward. The HUD OIG brought to light that, while federal agencies have taken some positive steps to improve their procedures regarding contaminated properties, federal agencies continue to put residents at risk. Most significantly, the HUD OIG found that, while communication between HUD and the EPA has improved, it is still inadequate, and HUD continues to take inadequate efforts “within its own authority to identify potentially contaminated properties.” Building from the HUD OIG’s recommendations, we recommend that HUD adopt the following policies to address the HUD OIG’s findings.

HUD must improve its compliance with the National Environmental Policy Act (“NEPA”). The HUD OIG Report reinforces the need for HUD to improve its compliance with NEPA. First, all new construction, redevelopment, and rehabilitation of federally assisted housing--e.g., the American Jobs Plan, Housing Opportunity Through Modernization Act implementation, Low-Income Housing Tax Credit Program, the Rental Assistance Demonstration program--should trigger appropriate civil rights review and should be subject to NEPA.⁴ Second, federal housing agencies and local public housing authorities must improve their environmental assessment processes, including engaging environmental experts to handle issues related to complex hazardous waste sites. The lack of environmental expertise within HUD or local housing

⁴ Of course, NEPA must be restored and improved after the Trump Administration rolled back critical regulations.

authorities can lead to dangerously deficient plans that do not appropriately account for actual risks and, in some cases, actually create new risks.

HUD must update its guidance to ensure that the EPA is notified before a NEPA environmental review is prepared at federally assisted housing within one mile of a Superfund site. HUD should likewise sync its online tools and most current guidance to ensure high-quality reviews under NEPA. Further, all new construction, redevelopment, and rehabilitation of federally assisted housing should trigger appropriate civil rights review that includes environmental justice factors. Finally, the nation's largest creator of new federally assisted housing, the Low-Income Housing Tax Credit ("LIHTC") Program, should be subject to NEPA even where there is no additional subsidy. With the planned expansion of the nation's largest source of new affordable housing, it would be a grievous error to not subject the LIHTC Program to NEPA and fail protect LIHTC residents from harm.

HUD should incorporate environmental hazard evaluations into its physical condition standards inspections. In order to fulfill its statutory duty to provide decent, safe, and sanitary housing⁵, HUD should include an assessment of the outside environment into its inspections. It is critical that HUD does not rely exclusively on environmental reviews triggered by NEPA because the trigger for NEPA reviews only captures certain activities, such as new construction, redevelopment and rehabilitation. It does not capture ongoing environmental harms in existing housing not undergoing construction, redevelopment, or rehabilitation. This is particularly problematic since redevelopment and rehabilitation of these sites is often spurred by the redevelopment or gentrification of a surrounding community. Therefore, those sites in more racially concentrated areas of the country with less economic development may be left without a meaningful assessment of environmental and human health risks.

In its recent proposed rulemaking, HUD clarifies its obligation to provide safe and habitable housing, synchronizing previous terms and definitions. As a part of that effort, HUD indicates the use of "health" is intended to capture an assessment of a broader range of impacts. The changes to the inspection protocol have shifted the inspection's focus from building damages to the effects of housing conditions on the health and safety of residents. However, in its assessment of properties, HUD must specifically consider hazards created by the outside environment and their effects on subsidized properties and most importantly, on the low-income tenants who reside in these developments or are eligible to live there.

We urge HUD to incorporate environmental hazards in the NSPIRE demonstration and extend the comment period to specifically address how to achieve these goals.⁶ The inspections and risk assessments should consider the siting of housing on or near environmentally contaminated land hazardous to the life, health, or safety of the tenants.

⁵ 42 U.S.C. 12702 (1990).

⁶ See Earthjustice and National Housing Law Project's letter and comments regarding the Department of Housing and Urban Development's Economic Growth Regulatory Relief and Consumer Protection Act: Implementation of National Standards for the Physical Inspection of Real Estate (NSPIRE) (Docket No. FR-6086-P-01) *available at* <https://www.regulations.gov/comment/HUD-2021-0005-0072> and <https://www.regulations.gov/comment/HUD-2021-0005-0044>.

Conduct a sweep of OEE's identified sites pursuant to HUD's existing authority to provide safe, decent, sanitary housing. As noted in the HUD OIG Report, many housing developments were built prior to NEPA and have not undergone a recent NEPA review. But even where an environmental review has occurred recently, significant oversight problems existed. HUD should proactively conduct a thorough evaluation of the already identified 2,738 sites. While doing a sweep for environmental risks at its properties, HUD should also consider not only toxics, but climate change vulnerability - another huge problem and Administration priority that could be addressed concurrently through the same or similar processes.

Engage with residents to provide actual notice of the environment concerns. It is particularly essential that HUD engage extensively with the directly impacted community. Currently, however, there is no federal directive that actual, accessible notice be provided to residents of high risk properties. HUD must ensure that notice is provided, not only to owners, but also to residents themselves. It is also essential that HUD maintain engagement with residents and ensure that residents are apprised of, and can provide insight regarding, all federal agency action concerning the property or the nearby Superfund site. As stated above, it is currently unclear if residents at even the seven highest risk properties received any notice that they faced dangerous contamination or of the remediation taking place.

Ensure residents have options to make the best decision available for their family. Notifying residents about contamination must also include options for tenants to address the dangers of living in a high risk property. Federal policy, however, constrains these choices. For example, in the public housing and multifamily housing programs, tenants do not retain their subsidy if they leave the development, requiring tenants to choose between contaminated housing or homelessness. In general, HUD policy only provides tenants the ability to move with their subsidy at approval of a demolition or contract termination, each of which result in a net loss of affordable housing for the community. 24 C.F.R. § 966.4, which governs mandatory lease terms in the public housing program, does provide a potential pathway for public housing residents by requiring a PHA to offer alternative accommodations where repairs cannot be made within a reasonable time. HUD could immediately issue guidance on that regulation and make clear it applies to moves necessary due to environmental justice concerns. Further, HUD could determine if the temporary move language of this regulation and lease term is also available within the other site-based programs. Even tenants in other HUD housing programs experience constraints in the ability to move. The project-based voucher and RAD programs impose one- or two-year waiting requirements on tenants before they can exercise their right to move under the Choice Mobility program. The HCV program likewise requires a one-year lease at the beginning of a tenancy, and the right to terminate remains dependent on state law and the term of the Housing Assistance Payment (HAP). HUD should develop guidance regarding the PHA's right to terminate the HAP under these circumstances.

We encourage HUD to develop guidance to allow tenants the option to move when an environmental hazard is identified under all HUD housing programs. HUD should allow for voluntary moves in these programs, making vouchers available from the Tenant Protection Voucher account or authorizing a public housing authority to set a preference for admission to

the Housing Choice Voucher (HCV) program.⁷ Further, we encourage HUD to issue guidance authorizing tenants to receive emergency moving papers and to waive any waiting periods in the Choice Mobility or RAD programs, or with voucher portability. Underlying all of these recommendations is the essential need for directly impacted communities to have meaningful input and agency in formulating and exercising their options moving forward.

We encourage HUD to create guidance to ensure that allowing resident choice does not result in a loss of site-based affordable housing or the loss of rights and remedies by residents, including the maintenance of equivalent subsidies. This 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, transfers of the Annual 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.

Improve coordination between HUD and the EPA initiated in the 2017 MOU. In response to the significant public attention brought to East Chicago’s environmental contamination, HUD and the EPA entered into a Memorandum of Understanding (MOU) to improve data sharing and interagency communication.⁸ The HUD OIG lauded the enhanced cooperation between agencies pursuant to the 2017 MOU but also stressed that additional steps are needed to meet the goals of strengthening cross-agency communication. As the HUD OIG found, HUD has not taken necessary steps to research and review properties for possible site contamination. The MOU covers only certain programs administered by HUD, specifically the public housing and multifamily housing programs, and fails to include other HUD programs or programs administered by the Department of the Treasury or Agriculture.⁹

The 2017 MOU encourages data sharing between EPA and HUD, but it does not (1) create binding or enforceable obligations; (2) include all federal agencies necessary to effectuate change; (3) include any involvement of state or local agencies; or (4) include directly impacted

⁷ Robust inspections in the HCV program must also account for environmental hazards, including robust testing for lead hazards. PHAs are responsible for ensuring housing units participating in the voucher program pass Housing Quality Standards (HQS) prior to entering into a contract with the property owner. 24 C.F.R. § 982 (1994). These inspections look for exigent health and safety issues, but they do not inspect for environmental hazards. The HCV program, for example, only requires ineffective visual inspections for lead hazards, which leaves children vulnerable to lead poisoning from lead-contaminated soil, water, and dust. HUD should immediately launch the [Housing Choice Voucher Lead Risk Assessment Demonstration](#).

⁸ U.S. DEP’T OF HOUS. AND URBAN DEV. AND U.S. ENVTL. PROT. AGENCY, IMPROVING COMMUNICATION ABOUT CERTAIN PUBLIC AND HUD-ASSISTED MULTIFAMILY HOUSING NEAR SUPERFUND SITES MEMORANDUM OF UNDERSTANDING (2017), <https://www.hudexchange.info/resources/documents/Memorandum-of-Understanding-between-HUD-and-EPA-Regarding-ImprovingCommunication-About-Certain-Public-and-HUD-Assisted-Multifamily-Housing-Near-Superfund-Sites.pdf>

⁹ The MOU governs only certain HUD assisted site-based housing programs and does not include the Department of Treasury, which oversees the Low-Income Housing Tax Credit program, or Department of Agriculture, which oversees Rural Development. The MOU also ignores Housing Choice Vouchers and project-based vouchers. The MOU further ignores other Tribal housing programs and HUD grant programs including Emergency Shelter Grants, HOME, and Community Development Block Grants.

communities. The 2017 MOU should be expanded to include all federal agencies potentially involved in or impacted by decisions at Superfund sites¹⁰ and be regularly updated to identify highly contaminated areas on the EPA's radar that encompass federally assisted housing. The MOU should call for EPA to use the most protective cleanup levels potentially applicable at any remediation site where public housing is impacted. The MOU should also outline significant public health issues known to HHS and any disaster management issues governed by FEMA. Further, the MOU should mandate that these federal agencies share existing data in order to better identify health hazards and environmental contamination and to better inform impacted residents. The January 2017 MOU also does not involve state or local agencies or directly impacted communities. Such inclusions are essential to provide additional sources of vital data and input.

Because HUD is the country's primary provider of federally assisted housing and has taken the lead on other cross-agency efforts related to the nation's housing stock, HUD should lead the coordination with all of the relevant government agencies and incorporate all existing information available from other agencies into its assessments.

Improve coordination amongst agencies and residents. Interagency agreements including all affected federal and state agencies, both subject- and site-specific, should be deployed to address the remaining high risk sites. These agreements should be both subject- and site-specific and must ensure that HUD is promptly notified and consulted on any EPA action or evaluation regarding a Superfund site near a high risk property. Impacted communities should be explicit third-party beneficiaries to any agreements with express rights to enforce these agreements.

All agencies involved in a specific Superfund cleanup, the public health response, and the administration of federal housing programs should also enter into binding MOUs with the directly impacted communities, including the Community Advisory Group, Resident Advisory Board or tenant association, and other resident stakeholders. At the same time, government agencies should enter binding, site-specific MOUs between all agencies, including affected tribal governments and all levels of government involved in the cleanup. Such MOUs should govern information sharing and notice, community education and technical assistance, processes for community visioning, and relocation options and requirements if appropriate.

A subgroup of the White House Environmental Justice Interagency Council, or a comparable interagency group ("Interagency Council"), should implement these recommendations. Executive Order 14008 mandates that "The Interagency Council shall develop a strategy to address current and historic environmental injustice . . . [,] develop clear performance metrics to ensure accountability, and publish an annual public performance scorecard on its implementation." The Interagency Council is to focus on the myriad ways environmental injustice causes harm to vulnerable communities. Through the Interagency Council, "Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse

¹⁰ To be clear it could be people, physical structures, land, etc., and this means potentially a range of federal agencies in addition to EPA and HUD, including Department of Health and Human Services, Department of Agriculture, Department of Treasury, Department of Defense, Department of Education, Department of Transportation, Department of Justice, General Service Administration, and Department of Interior.

human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.” Safe and stable housing are the cornerstone of any community. Advancing environmental justice in housing, and coordinating these efforts across the Interagency Council’s members and partners, is thus integral to the Council’s mission. Such efforts are essential in light of the HUD OIG’s findings that lack of coordination and data sharing between HUD and other agencies resulted in significant and irreversible harm to the residents of the West Calumet Housing Complex and that HUD continues to have inadequate safeguards in place to ensure other communities are not experiencing similar environmental injustices. This Administration’s laudable efforts to coordinate environmental justice efforts between agencies must be utilized to fill the gaps identified by the HUD OIG. Perhaps most importantly, the Interagency Council or its relevant subcouncil should take direction based on regular consultation with a working group of residents from the directly impacted communities, including grassroots community leaders. The Council should have regular meetings that are open to the public and at which they receive public comment.

Conclusion

The Biden Administration has shown an early commitment to promoting environmental justice in housing, but urgent action is needed. It is essential that the Administration prioritize addressing the concerns raised by the HUD OIG. Alongside directly impacted residents, like Akeeshea Daniels from East Chicago [who wrote the linked blog](#), we would welcome the opportunity to meet with HUD as well as other involved federal agencies such as the EPA to discuss next steps. Please do not hesitate to contact us at emilycoffey@povertylaw.org or (312) 724-8411. Thank you for your continued attention to this vital matter.

Best Regards,

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