

United States House of Representatives  
Committee on Financial Services  
2128 Rayburn House Office Building  
Washington, D.C. 20515

November 15, 2019

## Memorandum

**To:** Members, Committee on Financial Services

**From:** FSC Majority Staff

**Subject:** "Safe and Decent? Examining the Current State of Residents' Health and Safety in HUD Housing"

---

The Subcommittee on Housing, Community Development will hold a legislative hearing entitled, "Safe and Decent? Examining the Current State of Residents' Health and Safety in HUD Housing" at 2:00pm. on Wednesday, November 20, 2019, in room 2128 of the Rayburn House Office Building. This will be a single-panel hearing with the following witnesses:

- **Susan Rollins**, Executive Director, Housing Authority of St. Louis County
- **Margaret Salazar**, Executive Director, Oregon Housing and Community Services Department
- **Deborah Thrope**, Deputy Director, National Housing Law Project
- **Geraldine Collins**, Board President, National Alliance of HUD Tenants
- **Shalonda Rivers**, President and Resident, 22nd Avenue Apartment Tenants Association
- **Orlando Cabrera**, Partner, Arnall Golden Gregory

### Overview

Millions of Americans have seen their lives improved as a result of HUD's public and assisted rental housing programs, but many residents face ongoing issues with the physical condition of their homes due to chronic underfunding, insufficient HUD oversight and enforcement, and lack of compliance with HUD requirements by some landlords participating in HUD programs. While the majority of public and assisted housing is safe for its residents, increasingly these properties are aging and require capital investments and improvements to ensure residents live in safe environments. This hearing will explore the confluence of issues contributing to deteriorating living conditions for HUD tenants, and explore potential solutions.

### The Connection between Health and Housing

A growing body of evidence shows that health outcomes rely heavily on the conditions of homes and the neighborhoods they're located in, especially among low-income communities.<sup>1</sup> Neighborhood-level data from the National Center for Health Statistics show how life expectancy can vary from block to block.<sup>2</sup> For example, someone living in the Beverly Hills 90210 zip code of California will live an average of 10 years longer than someone who lives in California's Hawthorne or Inglewood neighborhoods.

---

<sup>1</sup> Health Affairs, [Housing and Health: An Overview of The Literature](#) (June 2018).

<sup>2</sup> National Center for Health Statistics, [U.S. Small-area Life Expectancy Estimates Project](#) (2018).

Studies have similarly found that the incidence of asthma, obesity, childhood lead poisoning,<sup>3</sup> and deteriorating mental health<sup>4</sup> among disadvantaged communities are positively correlated with aging housing stock, poor ventilation, water leaks, and other poor physical housing conditions.

## **HUD Rental Assistance Programs**

### *Public Housing*

Public housing plays a critical role in addressing America's affordable housing needs and is home to more than 2.6 million low-income seniors, people with disabilities, families with children, and other individuals. Funding for public housing, however, has decreased significantly beginning in the 1980s. In 2016, funding for repairs had fallen 53 percent since 2000, while Congress had only provided sufficient funding for public housing operations only three times during the same time period.<sup>5</sup> Between 2010 and 2016, after the *Budget Control Act* when into effect, Congress cut public housing by \$1.6 billion. While Congress recently increased funding for public housing in fiscal years 2018 and 2019, overall funding for the program is still 12.5 percent lower than the FY 2010 funding level, after adjusting for inflation. As a result of this underfunding, there is an estimated \$70 billion backlog in needed capital repairs to fix tenants' homes from substandard and unsafe conditions, and more than 10,000 public housing homes are lost each year due to disrepair.<sup>6</sup> Increasingly, public housing agencies (PHAs) are being pressured by HUD to "reposition" their housing stock through voluntary conversions to vouchers, demolition or disposition, or convert their units to Section 8 housing under the Rental Assistance Demonstration (RAD).

### *Section 8 Project-Based Rental Assistance*

The Section 8 project-based rental assistance (PBRA) program leverages private sector resources to develop and operate rental homes that are affordable to 1.2 million low income families across the nation. Unlike the public housing capital and operating funds, which have been chronically underfunded for decades, the Section 8 programs have historically been funded at levels that meet the estimated needs each year. While most PBRA properties are in good physical condition<sup>7</sup> some private owners have failed to maintain safe and decent living conditions that they are contractually obligated to provide. Due in part to understaffing and lack of uniform training and oversight across HUD field offices, HUD has also failed to consistently utilize its current enforcement authorities to ensure that every PBRA property is owned and managed to a high standard.<sup>8</sup>

### *Housing Choice Vouchers*

The Housing Choice Voucher (HCV) program ensures that more than 2 million low-income families can afford their homes. Under the program, a PHA issues an HCV to a family who can then use the voucher to subsidize the rent for a rental home in the private market. The family is generally responsible for finding a rental home and can only choose from homes in which the owner has agreed to comply with all HCV program requirements. One of the HCV program requirements is that the rental unit must pass a Housing Quality Standards (HQS) inspection performed by the PHA. Voucher holders often

<sup>3</sup> David E. Jacobs et al., [The Relationship of Housing and Population Health: A 30-Year Retrospective Analysis](#) (2009).

<sup>4</sup> Ankur Singh et al., [Housing Disadvantage and Poor Mental Health: A Systematic Review](#), American Journal of Preventive Medicine (2019).

<sup>5</sup> Doug Rice, Center on Budget and Policy Priorities, [Cuts in Federal Assistance Have Exacerbated Families' Struggles to Afford Housing](#) (2016).

<sup>6</sup> National Low Income Housing Coalition, [Public Housing: Where Do We Stand?](#) (October 2019).

<sup>7</sup> According to HUD data, the average Real Estate Assessment Center (REAC) inspections score is 86 (out of a scale of 100).

<sup>8</sup> Susie Khimm et al., NBC News, [Under Ben Carson, more families live in HUD housing that fails health and safety inspections](#) (November 14, 2018).

have trouble finding apartments in high opportunity areas due to a variety of factors, including discrimination<sup>9</sup> and lack of resources for landlord engagement. As a result, HCV families are often concentrated in poor neighborhoods, where much of the housing stock is older, and may be more prone to having various health hazards, such as lead, asthma-triggering mold, and vermin.<sup>10</sup>

## **Current Issues**

### *Inspection Protocol*

HUD's Real Estate Assessment Center (REAC) was established in 1997 to evaluate the physical conditions of public and PBRA multifamily housing properties. REAC developed Uniform Physical Condition Standards (UPCS) to determine whether a HUD-assisted property is decent, safe, sanitary, and in good repair. Inspectors, who are typically trained contractors, evaluate the property, building exterior, building systems, common areas, and tenants' individual units, and deduct points for deficiencies that negatively impact health and safety.<sup>11</sup> REAC inspects properties every 1 to 3 years, targeting low-performing properties for more frequent inspections. REAC's physical inspection scoring system rates properties based on a 100-point scale. Generally, properties that receive an inspection score below 80 are inspected within 1 year of the previous inspection. Properties with scores between 80 to 89 are inspected within 2 years; while properties with scores between 90 to 100 are inspected every 3 years.

Despite HUD staff awareness that its inspection process allowed some housing providers and consultants to "game the system," HUD failed to perform a comprehensive review of the REAC inspection process for nearly two decades<sup>12</sup> until 2019 after Congress and the media raised concerns about properties with substandard conditions receiving passing REAC scores. Recent news stories have highlighted egregious examples of situations where a building received a passing REAC score that did not reflect the reality of the conditions of the property. For example, a PBRA property in Jacksonville, Florida, received a REAC score of 85, despite the presence of mold, carbon monoxide leaks, and crumbling infrastructure on the property.<sup>13</sup> In another situation, a consultant advised a housing provider to construct temporary walls in an apartment complex to hide potentially dangerous areas from REAC inspectors; the property not only passed but received a high REAC score of 95.<sup>14</sup>

The Government Accountability Office published a report in March 2019 recommending that HUD improve its physical inspection process and ensure better oversight and training of REAC inspectors. HUD largely agreed with GAO's policy recommendations for improving the process and stated that it was already in the process of developing an alternative approach to the current inspection protocol. HUD later announced its proposed National Standards for the Physical Inspection of Real Estate (NSPIRE) demonstration to reexamine how properties are inspected and to develop a new physical inspection

---

<sup>9</sup> Only a few states and jurisdictions have source of income laws that prohibit discrimination against families with HCVs. See Poverty & Race Research Action Council, [State and Local Source-of-Income Nondiscrimination Laws: Protections that Expand Housing Choice and Access](#) (June 2019).

<sup>10</sup> Emily Benfer, [Contaminated Childhood: How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color](#), Harvard Environmental Law Review (2017).

<sup>11</sup> Life-threatening deficiencies, such as exposed wires or blocked exits, also require immediate action by the PHA or owner to correct.

<sup>12</sup> Government Accountability Office, [Real Estate Assessment Center, HUD Should Improve Physical Inspection Process and Oversight of Inspectors](#) (March 2019).

<sup>13</sup> Lynnsey Gardner, News 4 Jax, [HUD gives owner 60 days to repair Eureka Gardens](#) (March 21, 2017).

<sup>14</sup> Molly Parker, The Southern, [How a Consultant Said He Gamed HUD Inspections: Sweep Problems Behind a Wall](#) (December 21, 2018).

standard designed to rebalance the scoring criteria to place greater weight on health and safety issues, especially those within housing units, as opposed to aesthetics.<sup>15</sup> Under the demonstration, PHAs and owners that opt in will be subject to revised standards for inspecting and collecting information about the condition of federally-assisted housing.

#### *Performance-Based Contract Administration*

Performance-Based Contract Administrators (PBCA) are entities that HUD hires on a contractual basis to administer Housing Assistance Payment contracts between HUD and private owners of PBRA properties at the state or local level. The majority of PBCAs are PHAs, including many state Housing Finance Agencies (HFAs) that operate as PHAs. PBCAs play a critical role in the oversight and preservation of PBRA properties by conducting on-sight management reviews, protecting and engaging tenants, ensuring properties are well-maintained and in decent physical condition, and leveraging affordable housing resources to recapitalize properties. However, HUD published a Requests for Proposals (RFP) in 2017 that indicated the agency intends to reduce the comprehensive scope of work performed by PBCAs, consolidate PBCAs by region, and allow other entities, including for-profit companies to compete to become PBCAs.<sup>16</sup> Opponents of these proposed changes argue that this will make it harder for PHAs to compete and will likely result in companies that are inexperienced with housing preservation or tenant engagement to manage these contracts, and ultimately result in worse outcomes for tenants.<sup>17</sup>

#### *Lead-Based Health Hazards*

While HUD has made efforts in recent years to reduce lead hazards in federally-assisted housing,<sup>18</sup> lead poisoning continues to be an issue. According to HUD, there are an estimated 450,000 federally subsidized housing units that were built before the federal government banned consumer uses of lead paint in 1978 and have children under age 6 residing in them.<sup>19</sup> Of those units, about 57,000 are estimated to have lead-based paint hazards, including about 14,000 units of public housing, 16,000 units of PBRA, and 27,000 units attached to HCVs.<sup>20</sup> Childhood exposure to lead, even at very low levels, can have lifelong consequences, including decreased IQ and cognitive function, developmental delays, and behavioral problems. Higher exposures to lead at a young age can cause seizures, coma, and even death. Unfortunately, lead exposure often occurs without any obvious symptoms and can go unrecognized until the symptoms become more acute.

In general, lead-based paint hazards exist when the paint deteriorates into a dust that can be ingested. In the HCV program, inspectors are only required to perform a visual inspection before the

<sup>15</sup> PHAs and property owners currently have the option to participate in the NSPIRE demonstration. HUD released a notice for the demonstration in August 2019. *See* 84 Fed. Reg. 43,536, [Notice of Demonstration To Assess the National Standards for the Physical Inspection of Real Estate and Associated Protocols](#) (Aug. 21, 2019).

<sup>16</sup> HUD, [Draft Solicitation No. 86546A18R00001](#) and [Draft Solicitation No. 86546A18R00002](#) (December 2017).

<sup>17</sup> These groups say the scoring criteria made it harder for PHAs and state HFAs to compete. *See*, e.g. National Council of State Housing Agencies, [Comments on HUD Solicitation No. 86546A18R00001 and HUD Solicitation No. 86546A18R00002](#) (January 2018). Based on extensive feedback, HUD cancelled the RFP.

<sup>18</sup> In September of 2016, HUD took a major step forward on early intervention by promulgating a new regulation to align the agency's definition of lead poisoning with the CDC's. Previously, HUD's standard for determining when a child's blood had enough lead to require a remediation intervention was based on an outdated CDC standard.

<sup>19</sup> 81 Fed. Reg. 60304, [Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels](#) (September 1, 2016).

<sup>20</sup> *Id.*

voucher holder moves into an apartment. A visual assessment for loose and peeling paint can identify some *potential* lead-based paint hazards but can be ineffective in identifying lead dust or lead soil, and further steps would be necessary to determine definitively if a hazard exists.<sup>21</sup> Inspectors are required to perform a risk assessment in public housing and PBRA properties built before 1978, but only after lead paint is detected in the unit. A Government Accountability Office (GAO) report published in 2018 made recommendations to increase HUD performance in the mitigation and detection of lead-based paint, and overall found that even though the agency had instituted new methods to work with public housing agencies, further work was needed to overcome years and decades of neglect, including increasing oversight, implementing more stringent lead inspection standards, and better assessing and reporting on the agency's efforts to reduce lead hazards.<sup>22</sup>

People can also be exposed to lead hazards through lead service lines that connect a building's plumbing system to the community water main under the street. Congress banned the use of lead pipes in 1986, however, there are still an estimated 6.1 million lead services lines currently in use,<sup>23</sup> and there is no national database inventorying where lead service lines are located.<sup>24</sup> To address this issue, the Environmental Protection Agency (EPA) published a proposed rule in October 2019 to update its Lead and Copper Rule. But while the updated rule requires water systems to maintain a public inventory of where lead service lines are located, it does not affirmatively require that lead services line be replaced.<sup>25</sup>

### Legislation

- **H.R. 3745, the “HUD Inspection Oversight Act of 2019”** is a bill sponsored by Rep. Al Lawson that directs HUD to increase transparency and strengthen enforcement of the inspection process for PBRA properties that fail to come into compliance with federal housing laws.
- The **“Tenant Empowerment Act”** is a discussion draft that would allow tenants living in HUD-assisted properties to have an increased role in holding private owners accountable for poor housing conditions.
- The **“Ensuring Performance-Based Contract Administrators Actually Perform Act”** is a discussion draft that would clarify what entities are eligible to serve as performance-based contract administrators (PBCAs), by specifying that organizations that are not public housing agencies must have demonstrated experience with multifamily housing preservation and tenant engagement to be able to serve as a PBCA and would require local or state administration of PBRA contracts.
- The **“Lead Service Line Abatement Act”** is a discussion draft that would require HUD to identify lead service lines in federally assisted housing and provide grants for their removal.
- The **“Promoting Resident Opportunities and Self-Sufficiency Act”** is a discussion draft to ensure public housing residents remain eligible to participate in the Resident Opportunities and Self-Sufficiency (ROSS) and Jobs Plus programs after the public housing development where they live has been converted to Section 8 housing under the Rental Assistance Demonstration (RAD).

<sup>21</sup> HUD, [Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing](#) (July 2012).

<sup>22</sup> Government Accountability Office, [Lead Paint in Housing: HUD Should Strengthen Grant Processes, Compliance Monitoring and Performance Assessment](#) (June 2018).

<sup>23</sup> Government Accountability Office, [Real Estate Assessment Center, HUD Should Improve Physical Inspection Process and Oversight of Inspectors](#) (March 2019).

<sup>24</sup> National Conference of State Legislatures, [Lead Water Service Lines](#) (February 2018).

<sup>25</sup> The rule only requires that water systems replace the water system-owned portion of a lead service line when a customer chooses to replace their customer-owned portion of the line. Currently, water systems are not required to replace their portion of a lead service line when a customer replaces their portion of the line. See Environmental Protection Agency, [LCR Proposal Summary and Key Improvements](#) (2019).