

**Memorandum of Understanding between the
U.S. Department of Housing and Urban Development and the
U.S. Environmental Protection Agency regarding
Lead Paint Compliance and Enforcement**

I. Background

Millions of people, especially those living in communities with environmental justice concerns, continue to be exposed to lead at home and in other buildings where lead-based paint is found in deteriorating condition (peeling, chipping, cracking, or damaged). There is no level of lead exposure or lead in the body that is safe for children. Based on scientific evidence, even low levels of lead that were once considered safe have been linked to harmful changes in intelligence, behavior, and health. The Centers for Disease Control and Prevention (CDC) estimates that approximately 500,000 children in the United States have blood lead levels values above 3.5 micrograms of lead per deciliter of blood.¹

Lead-based paint hazards in older dilapidated housing or from housing renovations most commonly cause elevated levels of lead in children. Lead poisoning is far more common among low-income and minority children living in older housing, who then suffer disproportionate impacts from lead poisoning.

The United States Environmental Protection Agency (EPA) and the United States Department of Housing and Urban Development (HUD) (the agencies) are committed to strengthening our approach to environmental justice issues so that overburdened and marginalized communities, in particular, are protected from environmental health hazards. The agencies are committed to ensuring that all Americans have the right to live in safe housing.

EPA and HUD are also committed to renewing their cooperative working relationship in this Memorandum of Understanding (MOU), applying lessons learned from their prior work and developments that have taken place since the agencies entered the 1997 Memorandum of Understanding for the Enforcement of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (1997 Section 1018 MOU) and accompanying Guidance on Coordination Between EPA & HUD, Section 1018 Lead-Based Paint Disclosure Rule Investigations. The agencies recognize that they should utilize their resources for lead paint compliance and enforcement in the most efficient way possible and should focus on those areas where children are at greatest risk of lead poisoning. This MOU employs the term

¹ <https://www.cdc.gov/nceh/lead/docs/hrsa-cdc-letter-on-blood-lead-testing-508.pdf>

“enforcement” to encompass a broad range of compliance and enforcement activities that the agencies may otherwise describe using different nomenclature. For purposes of this MOU, use of the term “enforcement” covers the following activities: the array of methods to determine the compliance status of a regulated party and gather evidence for potential enforcement, including but not limited to planning and conducting inspections and investigations, information request letters and subpoenas, off-site compliance monitoring, and other measures to determine and promote compliance; case development; administrative and judicial proceedings; and post-settlement compliance monitoring.

II. Purpose

The agencies have a shared interest in ensuring that children, especially those at high risk, are not exposed to unacceptable human health risks from lead paint hazards, and therefore, the purpose of this MOU is to retain and strengthen collaboration between the agencies, in accordance with a whole of government approach, while at the same time clarifying and establishing parameters for information sharing and roles and responsibilities in enforcement. This MOU seeks to further the mutual interests and diverse experience of the agencies and to facilitate: 1) a framework for consultation, information-sharing, and mutual assistance in civil enforcement of the Lead Disclosure Rule, the Renovation, Repair and Painting Rule, and the Lead Safe Housing Rule; 2) improve coordination and communication between EPA and HUD to eliminate duplication of effort and maximize the effectiveness and efficiency of their monitoring and enforcement efforts; and 3) strengthen partnerships and pool resources to reduce childhood lead exposures and associated health impacts. This MOU identifies key mechanisms that the agencies expect to utilize for that continued collaboration.

This joint memorandum does not require that all enforcement actions be conducted by both HUD and EPA. Rather, it is an outline of how both agencies expect to work together in various stages of enforcement. For example, if EPA discovers that a property is HUD assisted or insured, EPA intends to contact HUD to coordinate enforcement. Similarly, if HUD discovers violations of the Renovation, Repair and Painting (RRP) Rule or Lead Paint Activities Rule, HUD intends to contact EPA.

III. Authorities

HUD and EPA share certain enforcement authority and also have certain independent enforcement authorities pertaining to lead paint. This MOU provides a

general overview of those authorities. This MOU does not provide an exhaustive explanation of the agencies' authorities.

A. Shared Authority

1. Congress enacted the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4822, and the Residential Lead-Based Paint Hazard Reduction Act of 1992, (Title X of the Housing and Community Development Act of 1992), amending 42 U.S.C. § 4822 and enacting §§ 4851, et seq. (Title X). As required by Section 1018 of Title X, 42 U.S.C. § 4852d, EPA and HUD promulgated joint regulations (the Lead Disclosure Rule; 40 CFR Part 745, Subpart F, for EPA, and 24 CFR Part 35, Subpart A, for HUD).

2. Section 1018 of Title X requires sellers and lessors of target housing (i.e., built before 1978, excluding pre-1978 housing for the elderly, housing for persons with disabilities, and zero-bedroom housing units, unless a child under age 6 resides or is expected to reside in such housing (15 U.S.C. § 2681(17) and 42 U.S.C. § 4851b(27))) to provide buyers and lessees with a lead hazard information pamphlet, disclose the presence of any known lead-based paint and/or lead-based paint hazards, provide any reports or records concerning lead-based paint and/or lead-based paint hazards, attach a form to each sales contract and lease containing a Lead Warning Statement (or to include the Lead Warning Statement in the contract) and certify compliance with the Lead Disclosure Rule, and provide buyers with a 10-day opportunity to conduct a risk assessment or inspection for lead-based paint hazards. Both agencies conduct education, outreach, enforcement, and compliance assistance activities to inform the regulated community of its obligations under Section 1018.

3. Section 1018 of Title X assigns regulatory and enforcement responsibilities to EPA and HUD. Section 1018 provides EPA with the authority to seek both civil and criminal penalties under the Toxic Substances Control Act ("TSCA") against any person who fails or refuses to comply with Section 1018, or any rule or order issued under the Section (e.g., the Lead Disclosure Rule). Section 1018 provides HUD with the authority to seek civil money penalties in accordance with the HUD Reform Act of 1989, 42 U.S.C. § 3545, against any person who knowingly violates the requirements of Section 1018 or the Disclosure

Rule and to enjoin any violation of Section 1018 or the Disclosure Rule. Section 1018 cannot be delegated to states, territories, or tribes.

This MOU is undertaken to implement part of Title X, Section 1016, 42 U.S.C. § 4852b, which provides that the agencies “shall consult on an ongoing basis” in carrying out Title X.

B. HUD’s Independent Authorities Pertaining to Lead Paint

1. HUD enforces the Lead-Safe Housing Rule (LSHR; 24 CFR 35, subparts B – R) pursuant to Title X, Sections 1012 and 1013, 42 U.S.C. § 4822. The LSHR applies to all target housing that is federally owned, target housing receiving federal assistance, and target housing for families receiving federal housing assistance.
 - a. Specific requirements depend on whether the federal government is assisting, or disposing of, the target housing, and also on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied. Enforcement authority resides with the HUD program offices that provide assistance under their respective program statutes and implementing regulations.
 - b. When the program offices that provide housing assistance believe that the owners (or their agents) have violated the LSHR, the offices have a range of administrative actions they may take for remediating the violations, such as enhanced HUD monitoring, requiring additional reporting by the provider, requiring advance approval for spending certain or even all funds.
 - c. In instances where owners fail to bring properties up to standard, and where physical and financial deficiencies persist, program offices can refer cases to HUD’s Departmental Enforcement Center (DEC) or Office of Program Enforcement (OPE). OPE or the DEC can take appropriate enforcement action, which may include administrative sanctions, such as civil money penalties, suspension and/or debarment, and possible referral to the Department of Justice for civil action. When criminal

activity is suspected, OPE or the DEC refer these cases to HUD's Office of the Inspector General.

- d. The Office of Lead Hazard Control and Healthy Homes (OLHCHH), under its delegation of authority from the Secretary of Housing and Urban Development for matters pertaining to lead hazard control, undertakes monitoring of LSHR implementation, provides technical support for LSHR enforcement by the program offices, and provides policies and guidance on LSHR implementation and enforcement.

2. The OLHCHH provides funding pursuant to 42 U.S.C. § 4852 for lead hazard reduction in privately-owned target housing of low-income families that is not receiving project-based assistance from HUD, through grants to local and certain state, tribal, or territorial governments (i.e., those states, federally recognized Indian tribes (tribes), or Territories with programs authorized by EPA to administer certain lead programs under 15 U.S.C. § 2684).

C. EPA's Independent Authorities Pertaining to Lead Paint

1. Pursuant to the TSCA Sections 402 and 406, 15 U.S.C. §§ 2682, 2686, EPA has also promulgated two other broad regulatory programs pertaining to lead paint enforcement – (1) the Renovation, Repair and Painting (RRP) Rule, which now incorporates the Pre-Renovation Education Rule (40 CFR Part 745 Subpart E) and (2) the Lead-Based Paint Activities Rule (40 CFR Part 745 Subpart L).

2. The RRP Rule regulates renovations for compensation in target housing and child-occupied facilities. Renovations include projects such as removing, modifying, or repairing painted surfaces or painted components; removing building components; interim controls; and weatherization projects. The RRP Rule requires lead-safe work practice standards; training and certification for firms and renovators; accreditation for training providers; and notice from renovators to owners and/or occupants (and, in child-occupied facilities, parents and guardians) prior to commencing lead paint renovations.

3. The Lead-Based Paint Activities Rule regulates lead paint abatement, inspection, and risk assessment in target housing and child-

occupied facilities, as well as the accreditation for training providers of those and other professions.

4. As described in 40 CFR Part 745, Subpart Q, EPA may authorize states, territories, or tribes to operate one or both programs if at least as protective as the Federal program (40 CFR Part 745, Subparts E and L). Currently, EPA directly implements both programs in multiple jurisdictions. More EPA-authorized programs currently operate the [Lead-Based Paint Activities Rule](#) than the [RRP Rule](#).

5. EPA pursues enforcement based on compliance monitoring activities, including tips and complaints and in accordance with policies setting national priorities for enforcement and compliance assurance. EPA or an authorized state, territorial, or tribal program can take appropriate enforcement action where there is noncompliance, which may include administrative penalties pursuant to 15 U.S.C. §§ 2615 and 2688-2689, and requiring compliance pursuant to 15 U.S.C. § 2616 through referral to the Department of Justice for civil action. When criminal activity is suspected, EPA refers these cases to EPA's Office of Criminal Enforcement, Forensics and Training (OCEFT).

IV. Organization and Facilitation Provisions

A. Communication, Organization and Conflict Resolution.

1. Communication may take place in any way the agencies find conducive to collaboration, including telephone, email, in person, or online conference calls.

2. The agencies recognize that their organizational structures differ, and that the difference in the structure of each agency requires careful coordination of communications by both agencies.

a. Currently, the Enforcement and Compliance Assurance Divisions (ECAD) of each EPA regional office, represented by their Office of Regional Counsel (ORC), initiate most lead enforcement matters. Cases are coordinated nationally with the Office of Enforcement and Compliance Assurance (OECA) in EPA Headquarters, which includes EPA's Office of Civil Enforcement (OCE) and EPA's Federal Facilities Enforcement Office (FFEO), the Office of Criminal Enforcement, Forensics and

Training (OCEFT), among other offices. Outreach activities and state, tribal, or territorial government authorization are responsibilities of the Land and Chemicals and Redevelopment Division (LCRD) in each EPA region, which coordinate nationally with the Office of Chemical Safety and Pollution Prevention (OCSP) and the Office of Pollution Prevention and Toxics (OPPT) in EPA Headquarters on outreach and coordinates nationally with OPPT, OECA, and the Office of International and Tribal Affairs in EPA Headquarters on authorization. The Office of General Counsel (OGC) advises the various offices of the EPA, including OECA and OPPT.

- b. HUD lead paint enforcement is primarily conducted by Headquarters, Office of Lead Hazard Control and Healthy Homes (OLHCHH) and the HUD program offices that provide housing assistance, including the Office of Public and Indian Housing (PIH), Office of Multifamily Housing (MF), and Office of Community Planning and Development (CPD), which HUD's Office of General Counsel represents and advises in both enforcement and non-enforcement matters. HUD maintains regional offices and field offices which include limited staffing on lead and healthy homes programs as well as more extensive staffing for monitoring and enforcing the statutes, regulations, and policies for HUD's assistance and mortgage insurance programs for housing and certain other facilities. The current primary foci of the field offices and OLHCHH are its lead hazard reduction grant programs and its outreach, monitoring, and enforcement of lead safety activities by recipients of housing assistance from HUD program offices, as described in Section III.B (HUD's Independent Authorities Pertaining to Lead Paint).
- c. HUD's Office of Public and Indian Housing oversees and funds public housing authorities, enforces public housing requirements, including funding for lead-based paint testing, remediation, and abatement. Public Housing Authorities provide affordable and public housing through public housing projects, project-based rental housing, and administration of the Housing Choice Voucher program, among other programs.

- d. HUD's Office of Multifamily Housing is responsible for the overall management, development, direction, and administration of programs including project-based rental assistance, housing for the elderly, housing for persons with disabilities, and loan guarantees for the construction, rehabilitation, preservation, and refinancing of multifamily rental housing, among other programs.
- e. HUD's Office of Community Planning and Development develops viable communities through such programs as those for community development block grants, HOME investment partnerships, self-help homeownership opportunity program, and the housing trust fund that finances the development, rehabilitation, and preservation of affordable housing for extremely low- and very low-income families, among other programs.

3. To the extent activities contemplated by this MOU involve offices other than the OCE and the OLHCHH, the OCE and the OLHCHH expect to coordinate and communicate with those respective offices. Additionally, OCE and the OLHCHH expect to assist each other in navigating any other offices, including regional or field offices, within their respective agencies as needed, including providing updated contact information.

4. The agencies expect to respond to each other in a timely manner, typically within 10 business days. The agencies recognize that time constraints apply during enforcement, and so expect to prioritize providing responses to those time-sensitive matters. The agencies should indicate any time constraints they are under and communicate those to the other agency.

- a. To the extent the notifying agency does not receive a timely response from the notified agency, it should follow-up first by attempting an alternative form of communication (e.g., following up an email with a phone call), by contacting the initial contact's supervisor, or by contacting the agency contact(s) designated in Section XII [Agency Contacts]. Then, they should schedule a meeting to connect regarding the issue, with a copy of that request sent to the agency contact(s) designated in Section XII [Agency Contacts]. To the extent the notified agency needs additional time to coordinate its response, it should inform the notifying agency of that delay. Such a delay should not exceed 15 additional business days from the date the notified agency

requests additional time. If the notified agency fails to respond within 10 business days of the meeting (or a request for a meeting) or the delay exceeds the 15 additional business days the notified agency requested, then the notifying party may proceed without further notice or coordination with the notified agency.

- b. Consultation between the agencies concerning implementation of this MOU may occur at any time upon the request of either agency. Whenever a matter involving this MOU is in dispute or otherwise cannot be resolved, the staff involved should elevate the matter to appropriate Headquarters contacts for decision, and, if needed, within Headquarters, to address the concerns.

B. Meetings

1. EPA regions and HUD regional or field offices and OLHCHH should meet quarterly, or on a schedule mutually agreed to by the individual EPA region and HUD field office to discuss coordination of activities described in Section V [Coordination of Agencies' Lead Paint Enforcement] in that region or field office.

2. The agencies expect to meet at least once a year nationally to review this MOU. OCE and OLHCHH should discuss the scope and schedule of these meetings and facilitate them. The meeting should include a discussion concerning any of the following:

- a. the status of planned and completed enforcement activities,
- b. any developments and updates relating to guidance, resources, and organization of each agency (such as the addition of any EPA-authorized programs or development of any federally assisted housing inspection requirements by HUD),
- c. progress/obstacles in meeting each agency's training needs (as discussed in Section IV.C [Cross-Agency Training and Guidance]), and
- d. other topics as requested by either agency.

C. Cross-Agency Training and Guidance

To aid in the understanding of each other's programs and procedures, the agencies expect to:

1. Develop and deliver joint training, which may include sharing information on any trainings provided throughout the year and/or organizing separate trainings specifically for the purposes of facilitating collaboration,
2. Develop, as appropriate, and provide individual, and, as appropriate, joint guidance, and
3. Provide resources, if available, to each other and to regulated communities as needed and appropriate.

V. Coordination of Agencies' Lead Paint Enforcement

Each agency expects to help successfully carry out actions described in this MOU to the greatest extent practicable and permitted by its authorities.

A. Covered Authorities

1. This MOU applies to:
 - a. EPA's direct enforcement activities under TSCA on the Lead Disclosure Rule, the Lead-Based Paint Activities Rule and RRP Rule.
 - b. HUD's enforcement activities under Title X (apart from its subtitle B), the Lead Disclosure Rule, and LSHR.
2. The agencies support sharing information and collaborating as needed or upon request even when an enforcement activity is being taken pursuant to the agency's independent authority. Each agency recognizes the other's independent authorities and HUD's authorities relating to its funded entities.

B. Education and Outreach.

Pursuant to the objectives of this MOU, EPA and HUD expect to continue to cooperate, as appropriate, when providing public education and outreach activities in areas such as large central cities in which the population has a high rate of elevated blood lead levels (prioritized cities) and other disadvantaged communities, including communities with environmental justice concerns. This may include any of the following activities:

1. Developing and implementing outreach and community engagement plans to educate landlords, landlord associations, property managers, local public housing authorities, contractors and renovators, and communities overburdened by lead exposure, in the prioritized

target cities and other disadvantaged communities, including communities with environmental justice concerns about lead paint.

2. Compiling and updating shared lists of potential state, tribal, territorial, and local contacts, including local housing, building, and zoning code enforcement and permitting organizations; local health departments; state, tribal, and territorial environmental, housing, health agencies; educational institutions, and nonprofit community partners, including community-based organizations in communities with environmental justice concerns.

3. Requesting and sharing lists of regulated entities, such as landlords/property managers, renovation and lead activities firms in each city, and lead paint abatement orders issued by state, tribal, or local health, housing, economic development, community development or similar departments, if available.

4. Preparing and distributing outreach documents regarding federal lead paint requirements and compliance to potential contacts.

5. Organizing and conducting joint outreach events, as well as collaborating on follow-up activities resulting from such events.

C. Targeting, Data, and Information Sharing

1. The agencies expect to cooperate to share and protect information to identify communities with environmental justice concerns, and geographic locations in the country where lead exposure poses the greatest potential risk. This includes sharing data analysis regarding environmental justice indicators.

2. The agencies may request information, including, but not limited to information or contacts for the groups and entities described under Sections V.B [Education and Outreach] 2 and 3, from the other to assist in compliance monitoring and enforcement actions. The agencies may also share information about any Lead Disclosure Rule regulated entities that they identify that are noncompliant. This exchange of information may take place initially at or around the beginning of the fiscal year or at any other time necessitated by the case development. To the extent consistent with applicable law, each agency will safeguard relevant information and facilitate enforcement actions in a timely manner and as early as possible in the process.

3. The agencies expect to provide each other, whenever possible and appropriate, notification of areas chosen for compliance monitoring. When one agency becomes aware that the other agency is conducting enforcement activities in the same location, they should make special efforts to regularly communicate regarding their respective activities so

as to initiate collaboration, increase efficiencies and avoid duplication of efforts, as described in this MOU.

4. All lists of investigation sites and priority enforcement foci as well as any other enforcement documents that may be shared are enforcement sensitive and will be held confidential to the extent consistent with applicable law.

5. Any privileged information exchanged should be held confidential to the extent consistent with applicable law.

6. To the extent any information claimed or potentially claimed as, or previously determined to be, Confidential Business Information (“CBI”) will be shared pursuant to this MOU, then any such written request submitted to EPA for CBI must contain all substantive requirements of 40 C.F.R. §§ 2.209(c) and, for TSCA CBI, 2.306(h). EPA will share TSCA CBI with only those HUD staff who have been cleared to follow appropriate procedures in accordance with any further agreement between EPA and HUD that addresses TSCA CBI.

7. If an agency that has received information under this MOU receives a Freedom of Information Act (5 U.S.C. § 552) request for which there are responsive records that originated with the other agency, to the extent practicable, it will refer that request to the other agency for it to respond directly to the requestor regarding the releasability of the information. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

8. Proper safeguards against unauthorized use and disclosure of the non-public information shared or exchanged pursuant to this MOU are necessary for effective implementation of this MOU. Information shared under this MOU shall be shared and used consistent with the Privacy Act of 1974, as amended, and each agency’s respective privacy and information security policies. (For example, Privacy Act information will only be shared pursuant to a routine use listed in the applicable System of Records Notice, or if otherwise permitted by the Privacy Act.)

9. EPA and HUD acknowledge that certain personally identifiable information (PII) may be transferred pursuant to this MOU. The agencies agree that such data must be adequately protected from any unauthorized access, consistent with federal privacy and information standards, and the Privacy Act, where applicable. Each agency will ensure that access to the data is limited to authorized users with a need to access the information in the performance of their official duties.

10. If either party discovers or is alerted that data is missing, not received, or not properly uploaded, such party shall notify the other

party as soon as possible, and in any event, not later than one business day of becoming aware of such incident. Further, both parties agree to work together to resolve such incident and ensure the matter is resolved and the data is fully secure.

D. Referrals Between Agencies

1. The agencies expect to work collaboratively to ensure that they use their enforcement resources as efficiently as possible and to avoid duplication of efforts wherever practical.
2. Either agency may refer to the other, an enforcement focus for a Lead Disclosure Rule inspection or investigation. Such referral should be in writing, include all relevant information concerning the focus, and sent to the contacts provided in Section XII [Agency Contacts]. The notified agency, in its own discretion, may decline to accept the referral from the other agency or refer the focus to the other agency. Such declination should be in writing and sent to the other agency's contact provided in Section XII [Agency Contacts].
3. When an agency accepts a referral, it may, in its own discretion, determine what type of action to take or not take regarding that enforcement focus. If the agency accepts a referral, it should provide the other agency copies of inspection reports, final actions, and/or any available case summaries to the notified agency upon request.
4. If an agency declines a referral or declines to act within 30 calendar days after accepting a referral, the other agency may request that the case be referred back to it within 10 business days, unless the agencies agree to a longer period, so they may move forward. Each agency may request cooperation from the referring agency in conducting the action. Such cooperation may include, for example, providing the assistance of experts and witnesses within the referring agency's control.
5. In certain instances (such as those described in Section V.E.1 [Joint Inspections and Investigations]) the agencies may jointly pursue an enforcement focus. To cover such cases, the agencies are entering into the Confidentiality Agreement in Appendix A of this MOU.
6. The agencies expect to make referrals as early as possible in the enforcement process.

E. Inspections and Investigations

1. Joint Inspections and Investigations

- a. In certain cases, it may be appropriate and preferable for both agencies to jointly investigate and pursue enforcement of potential Lead Disclosure Rule violations, especially if

the subject of the investigation includes public housing, Federal Housing Administration (FHA)-insured housing, the housing is occupied by tenants receiving Housing Choice Vouchers, or project-based rental assistance housing.

- b. If a property is public housing, FHA-insured housing, housing occupied by tenants receiving Housing Choice Vouchers, or project-based rental assistance housing, the agencies should meet within 10 business days of the decision to target that property (or within 10 business days of learning of the existence of that assistance) to develop a plan for how to proceed. If there is no response to a request to meet or disagreements regarding how to proceed, the agencies should follow the communication and conflict resolution procedures outlined in Section IV.A.4 [Communications, Organization, and Conflict Resolution].
- c. In a joint inspection, HUD may also inspect for compliance with the Lead-Safe Housing Rule, and EPA may also inspect for compliance with the RRP Rule and Lead-Based Paint Activities Rule. Either agency may assist the other agency in conducting its own independent inspection of those entities.

2. Independent Inspections and Investigations

- a. Either agency may independently inspect and investigate all types of housing, including unassisted housing, public housing, FHA-insured housing, housing occupied by tenants receiving Housing Choice Vouchers, and project-based assistance housing.
- b. Where EPA discovers during an independent inspection and investigation (including any inspections and investigations undertaken based on a tip and complaint) that the housing is public housing, FHA-insured housing, housing occupied by tenants receiving Housing Choice Vouchers, or project-based assistance housing, EPA should notify HUD of its investigation and inspection, and the agencies should meet within 10 business days of the decision to target that property (or within 10 days of learning of the existence of that assistance) to develop a plan for how to proceed, including:

- i. Upon request, EPA should explain how its authorities, including those described in Sections III.C [EPA's Independent Authorities Pertaining to Lead Paint] apply or intersect in that case.
 - ii. EPA also should provide HUD with any information it has relevant to the entities' compliance, to the extent permissible under Section V.C.6 [Targeting, Data, and Information Sharing].
 - iii. Upon request, HUD should notify EPA how its authorities, including those described in Section III.B [HUD's Independent Authorities Pertaining to Lead Paint] apply or intersect in that case.
 - iv. HUD also should provide EPA with any information it has relevant to the entities' compliance to the extent permissible under HUD's FOIA and Privacy Act (5 U.S.C. § 552a) rules, and assistance case-specific confidentiality provisions of agreements and contracts (e.g., statements on HUD forms).
 - v. If there is no response to a request to meet or there are disagreements regarding how to proceed under V.E.2 [Independent Inspections and Investigations] b, the agencies should follow the communication and conflict resolution procedures outlined in Section IV.A.4 [Communications, Organization, and Conflict Resolution].
- c. Where HUD discovers during an independent inspection and investigation that an entity is violating any of the authorities listed in Section III.C [EPA's Independent Authorities Pertaining to Lead Paint], HUD should notify EPA of its investigation and inspection and the agencies should meet within 10 days to develop a plan for how to proceed. HUD also should provide EPA with any information it has relevant to the entities' compliance to the extent permissible, such as would be allowed under the Freedom of Information Act and/or assistance-specific confidentiality agreements. If there is no response to a request to meet or if there are disagreements regarding how to proceed, the agencies should follow the communication and conflict resolution procedures outlined in Section IV.A [Communications, Organization, and Conflict Resolution].

3. Subpoenas and Information Requests

- a. Either agency may request that the other agency issue information requests to further joint inspections and investigations.
- b. HUD, which, as of the date of execution of this MOU, does not have lead-related statutory subpoena authority, may request that EPA issue subpoenas (including the specific information sought, information of previous unsuccessful attempts to obtain that information, and the reason(s) the information is needed) to further joint inspections and investigations. EPA will consider the request and decide, in consultation with HUD, resource constraints and other factors may preclude EPA from developing and issuing the requested subpoena.

F. Case Development, Administrative and Judicial Cases

1. Independent Inspections and Investigations

- a. For cases developed independently under Section V.E.2 [Independent Inspections and Investigations]:
 - i. Involving judicial action in cases under the Lead Disclosure Rule regarding federally-assisted housing, the judicial action should be undertaken jointly, unless the other agency affirmatively declines to partake in the judicial action.
 - ii. For other cases, the enforcing agency may pursue administrative or judicial remedies independently or jointly.

2. Joint Inspections and Investigations

- a. Recognizing that both agencies have responsibility for enforcement of the Lead Disclosure Rule, in any enforcement case under that rule where collaboration may benefit the case, the notifying agency should seek the partnership of the notified agency in that case, unless it refers the case to the notified agency under Section V.D [Referrals between Agencies].
- b. To help provide the greatest protection of the health of children residing in target housing units of a violative owner, the agencies should pursue settlements (or other endpoints, such as compliance agreements and court judgments) that include testing and remediation of as many

target properties in communities with environmental justice concerns as possible, to the greatest extent possible.

- c. For cases developed based on a joint inspection and investigation, the agencies should meet to discuss the following:
 - i. How the agencies expect to allocate cases, including each agency's roles and responsibilities.
 - ii. The application of:
 - (a) HUD's administrative enforcement procedures, as discussed in Sections III.A and/or B and HUD's authority concerning the type of funds that may be used or not used to pay a penalty depending on the entity involved.
 - (b) EPA's Enforcement Response and Penalty Policies and related policies, such as those governing settlements with conditions or Supplemental Environmental Projects, or other agreements between EPA and HUD addressing penalties.
 - (c) HUD's position, acknowledged by EPA, is that in no event shall a Respondent pay any portion of the civil penalty or interest thereon from funds restricted from use for such purpose under statutes or regulations implemented by HUD including 42 U.S.C. §§1404a-1440 as amended and annual HUD appropriations acts (currently within Transportation, Housing and Urban Development and Related Agencies Appropriation Acts) and related regulations. EPA and HUD acknowledge this restriction in no way impacts EPA's ability to include a penalty assessment as a component of an enforcement action.
 - iii. The potential referral of the case for civil administrative or judicial enforcement, and/or criminal enforcement.
 - iv. Whether or not joint settlement discussions should occur.

- v. Reasonable timelines for completing investigation and case development work.
- vi. The technical expertise each agency may provide (e.g., EPA on its RRP and Pre-Renovation Education Rules, and HUD on its LSHR and the application of the HUD Guidelines in any inspection, risk assessment, abatement plans, funding, and reporting).
- vii. Whether the agencies will file parallel administrative proceedings.
- viii. Possible referral of cases to the Department of Justice.
- ix. The shared understanding of the case objectives and goals, as well as division of labor contemplated by the agencies in consent decree drafting and monitoring, including implementation of injunctive relief, such as inspections, lead risk assessments, interim controls of lead-based paint hazards, and/or lead-based paint or lead-based paint hazard abatement.

VI. No Binding Obligation or Financial Commitment

This MOU imposes no binding obligations or financial commitments on either of the agencies. This MOU is an expression of intent only. This MOU is a voluntary agreement that expresses the good-faith intentions of the agencies, is not legally binding, does not create any contractual obligations, and is not enforceable by any party.

VII. Expenses of the agencies

Each agency bears its own expenses in connection with the preparation, negotiation, and execution of this MOU.

VIII. Limitations

- A. All commitments made by EPA and HUD in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA or HUD to expend resources or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations.
- B. Any transactions involving transfers of funds between the agencies to this MOU will be undertaken in accordance with applicable laws, regulations, and procedures under separate written agreements.

- C. This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this MOU, against any of the agencies, their officers or employees, or any other person. This MOU does not apply to any person or entity outside of the signatory agencies.
- D. Nothing in this MOU alters the statutory, regulatory, or other authority or responsibilities of the EPA or HUD. This MOU supersedes the 1997 Section 1018 MOU and its implementing guidance. This MOU does not restrict any future agreements between HUD and the EPA.
- E. HUD Regional Offices and Field Offices, in coordination with OLHCHH, and EPA regional offices, in coordination with OCE and FFEO, may build on this MOU and enter into supplemental MOUs or similar agreements to further clarify their enforcement and compliance assistance work, consistent with the overall national framework established under this MOU. HUD's regional and/or field offices drafting such MOUs or agreements shall seek approval of them from the OLHCHH and HUD OGC, and such MOUs or agreements shall go into effect only upon EPA Regional approval and such HUD headquarters approval being provided.

IX. Publicity and Press

The agencies expect to coordinate all public statements about the MOU, or any deliverables developed under the MOU. The agencies expect to collaborate from the outset on the form, timing, and contents of any of the following relating to the MOU or any related deliverables: press releases, media responses, publicly available descriptions, or any other public communications. The agencies, including agency public affairs representatives, expect to begin consulting on press releases and press conferences well in advance of any public announcement. As part of that consultation, the agencies may work together to reach out to communities with environmental justice concerns whenever possible.

X. Duration, Amendments, Termination or Cancellation

- A. This MOU is to take effect upon the date of final signature.
- B. This MOU may be modified, at any time, through the written consent of the agencies. The agencies expect to review this MOU:
 - 1. At least once every three years, or
 - 2. When changes in conditions that may affect this MOU occur, and amend it if appropriate.
- C. Either agency may terminate its participation in this MOU at any time by providing written notice to the other agency, at least 90 days in advance of the desired termination date.

XI. Compliance with Applicable Laws

- A. The agencies understand that changes in rules, laws, regulations, or case law applicable hereto may occur during the term of this MOU and that this MOU has no legal effect on any such changes.
- B. Should such changes occur, the agencies should examine them and consider amending this MOU under Section X [Duration, Amendments, Termination or Cancellation].

XII. Agency Contacts

- A. The following agency offices are the primary contacts for implementation of the efforts outlined in this MOU:
 - 1. U.S. Department of Housing and Urban Development: Director, Office of Lead Hazard Control and Healthy Homes.
 - 2. U.S. Environmental Protection Agency: Deputy Director, Office of Civil Enforcement
- B. The agencies should designate specific contacts (offices and individuals) for their headquarters, regional offices, and, for HUD, field offices regarding this MOU. Appendix B lists the headquarters contacts at the time of execution of this MOU. Each agency may, from time to time, unilaterally revise its contacts by sending a revision of the appendix to the other agency without re-executing this MOU.
- C. The agencies should exchange updated contact information at least annually, copying their respective headquarters contacts.

This Memorandum of Understanding is signed for:

**U.S. Department of Housing and Urban
Development Office of Lead Hazard Control and
Healthy Homes**

MATTHEW AMMON Digitally signed by
MATTHEW AMMON
Date: 2024.02.06
18:37:39 -05'00'

Matthew Ammon
Director

Date

**U.S. Environmental Protection Agency
Office of Enforcement and Compliance
Assurance**

Rodrigues, Cecil Digitally signed by
Rodrigues, Cecil
Date: 2024.02.02
16:55:42 -05'00'
Cecil

Cecil Rodrigues
Acting Principal Deputy Assistant Administrator

Date

Appendix A - Confidentiality Agreement

CONFIDENTIALITY AGREEMENT BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR THE SHARING OF INFORMATION IN ENFORCEMENT MATTERS INVOLVING LEAD-BASED PAINT

1. This Agreement reflects the mutual understanding between the U.S. Environmental Protection Agency (“EPA”),² and U.S. Department of Housing and Urban Development (“HUD”) (collectively, the “Agencies”) with respect to privileges and claims of confidentiality that may be asserted in response to Freedom of Information Act (5 U.S.C. § 552) requests, and any third party request, including requests in any civil or criminal litigation, and in potential civil or criminal enforcement actions, whether administrative or judicial, relating to certain records that are shared between the Agencies in connection with ongoing or potential enforcement matters concerning compliance with federal laws and regulations governing lead-based paint.

2. The Agencies share close and common interests in the compliance with and enforcement of federal laws and regulations governing lead-based paint. Common interests include, but are not limited to, ensuring compliance with the federal Toxic Substances Control Act (“TSCA”), 15 U.S.C. §2601, et seq., the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4822, and the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851, et seq., as well as the regulations promulgated thereunder, including EPA’s and HUD’s Lead Disclosure Rule, 40 C.F.R. Part 745 Subpart F, and 24 C.F.R. Part 35 Subpart A, respectively; EPA’s Renovation, Repair and Painting Rule, 40 C.F.R. Part 745, Subpart E, which now incorporates EPA’s Pre-Renovation Education Rule; EPA’s Lead Paint Activities Rule, 40 C.F.R. Part 745 Subpart L; and HUD’s Lead Safe Housing Rule, 24 C.F.R. Part 35 Subparts B, H, L and R. The Agencies agree that full and candid deliberations between them with regard to ongoing or potential enforcement matters will serve the public interest in attaining and maintaining compliance with lead-based paint

² For purposes of this Agreement, U.S. EPA encompasses, as currently structured, the Office of Enforcement and Compliance Assurance (OECA) in EPA Headquarters and the Enforcement and Compliance Assurance Divisions (ECAD) of each EPA regional office, represented by their Office of Regional Counsel (ORC).

requirements. Accordingly, the Agencies agree that the sharing of information by their employees, consultants, agents, and counsel will further these common interests.

3. Specifically, the Agencies wish to exchange records, including but not limited to emails, draft documents, and other material, which concern ongoing or potential enforcement matters, regarding potential or alleged violations of Sections 15 and 409 of TSCA, 15 U.S.C. Sections 2614 and 2689, involving failure to comply with EPA's Lead Disclosure Rule, EPA's Renovation Repair and Painting Rule, and/or EPA's Lead Paint Activities Rule, as well as potential or alleged violations of HUD's Lead Disclosure Rule and/or HUD's Lead Safe Housing Rule, and of the statutes authorizing the assistance to which the Lead Safe Housing Rule applies (e.g., 42 U.S.C. ch. 8). This Agreement does not cover information acquired by EPA from another source.

4. The Agencies anticipate that civil litigation may arise from the subject matters addressed in this Agreement.

5. The Agencies do not intend to, and do not, through their consultations and exchange of records, either before or after the initiation of litigation, waive any privileges, exemptions, or claims of confidentiality, such as, but not limited to, attorney-client, work product privilege, and governmental privileges, which would otherwise attach to any information, documents, or communications shared between the Agencies in these matters. The Agencies specifically intend that all such privileges, exemptions and claims of confidentiality shall be preserved, and that privileged, exempt and/or confidential information shall be protected from disclosure to third parties, except with respect to disclosures agreed to by the Agencies, and disclosures that are otherwise mandated pursuant to a federal statute or by order of a Federal court to disclose the information. In response to any request for information covered by this Agreement, either in discovery or pursuant to any other law and regulation, including the Freedom of Information Act, the Agencies further agree to consult with each other and notify each other in writing after receiving such a request and before producing to any third party any such documents, whether such production is made voluntarily, in response to any discovery request or pursuant to any other law and regulation. The Agencies further agree that they will not oppose the intervention of the other agency party in any proceedings related to the production of such documents to a third party.

6. The Agencies agree and acknowledge that the common interest privilege and confidentiality established by this Agreement is held jointly by both parties and that neither Agency is authorized to unilaterally waive the privilege or confidentiality with respect to any information or documents shared pursuant to this Agreement. The

Agencies agree that disclosure of information shared under this Agreement where such disclosure is inconsistent with the Agreement terms, regardless of the intent of such disclosure, shall not waive the confidentiality and privileges otherwise applicable to the shared information or any other information referenced by, based upon, or closely related to the shared information.

7. The Agencies agree that certain information or documents shared pursuant to this Agreement may not be subject to public disclosure pursuant to the Freedom of Information Act, because they are exempt from disclosure pursuant to 5 U.S.C. § 552(b).

8. The Agencies further agree that all information obtained by the Agencies pursuant to this Agreement will be used only for purposes that are consistent with existing law. The Agencies agree that they shall each take the necessary and appropriate steps to ensure that any person who is granted access to confidential information and documents shared pursuant to this Agreement is familiar with the terms of this agreement and complies with such terms as they relate to the duties of such person.

9. The confidentiality obligations established by this Agreement shall remain in full force and effect, as permitted by federal law, as applicable, without regard to whether the Agreement is terminated pursuant to Paragraph 10.

10. Subject to Paragraph 9, this Agreement shall terminate upon either Agency notifying the other in writing of its intention to withdraw from this Agreement.

11. The Agencies agree that this Agreement memorializes their earlier written and/or oral understanding with regard to the confidentiality of previously shared information, and also applies to that information.

12. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the Agreement.

13. This Agreement shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by the authorized representatives of all parties.

14. This Agreement is intended to be executed on separate signature pages. This Agreement, and any modifications thereto, shall be effective when at least one

counterpart has been executed by each party (the “Agreement’s effective date”). Manual, faxed, digital or emailed signatures shall constitute original signatures binding on the signing party.

15. Each of the undersigned representatives of the Agencies certifies being fully authorized to enter into the terms and conditions of this Agreement, and to legally bind such entity to all terms and conditions of this document.

This Confidentiality Agreement is signed for:

**U.S. Department of Housing and Urban Development
Office of Lead Hazard Control and Healthy Homes**

MATTHEW AMMON Digitally signed by
MATTHEW AMMON
Date: 2024.02.06
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Matthew Ammon
Director

Date

**U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance**
Rodrigues,
Cecil Digitally signed by
Rodrigues, Cecil
Date: 2024.02.02
16:56:18 -05'00'

Cecil Rodrigues
Acting Principal Deputy Assistant Administrator

Date

Appendix B – Points of Contact for HUD-EPA Lead Paint Enforcement MOU

This appendix lists contacts as of the date of execution of this MOU. Each agency may, from time to time, unilaterally revise its list of contacts by sending a revision of the appendix to the other agency.

U.S. Department of Housing and Urban Development

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Director
Office of Lead Hazard Control and Healthy Homes
U.S. Department of Housing and Urban Development
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Bruce P. Haber
Director, Program and Regulatory Support Division
Office of Lead Hazard Control and Healthy Homes
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John B. Shumway
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Office of General Counsel
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Lee Ann Richardson
Deputy Assistant General Counsel for Administrative Law
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U.S. Environmental Protection Agency

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Office of Enforcement and Compliance Assurance
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Michael Bellot, Associate Director
Office of Enforcement and Compliance Assurance
Waste and Chemical Enforcement Division
U.S. Environmental Protection Agency
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Bellot.Michael@epa.gov

Kathryn Pirrotta Caballero
Director, Federal Facilities Enforcement Office
US Environmental Protection Agency
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