

May 1994

# LEAD-BASED PAINT POISONING

## Children in Section 8 Tenant-Based Housing Are Not Adequately Protected





**Resources, Community, and  
Economic Development Division**

B-252772

May 13, 1994

The Honorable Donald W. Riegle, Jr.  
Chairman  
The Honorable Alfonse M. D'Amato  
Ranking Minority Member  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate

The Honorable Henry B. Gonzalez  
Chairman  
The Honorable Jim Leach  
Ranking Minority Member  
Committee on Banking, Finance  
and Urban Affairs  
House of Representatives

The risk of poisoning from lead-based paint continues to threaten young children living in housing constructed before 1978, when the sale of such paint was banned. Exposure to lead, even at low levels, may cause children—especially those under the age of 7—to develop serious health, learning, and behavior problems. According to officials of the Department of Housing and Urban Development (HUD), over 300,000 families with children under the age of 7 live in privately owned rental housing—most of which was constructed before 1978—and receive tenant-based housing assistance through HUD under section 8 of the Housing Act of 1937, as amended.<sup>1</sup>

Concerned about the continued threat to children's health posed by lead-based paint in federally assisted housing, the Congress required, in the Housing and Community Development Act of 1992, that we review the enforcement of and compliance with federal lead safety laws and regulations as they apply to section 8 tenant-based housing and determine whether changes are needed to better identify lead hazards in that housing. Specifically, this report addresses

- the effectiveness of HUD's regulations for identifying lead-based paint hazards to ensure the safety of section 8 tenant-based housing,

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<sup>1</sup>Section 8 tenant-based assistance is provided to the tenant rather than to the housing project or to a public housing authority, as with public housing. See our earlier report on lead-based paint in public housing, Lead-Based Paint Poisoning: Children in Public Housing Are Not Adequately Protected (GAO/RCED-93-138, Sept. 17, 1993).

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- the effectiveness of HUD's regulations for protecting children who already have elevated levels of lead in their blood and live in section 8 tenant-based housing, and
  - the applicability of the Lead-Based Paint Poisoning Prevention Act, as amended in 1992, to the section 8 tenant-based program.

In four major cities—Boston, Massachusetts; Minneapolis, Minnesota; New Orleans, Louisiana; and St. Paul, Minnesota—we assessed the implementation of federal lead safety regulations pertaining to section 8 tenant-based housing. We conducted our study by matching the address of children with elevated lead levels (obtained from local health agencies with the addresses of section 8 residences (obtained from the local public housing agencies in each city). Through this process, we identified a limited number of complete matches, from which we selected 11. For these 11 matches, we determined whether the residences had been tested for lead paint and whether the children had been protected from further poisoning. Our findings apply only to the locations we reviewed and cannot be generalized to other cities. (See app. I for additional information on our study's scope and methodology.)

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## Results in Brief

The legislative goal of inspecting section 8 housing is to ensure that residents have “decent, safe, and sanitary” housing, which includes protection from exposure to lead-based paint hazards. However, the lead-based paint inspections that HUD requires public housing authorities to conduct consist primarily of visual searches for defective—chipped or peeling—paint. These inspections do not include testing for lead unless a child whose blood contains elevated levels of lead is known to live in the residence. The four public housing authorities we visited complied with these requirements, but their visual inspections did not alert them to lead hazards in certain intact painted surfaces, such as floors, window sashes and window sills. HUD officials could not estimate the cost of testing the section 8 tenant-based inventory or the extent to which requiring such testing would discourage landlords from participating in the program. HUD officials stated, however, that resource constraints have limited the ability of public housing authorities to enhance visual inspections with more conclusive testing of the paint.

Federal regulations did not adequately protect children with elevated lead levels who lived in section 8 tenant-based housing overseen by the four public housing authorities included in our study. Tests by local health agencies showed that 7 of the 11 residences selected for our study

contained lead-based paint hazards. Although regulations require public housing authorities to have the paint tested in the homes of children with elevated lead levels and to require corrective actions, the public housing authorities did not know whether the testing was being done. Local health agencies did not routinely determine whether the children they identified with elevated lead levels resided in section 8 housing; therefore, they did not notify the responsible public housing authorities of the children's condition or of the testing that was being done for lead-based paint hazards.

The applicability of the Lead-Based Paint Poisoning Prevention Act, as amended in 1992, (the act) to section 8 housing is uncertain. Although the act by its terms appears to cover section 8 tenant-based housing, the legislative history of the 1992 amendments to the act suggests that the Congress intended to exempt such housing from the act's requirements for lead-based paint risk assessments and other control measures. Because these requirements could be costly, they could discourage property owners' participation in the section 8 program and could thus reduce the nation's stock of affordable housing. HUD officials, however, maintain that the act does apply to section 8 tenant-based housing, and they plan to draft rules imposing the act's requirements for dwellings in the program. They also told us that they plan to provide ample time for congressional and public comment on the rules and may develop other interim procedures to better identify hazards. Until new rules have been approved, HUD plans to continue enforcing the existing regulations, which do not require risk assessments.

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## Background

To provide affordable housing for low-income families, the Congress established several housing assistance programs, including the section 8 certificate and voucher programs. HUD, which administers these programs, contracts with public housing authorities, which in turn certify applicants for eligibility and make rental assistance payments to property owners on behalf of program participants. Public housing authorities also contract with property owners to provide rental housing to eligible applicants. As part of this housing contract, property owners agree to have their dwellings inspected by the public housing authorities and to comply with HUD's housing quality standards, which include procedures for eliminating lead-based paint hazards.

Lead-based paint is a serious problem in the United States. On the basis of studies by HUD and the Environmental Protection Agency, experts have

estimated that one out of every six children under the age of 7 has been poisoned by lead to some degree. Young children are more susceptible to lead poisoning than older persons because they retain proportionally more lead in their blood, where it can damage their still-developing neurological systems.

To eliminate the hazards of lead-based paint, section 302 of the act requires that certain types of federally assisted housing be inspected for lead-based paint and that identified hazards be eliminated as far as practicable. Lead-based paint hazards are defined by statute as any of six conditions that can present lead exposures sufficient to adversely affect human health: contaminated dust; deteriorated lead-based paint; intact lead-based paint on friction surfaces, impact surfaces, and chewable surfaces accessible to children;<sup>2</sup> and contaminated bare soil.

HUD issued its current lead-based paint regulations for section 8 tenant-based housing in 1987 and changed them slightly in 1988. These regulations require that dwellings constructed before 1978 and inhabited by families with children under the age of 7 be visually inspected at least once a year<sup>3</sup> for cracked, scaling, peeling, chipped, and loose paint. Such defective paint represents a health hazard and, if found, must be covered or removed. The regulations further require that if a child with elevated lead levels is living or will be living in the dwelling, all chewable surfaces—those readily accessible to children under the age of 7—must be tested. If lead-based paint is found on these surfaces, it must be covered or removed.

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## Public Housing Authorities' Inspections Do Not Identify All Lead-Based Paint Hazards

Although public housing authorities' visual inspections comply with HUD regulations, in the four cities we visited these inspections did not effectively identify lead-based paint hazards in section 8 tenant-based housing. Proper testing of the paint, followed by abatement if necessary, would better ensure the safety of the housing. However, the cost of such testing to landlords and the effect of this cost on their desire to keep their properties in the program are unknown.

The four public housing authorities in our study generally conducted inspections in accordance with HUD's requirements, and the St. Paul

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<sup>2</sup>Friction surfaces, such as window sashes, are likely to be rubbed; impact surfaces, such as floors receive weight; and chewable surfaces, such as window sills, protrude enough to be bitten.

<sup>3</sup>At a minimum, inspections are to take place when tenants take occupancy, when they vacate, and annually.

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authority reported defective paint in section 8 residences. However, these and other public housing authorities may be overlooking significant hazards in these inspections, which require only visual evidence and do not include testing for lead-based paint hazards. Evidence of the limitations of these inspections is demonstrated by the results of local health agencies' testing of dwellings.

Local health agencies test for lead after being notified that a child with elevated lead levels has been identified through screening by a health clinic or a private physician. For example, at the four public housing authorities we visited, local health agencies tested the homes of 11 children with elevated lead levels. At three public housing authorities—in St. Paul, Minneapolis, and Boston—the local health agencies identified lead-based paint hazards in seven residences. The public housing authorities had recently inspected these homes visually and had not identified any such hazards.

The Deputy Director of HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention said that HUD's section 8 tenant-based inspection regulations should require the testing of paint in federally assisted housing. He explained that the regulations had not been updated to include this requirement because limited resources were available to address the technical issues that would arise if public housing authorities were required to test paint in section 8 housing. He did not know and could not estimate what resources would be needed annually for such testing. Moreover, he had no information to support an opinion on the impact of a testing requirement on section 8 landlords' desire to remain in the program. The cost of such a requirement could drive landlords from the program and thus reduce the nation's stock of low-income housing.

Although officials in HUD's Office of Lead-Based Paint currently have no data for estimating either the cost of testing or the impact of testing on landlords, such information could be obtained. For example, data that could be useful in developing cost estimates as well as in assessing factors affecting landlords' decisions to remain in the program are being gathered by the congressionally mandated Task Force on Lead-Based Paint Hazard Reduction and Financing. This task force, created under section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, is trying to identify ways for property owners to obtain financing for testing and eliminating lead-based paint hazards. Results of the task force's work should be available in 1995 and should be of significant value to HUD

officials as they develop guidelines for testing and eliminating lead hazards in section 8 tenant-based residences.

According to HUD officials, data collected as part of a demonstration program probably would be more valuable than the task force's results. The Director of HUD's Office of Lead-Based Paint believes that a properly designed demonstration program in a specific geographic vicinity would provide valuable information on which to base future regulatory decisions.

## Lack of Communication Prevents Public Housing Authorities From Implementing HUD's Regulations

Children who already have elevated levels of lead in their blood and live in section 8 housing are not protected from further exposure to lead in accordance with HUD's regulations. Local health agencies identified the seven children with elevated lead levels who were living in section 8 tenant-based dwellings that contained lead-based paint hazards; however, the public housing authorities responsible for ensuring the testing and, if necessary, the treating of the children's residences received no information from the health agencies and knew of neither the children's condition nor the continuing health hazards in their homes. Therefore, the public housing authorities could not and did not implement HUD's regulations requiring testing for lead-based paint and, if necessary, abating its hazards.

Faced with similar circumstances in another segment of the low-income housing stock—public housing—HUD has taken steps to overcome the lack of communication. In a recent letter to the Centers for Disease Control, HUD outlined its responsibilities, authorities, and resources for ensuring that appropriate steps are taken to reduce hazards for public housing residents. Furthermore, HUD encouraged local health agencies nationwide to coordinate their efforts to protect children from the hazards of lead-based paint with those of local public housing agencies.

During our four-city study, we visited the local health agencies as well as the public housing authorities. The health agencies identified children with elevated lead levels either through their own health screening programs or through notification by other health care providers or physicians. The health agencies are required by local or state laws to test a child's home for lead after being notified that the child has elevated lead levels. Health agencies used various techniques, including testing samples on-site and at a laboratory, to determine the lead content of painted surfaces in dwellings. Federal regulations require that if a section 8 family includes a child under the age of 7 years with identified elevated lead levels,



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inspections will include a test for lead-based paint on chewable surfaces. Lead content is to be tested by using an X-ray fluorescence analyzer or a comparable method approved by HUD.

The local health agencies identified many hazards, including deteriorating (chipped and peeling) paint surfaces and dust containing unacceptable levels of lead-based paint.<sup>4</sup> They found hazards both inside and outside dwellings in places such as wall siding and windows. In some instances, local health officials identified painted surfaces whose lead content was three times the accepted level. These officials told us that, if necessary, they may inspect other areas in addition to the child's home, such as a care-giver's residence, the child's previous residence, or the child's school. Health agencies may also test the soil surrounding a child's home.<sup>5</sup> After finding hazardous levels of lead in the soil outside the home of one of the children in our test group, the New Orleans Department of Health required that the soil be covered with grass.

The four health agencies we visited communicated the findings of their inspections to property owners. They advised 7 of the 11 property owners not only of the lead-based paint hazards but also of the corrections necessary to abate or control the hazards. In the remaining four cases, testing did not identify excessive lead levels in the children's residences, but local health agencies advised the children's parents of measures they could take to protect their children from further exposure to lead. State and local laws assign varying degrees of responsibility to property owners for completing abatement, but they generally require owners to undertake some sort of correction. At the time of our study, the seven property owners that had been required to make corrections by the state or local agency had responded as follows:

- One property owner had not started to abate the hazards; as a result, the local health agency had initiated legal proceedings.
- One property owner had completed abatement measures, which the local health agency had approved.
- Five property owners had begun but not completed abatement measures.

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<sup>4</sup>The acceptable level of lead is defined by the particular state.

<sup>5</sup>A Minnesota health official told us that the standard for lead contamination in soil, as defined by the state, is so low that virtually any soil tested would be considered contaminated. Hence, local health agencies require covering any bare soil surrounding a residence identified as having lead-based paint hazards.

Because health agency officials generally do not know whether the family of a child with elevated lead levels is receiving section 8 assistance, they do not—and are not required to—notify the local public housing authority. As a result, the public housing authority officials, although aware of HUD regulations, are unaware of the child's condition and do not implement HUD's regulations for testing and abatement.<sup>6</sup> Because, as we previously reported,<sup>7</sup> no routine mechanism exists for informing public housing authority officials that children with elevated lead levels are living in section 8 housing, the children remain exposed to the risk of further lead poisoning and the public housing authorities that administer the section 8 programs—and perhaps HUD as well—incur the risk of potentially costly lawsuits for unwittingly allowing hazards to continue unabated.

According to a Minneapolis health agency official, shortly after our visit the local health agency began to give the local public housing authority addresses of children with elevated lead levels so that the authority could determine whether these children were living in section 8 dwellings. Other health officials told us they could give a public housing authority the addresses of the residences that the local health agency had begun to inspect. Health officials said they would be reluctant to provide further information because they needed to keep the names and conditions of individual children confidential.

Under HUD's regulations, a public housing authority may impose sanctions against uncooperative property owners who do not abate lead-based paint hazards. For example, a public housing authority may stop rental payments to an owner if the owner fails to complete abatement within 30 days of notification, even if the family continues to reside in the section 8 dwelling. Only one of the four public housing authorities included in our study had exercised this leverage, and it had done so on 11 occasions. On one of these occasions, for example, the Boston public housing authority stopped rental payments when a property owner repeatedly failed to bring a dwelling up to HUD's housing quality standards.

State and local abatement requirements may differ from federal requirements. For example, under Massachusetts law, property owners must hire an abatement contractor within 30 days and may be subject to

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<sup>6</sup>Federal regulations require section 8 property owners, within 30 days of being notified by the public housing authority, to cover or remove chewable surfaces whose lead content exceeds 1 milligram per square centimeter.

<sup>7</sup>Lead Poisoning Notification (GAO/RCED-94-18R, Oct. 14, 1993).

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punitive damages for failing to abate hazards. In Louisiana, property owners must complete abatement measures within 30 days. However, health officials told us that abatement is generally not completed within this period and the requirement is rarely enforced for fear that enforcement may increase vacancy rates. In Minnesota, property owners are required to complete abatement within a range of times specified by various health agencies. However, local health officials said their enforcement ability is limited.

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## Applicability of the Act to Section 8 Tenant-Based Housing Is Not Clear

Whether the Lead-Based Paint Poisoning Prevention Act, as amended by title X of the Housing and Community Development Act of 1992,<sup>8</sup> (the act) applies to section 8 tenant-based housing is not clear. The act covers housing for which HUD administers housing assistance payments, which could include section 8 tenant-based housing assistance payments. However, the reported legislative rationale for title X contains statements that are inconsistent with certain provisions of the act that arguably apply to section 8 tenant-based housing.

The act requires HUD to implement a schedule for conducting an initial assessment of lead-based paint risks in federally assisted housing and to complete this assessment by January 1, 2002. According to section 302 of the act, as amended by title X, federally assisted housing covered by the act includes housing for which HUD administers assistance payment programs. Since both of the section 8 tenant-based programs—the certificate and the voucher programs—involve assistance payments from HUD, both of these programs would appear to be covered under the language of the act.

In contrast, the legislative history of title X raises questions as to whether housing receiving section 8 tenant-based assistance is covered under the act. According to the Senate report accompanying title X,<sup>9</sup> housing receiving such assistance would be exempt from the act's requirements because this housing tends to pass in and out of federal housing assistance programs. The Senate committee was also concerned about the practicability and equity of extending title X's requirements to property owners providing section 8 tenant-based housing.<sup>10</sup> HUD officials recognize

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<sup>8</sup>Title X is also called the Residential Lead-Based Paint Hazard Reduction Act of 1992.

<sup>9</sup>Report by the Senate Committee on Banking, Housing and Urban Affairs accompanying S. 3031.

<sup>10</sup>Echoing this concern, some experts say that if section 8 housing is covered by the act, landlords will flee the program and fewer affordable dwellings will be available for low-income tenants.

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that the applicability of the act to section 8 tenant-based housing is uncertain; however, they believe that the previous regulations for this housing are valid.

HUD is proceeding as if the act is applicable to section 8 tenant-based housing, and it plans to issue regulations to this effect in 1995. According to HUD officials, these regulations would implement a schedule to conduct the required risk assessments at a date later than contemplated in the law in order to allow for ample congressional and public comment. A more detailed discussion of the act's applicability to section 8 tenant-based housing appears in appendix II.

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## Conclusions

The results of our matching addresses in local health agencies' records with the addresses of section 8 residences in four cities does not form a sufficient basis for proposing a more thorough testing program. To obtain such a basis, HUD would need to gather data on the cost and the impact on the low-income housing market of implementing more stringent regulations. We agree with the Director of HUD's Office of Lead-Based Paint that such information could be obtained through a demonstration program that would determine the costs of testing paint and would identify the impact of required testing and subsequent abatement on the regulatory process and on property owners' decisions to remain in the section 8 program. While testing might be costly, requiring adequate tests and making their results known would alert property owners and residents to potential lead-based paint hazards.

Our work shows that HUD's regulations to protect children with elevated lead levels from further poisoning are not being implemented. Because the local health agencies we visited generally did not report these children's addresses to public housing authorities, the public housing authorities could not ensure that the children's residences were being tested and that lead-based paint hazards were being abated. We believe that better communication is needed between local health agencies and public housing authorities, as well as between section 8 landlords and public housing authorities. We further believe that HUD has a responsibility to ensure that public housing authorities receive the information they need to protect children with elevated lead levels from further poisoning.

Because the applicability of the Lead-Based Paint Poisoning Prevention Act, as amended, to section 8 tenant-based housing is unclear, the legal framework governing the federal government's responsibility for

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protecting children living in such housing from lead poisoning and the means the federal government uses to carry out that responsibility are in question. Nevertheless, HUD officials have interpreted the act as applicable and are planning to issue implementing regulations for section 8 tenant-based housing. An amendment to the act could clarify whether the Congress intended the act to apply to this housing and could provide HUD with clear policy guidance for implementing the act.

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## Recommendations

To determine whether requiring more rigorous inspection and testing in section 8 tenant-based housing is practicable and whether such requirements are likely to affect landlords' participation in the section 8 program, we recommend that the Secretary of HUD conduct a demonstration program that draws on the work of the Task Force on Lead-Based Paint Hazard Reduction and Financing. This demonstration program should develop the information needed to (1) estimate the cost of testing section 8 tenant-based housing for lead-based paint hazards, (2) assess the likely response of section 8 landlords to new requirements for such testing, and (3) recommend to the Congress whether HUD's regulations should be changed to reflect the demonstration program's findings.

To better ensure that individuals receiving section 8 tenant-based assistance are obtaining safe housing as required and that children whose blood contains elevated levels of lead are protected from further exposure to lead-based paint hazards, we recommend that the Secretary of HUD

- require, as a condition for receiving housing assistance payments and annually renewing participation in a section 8 tenant-based assistance program, that a property owner notify the public housing authority if a local health agency finds that the property contains a lead-based paint hazard and
- require public housing authorities to (1) ask local health agencies for the addresses of children with elevated levels of lead in their blood and (2) match these addresses with the addresses of section 8 tenant-based residences to determine whether HUD's regulations should be implemented.

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## Matter for Congressional Consideration

To resolve uncertainty about the applicability of the Lead-Based Paint Poisoning Prevention Act, as amended in 1992, to the section 8 tenant-based housing assistance programs—uncertainty created by inconsistencies between provisions of the act and statements in the

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legislative report for the 1992 amendments to the act—the Congress may wish to consider amending the act to clarify its applicability to the section 8 tenant-based housing assistance programs. Specifically, the Congress may wish to clarify section 302 of the act to indicate whether section 8 tenant-based housing is considered federally assisted housing under the act.

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## Agency Comments

The Senate Committee on Banking, Housing and Urban Affairs requested and the House Committee on Banking, Finance and Urban Affairs agreed that we not obtain written agency comments on a draft of this report. We did, however, provide a complete draft of this report to HUD for review and oral comment. Subsequently, we discussed the draft's findings, conclusions, and recommendations with the Director of HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention. He generally agreed with our findings and conclusions, and we incorporated his comments as appropriate. He noted that in the absence of new regulation for lead-based paint in section 8 tenant-based housing, HUD believes that current regulations are still valid and will enforce compliance with them. In addition, he generally agreed with our recommendations for a demonstration program to estimate the cost and market impact of more rigorous paint testing and for improved communication between local health agencies and public housing authorities.

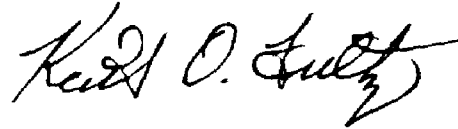
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We conducted our review between May 1993 and February 1994 primarily at HUD headquarters and at HUD field offices and public housing authorities in Boston, Minneapolis, New Orleans, and St. Paul. We performed our work in accordance with generally accepted government auditing standards. Further details on our objectives, scope, and methodology appear in appendix I.

We are sending copies of this report to the appropriate congressional committees and subcommittees, the Secretary of HUD; and the Director, Office of Management and Budget. We will also make copies available to others on request.

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This work was performed under the direction of Judy A. England-Joseph, Director, Housing and Community Development Issues, who may be reached at (202) 512-7631 if you or your staff have any questions. Major contributors to this report are listed in appendix III.

A handwritten signature in black ink, appearing to read "Keith O. Fultz". The signature is written in a cursive style with a large, stylized initial "K".

Keith O. Fultz  
Assistant Comptroller General

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Table

Table I.1: Cross-Matches of EBL Children With Section 8  
Addresses

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## Abbreviations

EBL      elevated blood lead level  
HUD      Department of Housing and Urban Development  
PHA      public housing authority

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# Objectives, Scope, and Methodology

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Section 1056(a) of the Housing and Community Development Act of 1991 requires us to assess the effectiveness of the federal government's enforcement of and compliance with lead safety laws and regulations. This provision also requires us to recommend changes that may be needed in the Department of Housing and Urban Development's (HUD) annual inspection procedures for identifying lead-based paint hazards in housing that receives section 8 tenant-based assistance. In response to these requirements, this report provides information on

- the effectiveness of HUD's regulations for identifying lead-based paint to ensure the safety of section 8 tenant-based housing,
- the effectiveness of HUD's regulations for protecting children who already have elevated levels of lead in their blood and live in section 8 housing, and
- the applicability of the Lead-Based Paint Poisoning Prevention Act, as amended in 1992, to section 8 tenant-based programs.

In obtaining this information, we reviewed pertinent legislation and legislative histories, program documentation, and federal lead-based paint regulations. We discussed legal and regulatory issues with HUD officials in Washington, D.C., including officials at the Section 8 Policy Branch, Office of Policy and Research, and Office of Lead-Based Paint Abatement and Poisoning Prevention. We also spoke with HUD officials in two regional offices and two field offices. Our discussions and data-gathering activities focused on the private sector's compliance with lead-based paint regulations and associated inspection activities at public housing authorities (PHA) in four major cities—Boston, Massachusetts; Minneapolis, Minnesota; New Orleans, Louisiana; and St. Paul, Minnesota.

To obtain information on whether HUD's regulations effectively protect children with elevated levels of lead in their blood—also called EBL children—we tested the regulations at the four previously named PHAs.<sup>11</sup> Our conclusions apply only to these PHAs, and we did not attempt to identify the universe of EBL children who live in section 8 tenant-based housing. We included New Orleans in our test because Members of Congress expressed interest in the administration of this PHA's programs. We included the other PHAs because they are located in states that (1) require or encourage the screening of children for lead poisoning and (2) direct local health agencies to implement testing and

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<sup>11</sup>Because there are over 3,100 independent public housing authorities nationwide, each with varying operating characteristics, a much more extensive and time-consuming data-gathering effort would be needed to portray all the ramifications of regulatory compliance across the country.

abatement/control measures when lead-based paint hazards are identified in an EBL child's home.

By selecting PHAS located in states that had these two requirements, we were able to review the PHAS' implementation of HUD's testing and abatement regulations when local health officials found that an EBL child resided in a section 8 tenant-based dwelling. Also, these requirements ensured that we could examine the coordination between the PHAS and the local health agencies. Finally, we chose these four PHAS because collectively they administered over 16,000 section 8 tenant-based dwellings. Although this total represents only 1 percent of all section 8 tenant-based housing nationwide, it is substantial for only four PHAS. In addition, the Boston and New Orleans PHAS are among the top 25 nationwide in terms of the number of participants in either the voucher or the certificate program.

To examine the PHAS' compliance with HUD's testing and abatement regulations after an EBL child was identified through the health screening process, we identified the EBL children living in section 8 tenant-based housing in the four cities included in our study. We contacted local health agencies in each city to obtain the addresses of EBL children and cross-matched these addresses with the addresses of PHAS' section 8 tenant-based residences. The data we obtained from the health agencies generally covered periods of from 1 to 2 years during calendar years 1992 and 1993, as shown in table I.1. Also included in the table are the number of addresses of EBL children we obtained from the health agencies and the number of section 8 addresses that we cross-matched to this information

**Table I.1: Cross-Matches of EBL Children With Section 8 Addresses**

<b>Location</b>	<b>Time period covered</b>	<b>Number of addresses of EBL children</b>	<b>Number section tenant-based address</b>
Boston	8/1/92 to 7/31/93	331	6,4
Minneapolis	1/1/92 to 7/25/93	678	1,6
New Orleans	1/1/92 to 6/16/93	147	5,7
St. Paul	1/1/92 to 7/16/93	215	2,9
<b>Total</b>		<b>1,371</b>	<b>16,6</b>

Although we identified many potential matches, discrepancies existed between the information provided by the local health agencies and the PHAs. For example, between the list of addressees provided by the St. Paul Department of Health and that provided by the St. Paul PHA, we found 24 potential matches. However, one list's data did not always match the other's. For example, an address on one list sometimes included words numbers—such as “avenue”, “street”, or an apartment number—that did not appear on the other list. For our study, therefore, we selected 11 addresses of EBL children that completely matched the addresses of section 8 residences. We considered this a manageable number of cases to assess in the time allotted to us.

We determined the four PHAs' compliance with federal testing and abatement regulations by reviewing the PHAs' tenant files and inspection records and discussing this documentation with PHA officials. We also obtained information from and spoke with local health department officials responsible for identifying EBL children and conducting inspections for lead-based paint hazards in these children's homes. We did this to familiarize ourselves with local and state procedures for screening children and identifying lead-based paint hazards.

To determine the effect of federal regulation on the PHAs' success in identifying lead-based paint hazards, we reviewed the federal laws and regulations that pertain to PHAs' inspection responsibilities. We discussed these matters with HUD officials in two regional offices—Boston and Chicago—and at the field offices in Minnesota and Louisiana. We also reviewed inspection activities at the four PHAs and discussed our review with PHA officials, including inspectors responsible for inspecting section 8 tenant-based housing for compliance with federal housing quality standards. In addition, we observed inspections conducted by officials at the New Orleans PHA.

To provide information on the applicability of the Lead-Based Paint Poisoning and Prevention Act, as amended in 1992, (the act) to section 8 housing, we prepared a legal analysis on the exemption of section 8 tenant-based programs from the act. We also obtained a legal opinion from HUD's Office of General Counsel on the issues of applicability and exemption. In addition, we discussed these issues with HUD headquarters officials, including officials at the Office of Lead-Based Paint Abatement and Poisoning Prevention. We also reviewed the legislative history of the act, which includes legislative reports on the rationale for the 1992 amendments.

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**Appendix I**  
**Objectives, Scope, and Methodology**

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**We conducted our fieldwork between May 1993 and February 1994 in accordance with generally accepted government auditing standards.**

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# Applicability of the Act to Section 8 Tenant-Based Housing Is Uncertain, and Current Regulations Do Not Implement Earlier Law

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The applicability of the Lead-Based Paint Poisoning Prevention Act, as amended by title X of the Housing and Community Development Act of 1992,<sup>12</sup> (the act) to section 8 housing receiving tenant-based rental assistance is not clear. The Senate Committee on Banking, Housing and Urban Affairs, in its explanation of the amendments made by title X, states that this type of housing would no longer be covered by the act. However, the act's language still arguably covers section 8 tenant-based housing, and in developing new regulations, HUD is assuming that the act still covers this housing. Therefore, HUD is still planning to revise its regulations to reflect the act's new requirements.

Current federal regulations covering the identification of lead-based paint in section 8 housing not only predate title X but also generally predate legislation enacted 6 years ago—the Housing and Community Development Act of 1987—which similarly required changes to HUD's regulations. The 1987 act mandated significant changes in the way HUD then and is still managing and regulating the federal response to the problem of lead-based paint in homes. However, HUD did not issue regulations that fully implemented the provisions of the 1987 act.

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## Applicability of the Act to Section 8 Tenant-Based Housing Is Not Clear

Before the enactment of title X, residential housing receiving section 8 tenant-based assistance was covered by the Lead-Based Paint Poisoning Prevention Act, enacted in 1971. The passage of title X, however, has left unclear whether such housing continues to be covered. This uncertainty comes from two views of the act's applicability to section 8 tenant-based housing.

The first view is expressed in the explanation by the Senate Committee on Banking, Housing and Urban Affairs of the amendments to the act made by title X. According to the Committee, the tendency of this housing to pass in and out of the federal assistance programs warranted its exemption from the act. If this housing were subject to the act's provisions, its owners would have to meet more stringent requirements than private landlords—a situation that the Committee considered unworkable and, in some respects, inequitable. Furthermore, language in title X suggests that section 8 tenant-based housing is exempted from title X's requirements. The section of title X that amended section 302 of the act, which sets forth requirements for housing receiving federal assistance, is entitled "Evaluation and Reduction of Lead-Based Paint Hazards in Federally Assisted Housing." In defining the term "federally assisted housing," title

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<sup>12</sup>Title X is also called the Residential Lead-Based Paint Hazard Reduction Act of 1992.

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specifies residential dwellings receiving project-based assistance. This strongly suggests that the dwellings receiving tenant-based assistance under section 8 (that is, dwellings covered by the certificate and voucher programs) are not included in the definition of “federally assisted housing.” Therefore, in detailing the requirements to reduce lead-based paint hazards in “federally assisted housing,” title X appears to have excluded section 8 tenant-based housing.

Nonetheless, substantial evidence supports the second and opposite view that the act continues to cover the section 8 tenant-based certificate and voucher programs. Most importantly, title X left untouched the wording in the act that previously encompassed section 8 tenant-based housing, namely, “any existing housing which may present [lead-based paint poisoning] hazards and which is covered by an application . . . for housing assistance payments under a program administered by the Secretary [of HUD].”

Additionally, title X changed the title of section 302 of the Lead-Based Paint Poisoning Prevention Act, which details that act’s requirements for federally assisted housing, to “Requirements for Housing Receiving Federal Assistance.” While title X defines the term “federally assisted housing” to exclude tenant-based housing (as previously explained), the term “housing receiving federal assistance” is not defined. In HUD’s view, the term “housing receiving federal assistance” is, perhaps, broader than the term “federally assisted housing.” One could argue that the term is similar in meaning to the phrase “housing which is covered by . . . housing assistance payments,” which is found in the act itself and which, by its terms, covers section 8 tenant-based housing. Thus, both by its title and its substantive terms, the act still arguably encompasses section 8 tenant-based housing.

HUD states that in light of the uncertainty over whether the Congress intended to exclude housing receiving section 8 tenant-based certificate and voucher assistance, the Department is proceeding on the assumption that this housing continues to be covered by the act. HUD is currently drafting regulations to implement the provisions of title X, including those provisions amending the Lead-Based Paint Poisoning Prevention Act. According to HUD officials, these regulations will address the issue of whether housing receiving section 8 tenant-based certificate and voucher assistance is covered under the act. Furthermore, according to HUD officials, the Task Force on Lead-Based Paint Hazard Reduction and Financing, established under title X, will also address this issue.

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**Current Section 8  
Program Regulations  
Did Not Implement  
1987 Legislative  
Requirements**

Under the Housing and Community Development Act of 1987, HUD was required to establish procedures to

- eliminate, as far as practicable, immediate hazards due to the potential presence of lead in exterior and interior house paint;
- test all surfaces for lead-based paint using an approved X-ray fluorescence analyzer or a comparable approved method; and
- base any detection and elimination procedures on criteria that measure the condition of the housing rather than the health of the housing's residents.

HUD amended its regulations to implement the 1987 amendments for its public and Indian housing programs and announced its intention to amend other program regulations (such as those of the section 8 program) at a later date. In fact, because of what it said were difficulties in implementing the requirements of the 1987 amendments, such as the costs involved, HUD did not amend its other program regulations, including those covering section 8 housing, except in minor ways. The Senate Committee on Banking, Housing and Urban Affairs criticized HUD for not amending the section 8 program's regulations:

"The Committee notes that HUD has failed to update its Section 8 regulations to reflect the important changes mandated by the 1987 amendments to the Lead-Based Paint Poisoning Prevention Act. As a result, HUD's regulations and the current implementation of tenant-based Section 8 programs are directly at odds with the requirements of current la

Because HUD had problems implementing the 1987 amendments, the Congress enacted the Residential Lead-Based Paint Hazard Reduction Act of 1992, which, as previously noted, is title X of the Housing and Community Development Act of 1992. Title X redirects federal lead-based paint policy toward what the Congress considers a more cost-effective a practical approach. For example, the definition of lead-based paint hazard has been changed to exclude intact lead-based paint unless it is on accessible (or chewable) surfaces, friction surfaces, or impact surfaces. Additionally, title X provides for using temporary measures, called interim controls, in many circumstances. Interim controls are designed to prevent exposure to lead hazards but do not necessarily eliminate the sources of



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exposure. (Before the enactment of title X,<sup>13</sup> HUD's only option was to require the elimination of sources of exposure.) HUD is required to issue implementing regulations for the act in 1995, but HUD officials stated that the Department is far from developing, not to mention issuing, updated regulations to reflect the act's new requirements.

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<sup>13</sup>The Residential Lead-Based Paint Hazard Reduction Act of 1992 did not change the "housing" approach to reducing lead-based paint hazards adopted by the 1987 amendments. Title X also retained the Lead-Based Paint Poisoning Prevention Act's caution that "measurement criteria be based on the condition of the housing rather than the health of the residents . . . The [Senate] Committee [on Banking, Housing and Urban Affairs] in no way intends to retreat from the decision made in the Housing and Community Development Act of 1987 that federal policy should be to prevent poisoning not to react once poisonings occur." S. Rep. No. 332, 102nd Cong., 2nd Sess. 113 (1992).

# Major Contributors to This Report

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Resources,  
Community, and  
Economic  
Development  
Division, Washington,  
D.C.

Eric A. Marts, Assistant Director

---

Chicago Regional  
Office

John A. Wanska, Regional Management Representative  
Gwenetta A. Blackwell, Evaluator-in-Charge  
Sharon E. Timmins, Staff Evaluator

---

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