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**DOI INVESTIGATION REVEALS NYCHA FAILED TO CONDUCT
MANDATORY LEAD PAINT SAFETY INSPECTIONS FOR FOUR YEARS**

--NYCHA submitted documents to federal government falsely certifying compliance--

Mark G. Peters, Commissioner of the New York City Department of Investigation ("DOI"), announced today the results of an investigation into mandated inspections for potential hazardous lead-based paint conditions at New York City Housing Authority ("NYCHA") apartments. DOI's investigation determined that NYCHA failed to conduct mandatory safety inspections for lead paint over a four-year period beginning in 2013, but submitted false documentation to the United States Department of Housing and Urban Development ("HUD") stating that the Authority was in compliance with federal laws that require these inspections to be performed. In its Report, DOI shows that despite its senior staff being made aware that NYCHA was out of compliance with City lead laws in 2015, and its Chair, Shola Olatoye, being told in 2016 of non-compliance with both City and Federal rules, certifications were still submitted to the federal government. As a result of this investigation, and three additional DOI investigations that revealed other serious safety hazards and breakdowns over the past two years, DOI is recommending that a monitor, reporting to DOI, be appointed to ensure future compliance with inspections in areas including lead paint, smoke alarms and carbon monoxide detectors. A copy of DOI's Report can be found at the following link: <http://www1.nyc.gov/site/doi/newsroom/public-reports.page>

Commissioner Mark G. Peters said, "DOI's investigation found that NYCHA failed to do critical lead safety inspections and then falsely certified that they were meeting these legal requirements. This is the fourth time in two years that DOI has found NYCHA to be careless when it comes to tenant safety. NYCHA has an obligation both to protect tenants and to be honest with the public. Today's report should be an important step in ensuring that NYCHA meets these obligations. "

According to DOI's investigation, NYCHA fell out of compliance with City Local Law 1 of 2004 and Federal Lead Safe Housing Rule 24 C.F.R. 35 in 2013. These laws require public housing authorities, like NYCHA, to conduct annual visual assessments of apartments that meet certain criteria and where the possibility of lead-based paint has not been ruled out. NYCHA has approximately 55,000 apartments that must be visually assessed each year to satisfy the federal rule. NYCHA is required to file with HUD, certifying that it has complied with "all applicable Federal statutory and regulatory requirements," related to lead-based paint. DOI's investigation revealed that in 2013, after HUD relaxed its rules on apartment inspections, NYCHA ceased conducting annual apartment inspections and did not create a separate protocol, resulting in NYCHA failing to perform annual visual assessments for potential lead-paint hazards as legally required.

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DOI's investigation showed that in 2013, 2014 and 2015, NYCHA submitted documentation to HUD certifying that it was in compliance with lead-based paint regulations, despite not having conducted the required visual assessments.

DOI was also told by NYCHA that in September 2016, NYCHA reportedly self-disclosed its noncompliance privately to certain HUD officials during a routine quarterly oversight meeting in Washington, D.C. DOI has been working to corroborate this disclosure. The following month, according to the investigation, NYCHA submitted another certification. It wasn't until July 2017, when NYCHA submitted an amended 2017 plan to HUD, that it also submitted a new form qualifying its certification stating, "NYCHA has not complied with certain requirements related to lead-based paint but is working to ensure full compliance."

This investigation revealed that although senior executives, including the Chair, were aware that in 2016 NYCHA was out of compliance with federal regulations, NYCHA nonetheless submitted a certification stating otherwise. DOI has previously issued three other reports focused on additional safety failures at NYCHA, specifically a [failure to properly inspect smoke and carbon monoxide detectors](#), and a failure to comply with building codes regarding [elevator safety](#). DOI also issued a Report and follow-up investigation on NYCHA's failure to enforce its Permanent Exclusion policies for serious criminal offenders.

As a result of these multiple failures, DOI has issued a series of recommendations related to lead and to the need to hire a monitor that reports to DOI to ensure NYCHA's compliance with safety laws:

- NYCHA must ensure that it is fully compliant with City and federal lead-based paint laws, including by conducting annual visual assessments for lead-based paint hazards in certain apartments as required by law, and by performing biannual quality assurance reevaluations every two years.
- NYCHA should evaluate the feasibility of systematically abating the remaining public housing apartments that are known or presumed to contain lead-based paint, beginning with apartments known to house a child under six.
- NYCHA, for all future filings and certifications, must implement a system to collect written sign off of the accuracy of all statements.
- NYCHA should hire a third-party monitor to ensure compliance with safety laws and rules by performing the following services: a) concerning lead-based paint inspections, the independent integrity monitor should conduct field spot-checks to ensure that annual apartment inspections are done, needed abatement is completed, and quality assurance re-inspections are duly performed in accordance with Local Law 1 of 2004 and 24 C.F.R. 35; b) conduct field visits to ensure that critical apartment safety checks of smoke alarms, carbon monoxide detectors and window guards, are duly performed in accordance with NYCHA policy; and c) potentially ensuring full compliance with elevator safety measures put in place by NYCHA following DOI's March 2016 report about a fatal elevator accident.

DOI Commissioner Peters thanked NYCHA for its cooperation in this investigation.

The investigation was conducted by DOI's Office of the Inspector General for NYCHA, under the supervision of Inspector General Ralph Iannuzzi, Associate Commissioner James Flaherty, Deputy Commissioner/Chief of Investigations Michael Carroll and First Deputy Commissioner Lesley Brovner.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City Department of Investigation

**Investigation into False Certification of
NYCHA Lead Paint Inspections**

**MARK G. PETERS
COMMISSIONER**

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EXECUTIVE SUMMARY

The New York City Department of Investigation (DOI) has conducted an investigation into mandated inspections for potential hazardous lead-based paint conditions in New York City Housing Authority (NYCHA) apartments. The investigation determined that NYCHA has violated city and federal laws by failing to conduct mandatory safety inspections for lead paint. Further, since 2013, NYCHA has falsely certified to the United States Department of Housing and Urban Development (HUD) that it was in compliance with the federal law.¹ By 2015, certain senior NYCHA officials were aware that NYCHA was violating city lead laws. By summer 2016, NYCHA's Chair, Shola Olatoye, knew that NYCHA was out of compliance both with city and federal lead laws when she submitted a false certification to HUD.

This investigation uncovered what, at a minimum, constituted a series of flawed decisions and a lack of due diligence by NYCHA, including by NYCHA executive leadership, that resulted in NYCHA submitting false lead certifications, from 2013 through 2016, with HUD. These certifications passed through NYCHA executive leadership without anyone performing basic due diligence checks to ensure that the information submitted to HUD – under penalty of perjury – was accurate. Indeed, by 2016, senior staff at NYCHA affirmatively knew that the forms were not accurate.

The filing of this false information with the federal government demonstrated a significant breakdown in communication, poor judgement and a lack of public transparency on a significant health issue, the state of lead compliance at NYCHA.

Notably, this Report constitutes the fourth time in two years that DOI investigations have determined that NYCHA has neglected safety rules and regulations. In December 2015 and March 2017, DOI issued reports regarding NYCHA's failures to exclude dangerous criminal offenders from public housing. In March 2016, DOI found that NYCHA was not performing critical elevator inspections, and in October 2016, DOI found that NYCHA was failing to perform critical inspections inside of NYCHA apartments including testing smoke alarms and carbon monoxide detectors. As a result of this continued pattern of failing to conduct safety inspections, DOI is recommending, among other things, that a monitor be appointed to ensure future compliance with inspections for safety items identified by DOI, including lead paint hazards, smoke alarms, carbon monoxide detectors and possibly elevator safety.

BACKGROUND

Lead-based paint was a high-performing product that historically was widely used in the United States, but, according to NYCHA, is not known to be widely used at NYCHA. Based on improved medical understanding of the toxicity of lead products, New York City banned the use of lead-based paint in residential buildings in 1960, and a federal ban went into effect in 1978.

¹ Shola Olatoye became the Chair in 2014.

However, some older buildings still contain lead, primarily in paint on components such as window casings, pipes, and baseboards.²

NYC Local Law 1 of 2004, the New York City Childhood Lead Poisoning Prevention Act,³ requires landlords – including NYCHA -- to conduct annual visual inspections of apartments built before 1960, or between 1960 and 1978 “where the owner has actual knowledge of the presence of lead-based paint,” but only for apartments where the tenant has reported the presence of a resident child under the age of six.⁴ At NYCHA, there are, once pending exemption applications have been processed, approximately 4,200 units in which lead paint has not been ruled out and which indicate a resident child under 6.

Similarly, a HUD regulation known as the Lead Safe Housing Rule, 24 C.F.R. 35, requires public housing authorities to conduct annual visual assessments of apartments where the possibility of lead-based paint has not been ruled out, regardless of the age of the occupants.⁵ Conversely, if testing demonstrates that no lead-based paint is present, public housing authorities may obtain exemptions.⁶ At NYCHA, as of 2016, there were approximately 55,000 apartments must be visually assessed pursuant to 24 C.F.R. 35.

INVESTIGATIVE FINDINGS

As a Public Housing Agency (PHA) receiving federal funding from HUD, every fall NYCHA is required to file with HUD a PHA Annual Agency Plan (the “Annual Plan”) for the upcoming Fiscal Year, a document that contains information about NYCHA programs and initiatives ranging from physical needs assessments to technological innovations.

The Annual Plan also requires the attachment of numerous documents, including the “PHA Certifications of Compliance with PHA Plans and Related Regulations” (the “HUD certification”), also known as HUD form 50077, and all documentation must be made available for public review. Concerning lead-based paint, NYCHA attests via the HUD certification that:

² A common cause of lead poisoning in children is the ingestion of paint chips or dust from peeling lead-based paint in residential buildings. A blood test is the only way to conclusively determine whether a child has been exposed to lead. New York State and City regulators, including the NYC Department of Health and Mental Hygiene (DOHMH), have long-standing protocols for screening young children for possible lead exposure, identifying children with elevated blood lead levels, and locating and testing residential and other sites that are associated with such children. Since 2010, 17 units out of approximately 178,000 NYCHA apartments have been associated to a child with an elevated blood lead level. DOI investigators reviewed these cases in detail and found that NYCHA appropriately and timely responded by abating, re-testing, and obtaining clearance approval from DOHMH.

³ Article 14, Lead Poisoning Prevention and Control, § 27-2056.1 *et seq.*

⁴ § 27-2056.4(a).

⁵ 24 C.F.R. 35.1355(a)(2).

⁶ 24 C.F.R. 35.115.

The PHA will comply with the Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992, and 24 CFR Part 35.

and

The PHA certifies that it is in compliance with all applicable Federal statutory and regulatory requirements.

This investigation determined that NYCHA fell out of compliance with Local Law 1 and 24 C.F.R. 35 by the end of 2012. As a result, the HUD certifications submitted by NYCHA from 2013 through 2016 were false.⁷

August 2012: NYCHA Stops Performing Annual Lead Inspections

Historically, NYCHA performed the required visual assessments for lead-based paint hazards as part of HUD-mandated annual inspections to evaluate general apartment conditions. In 2012, HUD relaxed its rule so that apartment inspections were no longer required to be performed every year, in order to free up resources for apartment maintenance.⁸ This rule change did not eliminate the requirement to inspect for lead where relevant. Following that federal rule change, in approximately August 2012, NYCHA ceased conducting annual apartment inspections and did not create a separate protocol to continue lead inspections. As a result, NYCHA was no longer performing annual visual assessments for potential lead-based paint hazards as legally required.

October 2013: NYCHA Files a False Certification of Compliance with HUD

In October 2013, NYCHA submitted to HUD its Fiscal Year 2014 Annual Plan with accompanying certifications, including HUD Form 50077, which NYCHA's then-Chair signed on October 11, 2013.

Because NYCHA had not conducted visual assessments for lead-based paint hazards every year beginning in 2012, NYCHA's certification that it was compliant with federal lead-based paint laws was false.

⁷ Technically, only failure to comply with the federal rule makes the certification false. However, NYCHA's failure to comply with City lead safety rules is also troubling.

⁸ HUD Public and Indian Housing Information Resource Center, January 2012 HUD e-Newsletter: "*Public Housing Unit Inspections . . . because there is no longer an annual unit inspection requirement, [public housing authorities] now have the latitude to schedule unit inspections in a manner that can satisfy the statute's intent and simultaneously free up resources, especially those necessary to provide unit maintenance*" including inspection of a representative sample of units, or establishment of a risk hierarchy based on historical records.

October 2014: NYCHA Files a False Certification of Compliance with HUD

In October 2014, NYCHA submitted to HUD its Fiscal Year 2015 Annual Plan with accompanying certifications, including HUD Form 50077, which was signed by Chair Shola Olatoye on October 16, 2014.⁹ Because at that time NYCHA was still not conducting annual lead inspections, it continued to be noncompliant with Local Law 1 and 24 C.F.R. 35, thereby making the certification to HUD false.

April 2015: Senior Officials at NYCHA Learned of Local Law 1 Violation

A senior official at NYCHA reported that he believed in 2015 that there was “general knowledge at the executive level” that NYCHA had suspended apartment inspections, because the General Manager’s office was involved in the process of resuming inspections. By April 2015, certain senior officials had learned that NYCHA was not in compliance with Local Law 1.¹⁰

During a DOI interview, the General Manager said that he did not know of the Local Law 1 violation until approximately a year later in April or May 2016. Chair Olatoye also said that she was not made aware that NYCHA was out of compliance with Local Law 1 until April or May 2016.

October 2015: NYCHA Files a False Certification of Compliance with HUD

In October 2015, NYCHA submitted to HUD its Fiscal Year 2016 Annual Plan with accompanying certifications, including HUD Form 50077, which Chair Olatoye signed on October 12, 2015. Again, this certification that NYCHA was compliant with federal lead-based paint laws was inaccurate.

Although NYCHA’s Chair and General Manager stated they were not aware that HUD form 50077 was false at the time it was submitted in October 2015, DOI determined that in spring 2015, certain senior NYCHA officials, including operations executives, did know that NYCHA was out of compliance with Local Law 1 (and thus should have known of a potential violation of the corresponding federal rule), because they were working to remediate the legal violation. In fact, one operations executive told DOI that if asked, he would have answered that NYCHA was not in compliance with applicable lead laws – but he was never asked. Instead, DOI’s investigation

⁹ For PHA Plan FY2015, which was submitted in 2014, the signature line for the HUD form 50077 is erroneously dated “10/16/15.”

¹⁰ On 5/7/15, in an email, a senior operations executive asked another NYCHA official to provide a list of apartments with children under 7 years old in reference to lead law compliance. Meeting minutes show that on 6/5/15, a group of NYCHA managers discussed apartment inspections including requirements for annual inspections. On 7/16/15, a group of NYCHA managers recommended that development maintenance workers be assigned approximately eight apartment inspections per day in order to meet various goals, including inspection of “all apartments that may contain lead and have children under the age of six (6) residing in them, every year.” Further, during a DOI interview, another senior operations executive stated that he first learned of the Local Law 1 violation in 2015 when he was working with a group on a plan to switch back to annual inspections, focusing first on apartments with children under six.

determined that NYCHA failed to put in place a system to confirm the accuracy of federal forms before they were submitted. Simply put, NYCHA's failure to confirm the accuracy of filings before they were made is an unacceptable gap in procedures.

After NYCHA's Chair and General Manager became aware of Local Law 1 noncompliance in April or May 2016, NYCHA began a program to inspect and remediate any lead hazards in units where NYCHA had not ruled out lead paint and a child under six resided.

Summer 2016: NYCHA's Chair and General Manager Learn of HUD Violation

In summer 2016, a senior advisor at NYCHA researched federal law concerning lead,¹¹ and concluded that NYCHA was also in violation of the HUD regulations, 24 C.F.R. 35.¹² She convened a group of the relevant executives to conduct an urgent assessment of NYCHA's lead-based paint situation, and at the end of July 2016, Chair Olatoye was presented with a "lead workflow"/"game plan" to address NYCHA's lead obligations.

During DOI interviews, both the General Manager and Chair Olatoye told DOI that they were first advised that NYCHA was also in violation of the HUD regulations in summer 2016.

September 2016: NYCHA Reportedly Disclosed Noncompliance to HUD

NYCHA advised DOI that on September 13, 2016, during a routine quarterly oversight meeting attended by NYCHA's Chair, General Manager, and other top NYCHA executives at HUD's central office in Washington, D.C., NYCHA executives delivered a PowerPoint presentation about various operations issues to numerous HUD officials, including the Assistant Secretary of Public and Indian Housing.¹³ During a slide concerning "Accountability: Lead-Based Paint," NYCHA's talking points read:

NYCHA has approximately 55,000 units where we have not yet ruled out lead-based paint. Approximately 4,200 of these 55,000 units have a child under 6 years old living there. We just completed inspections of these 4,200 units. . . . I want to talk a little more about inspections. Earlier, when we spoke about service levels, it was mentioned that a mistake of the previous administration was putting too much focus on work order numbers and there were some consequences. In a recent review of how this approach affected other areas of operations, it came to our attention that, starting in 2012, the previous administration made the decision to cease apartment inspections for a two year period. It was through these annual apartment inspections that lead-based paint apartments also received their annual visual

¹¹ In October 2015, NYCHA received notice of a federal inquiry concerning a range of issues including lead paint.

¹² In July 2016, a senior advisor circulated a draft chart detailing NYCHA's obligations under Local Law 1 and 24 C.F.R. 35, including a notation that the HUD regulation required visual assessments "at unit turnover and every 12 months."

¹³ NYCHA senior officials told DOI that shortly before this September 2016 meeting, NYCHA told HUD's local and regional New York offices of NYCHA's noncompliance in a telephone call.

assessments, so this also ceased for these two years. Completing the recent inspections of the 4,231 units where a child under 6 years old focused our resources on where the risk of exposure to lead hazards is the greatest but it was just the first step in correcting for this. We are also creating a new operations plan that will also address the annual required inspections for the remaining 50,000 lead-based paint units which don't have a child under 6 years old, bringing us back on track.

DOI has, to date, been unable to corroborate NYCHA's reported self-disclosure. At any rate, this disclosure, if it occurred, constituted a private statement to certain HUD officials and did not expressly reference either the certification or specific regulation.

October 2016: NYCHA Files a False Certification of Compliance with HUD

One month after the aforementioned meeting with HUD, on October 18, 2016, NYCHA submitted to HUD its Fiscal Year 2017 Annual Plan, with HUD Form 50077 signed by Chair Olatoye wherein NYCHA falsely certified that it was in compliance with federal lead-based paint regulations.

During a DOI interview, Chair Olatoye stated that in October 2016 when this certification was submitted, she was aware that NYCHA was not in compliance with the HUD regulations, which she considered "obviously a management failure," and thus that the certification was not accurate. However, she stated that in August and September 2016, NYCHA had already disclosed that information to HUD both in a briefing document and orally. However, as noted above, at most these were private briefings for senior HUD officials. The forms by contrast are certifications to the overall agency that are publicly available including to NYCHA tenants and other interested parties.

The General Manager, who reviewed the HUD certification in August/September 2016 before it went to a Board vote, also told DOI that although he was aware at the time that NYCHA was not in compliance with federal regulations, "we felt that this was something that... HUD knew about, and we were submitting the report to HUD so . . . the disclosure was the important part."

This investigation revealed that although Chair Olatoye, the General Manager and other senior executives were aware that NYCHA was out of compliance with federal lead-based paint regulations, NYCHA nonetheless submitted a false certification in October 2016, and had no reasonable explanation why this was acceptable.

July 2017: NYCHA Publicly Discloses Its Noncompliance in a New HUD Certification

On July 26, 2017, several months after DOI commenced its investigation, NYCHA's Board considered and approved a Significant Amendment to the Fiscal Year 2017 Annual PHA Plan, which concerned various non-lead-related real estate operations matters. With the Significant Amendment, NYCHA submitted HUD Form 50077 with the following additional asterisked language, qualifying its certifications of compliance with lead-based paint laws:

**As previously discussed with the U.S. Attorney's Office for the Southern District of New York ("SDNY") and HUD, NYCHA has not complied with certain requirements related to lead-based paint but is working to ensure full compliance. NYCHA is cooperating with an investigation by the SDNY regarding conditions in NYCHA housing. We will continue to engage with both the SDNY and HUD regarding our remedial efforts.*

Chair Olatoye told DOI that during preparations to file the Significant Amendment to the Fiscal Year 2017 Annual PHA Plan, NYCHA raised with HUD the certification, and a HUD attorney suggested that asterisked language be added to clarify that NYCHA was not in compliance but was working towards full compliance. NYCHA also released a fact sheet and letter to residents on lead-based paint programs in July 2017. These documents also acknowledged NYCHA's noncompliance with lead regulations. In working towards full compliance, NYCHA is developing a phased corrective action plan, which includes the integration of its lead-based paint data into its work order tracking system, and has already procured a vendor to conduct visual assessments of units for which lead paint has not been ruled out. DOI will monitor NYCHA's performance of this program initiative.

POLICY AND PROCEDURE RECOMMENDATIONS

This investigation showed that NYCHA violated city and federal laws by failing to conduct mandatory lead paint inspections at NYCHA apartments and that they falsely certified lead compliance to the federal government during a four year period. These failures were, in part, the result of poor communication, failure to exercise due diligence and resulted in a lack of public transparency. As a result of these failures, DOI makes the following Policy and Procedure Recommendations to NYCHA:

- 1) NYCHA must ensure that it is fully compliant with city and federal lead-based paint laws, including by conducting annual visual assessments for lead-based paint hazards in certain apartments as required by law, and by performing biannual quality assurance reevaluations every two years.
- 2) NYCHA should complete the integration of its lead-based paint data into its computerized apartment work tracking system so that development management and other involved NYCHA departments can access historical information, including building construction date, notifications from DOHMH or tenants of potential lead-based paint issues, apartment components that have tested positive for lead, prior abatement, apartment exemptions, and annual inspection history.
- 3) NYCHA should evaluate the feasibility of systematically abating the remaining public housing apartments that are known or presumed to contain lead-based paint, beginning with apartments known to house a child under six.
- 4) NYCHA, for all future filings and certifications, must implement a system to collect written sign off of the accuracy of all statements.
- 5) NYCHA should ensure compliance with safety laws and rules by: a) hiring a third-party integrity monitor to review lead-based paint inspections by conducting field spot-checks to ensure that annual apartment inspections are done, needed abatement is completed, and quality assurance reevaluations are duly performed in accordance with Local Law 1 and 24 C.F.R. 35; b) engaging the integrity monitor to conduct field visits to ensure that critical apartment safety checks of smoke alarms, carbon monoxide detectors and window guards, are duly performed in accordance with NYCHA policy; and c) potentially ensuring full compliance with elevator safety measures put in place by NYCHA following DOI's March 2016 report about a fatal elevator accident.¹⁴

¹⁴ The proposed monitor is intended to emphasize issues regarding NYCHA operations. As the issue referenced above regarding exclusion of criminal offenders is not considered an operational function of NYCHA, oversight of NYCHA's performance on this issue shall not be the focus of the proposed monitor.