



Leveraging the Federal Lead Hazard Disclosure Law to Improve Housing Conditions

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When Congress passed the federal Residential Lead-Based Paint Hazard Reduction Act in 1992, lead-poisoning prevention advocates viewed the “right to know” portion of the law with skepticism.¹ The lead hazard disclosure requirements of Title X’s Section 1018 merely compel sellers and landlords to notify prospective buyers and tenants of known lead-based paint or lead-based paint hazards; sellers and landlords are not required to correct hazards or even assess their properties for lead.² Advocates thus feared that disclosure requirements would be an incentive for sellers and landlords to remain ignorant about lead-based paint and lead-based paint hazards in their properties. At the time, advocates never conceived that the disclosure law could be a powerful tool for prevention of childhood lead poisoning. But, thirteen years later, skepticism has given way to growing enthusiasm about the potential of the federal disclosure law to spur corrective action in high-risk rental housing.

Based on its experience and anecdotal evidence, the Alliance for Healthy Homes believes that the majority of landlords of low-income rental properties have failed to meet the disclosure law’s modest requirements, much less go beyond them.³ Some ignore disclosure completely.⁴ To the extent that disclosure does occur, landlords often claim ignorance of lead-based paint or lead-based paint hazards in their properties, even after they have been informed of specific lead hazards following a health department investigation into the case of a poisoned child.⁵ This noncompliance presents an opportunity for advocates to pressure landlords of high-risk rental properties to invest in lead hazard control and prevention.

¹Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. § 4852d.

²See *id.*; 24 C.F.R. § 35.88(a) (2004). The Residential Lead-Based Paint Hazard Reduction Act and its implementing regulations use the terms “seller or lessor” and “purchaser or lessee,” but in this article we primarily use the term “landlord” for “lessor,” “buyer” for “purchaser,” and “tenant” for “lessee.”

³See Project Partners’ Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁴See *id.*

⁵See *id.*

Since May 2003, the Alliance for Healthy Homes has partnered with six state and local health departments and ten community-based organizations, including two legal aid organizations, to pursue strategies that effectively leverage the federal disclosure law.⁶ Through its Disclosure Leveraging Project and the results of more than two-dozen federal enforcement actions, the alliance and its project partners are convinced that community-based strategies designed to leverage the federal disclosure law can result in landlords' increased investment in and action to repair their substandard rental properties that are putting children at high risk of lead poisoning—particularly when these strategies are used in conjunction with the full range of penalties and incentives available.⁷ Advocates should note that the primary purpose of these strategies is not to increase compliance with the disclosure law but to unleash its potential to make high-risk rental housing lead-safe.

Although the federal disclosure law applies to all residential real estate transactions,

the alliance's project and this article focus on rental transactions in high-risk communities.⁸ In this article we give an overview of the federal lead hazard disclosure law, discuss federal enforcement of the disclosure law, and describe strategies for leveraging the federal disclosure law to motivate landlords of high-risk rental housing to control lead hazards.⁹

I. Overview of the Federal Lead Hazard Disclosure Law

The federal Residential Lead-Based Paint Hazard Reduction Act requires persons selling or leasing most residential housing built before 1978 to give buyers and tenants a federally approved lead hazard information pamphlet and to disclose known lead-based paint and lead-based paint hazards.¹⁰ With authority under Title X's Section 1018, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) promulgated joint regulations to implement the disclosure law.¹¹ We discuss the specifics of the federal

⁶The alliance's Disclosure Leveraging Project is funded by a grant from the U.S. Department of Housing and Urban Development (HUD) Operation Lead Elimination Action Program. The six state and local health departments are Chicago Department of Public Health, Illinois; Cleveland Childhood Lead Poisoning Prevention Program, Ohio; Clark County Combined Health District, Springfield, Ohio; Iowa Department of Public Health; Mahoning County District Board of Health, Youngstown, Ohio; and North Carolina Department of Environment, Health and Natural Resources. Although their work is ongoing and the alliance continues collaborating with most of them, the formal partnerships with these health departments ended in June 2004 at the conclusion of the first grant cycle. The ten community-based organizations are Childhood Lead Action Project, Providence, Rhode Island; Citizen Policy and Education Fund of New Jersey; Citizens' Lead Education Poisoning Prevention, Birmingham, Alabama; Connecticut Citizen Research Group, Hartford; Durham Affordable Housing Coalition, North Carolina; Healthy Homes Collaborative, Los Angeles, California; Greensboro Housing Coalition, North Carolina; Improving Kids' Environment, Indiana; Legal Aid Society of Greater Cincinnati, Ohio; and Project 504, Minneapolis, Minnesota.

⁷See Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, Compliance Assistance and Enforcement (updated Feb. 19, 2004), at www.hud.gov/offices/lead/compliance/index.cfm (discussing generally the number and impact of federal enforcement actions).

⁸24 C.F.R. § 35.82 (2004). However, advocates should note that noncompliance is also rife in sales transactions in at least some high-risk communities, including sales of rental properties. Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano). Many high-risk rental properties change ownership frequently, especially in areas where "flipping" is prevalent. Property flipping is when properties are bought and sold again quickly—sometimes with minimal, cosmetic repairs made—at a high markup. See, e.g., Ada Focer, *Flip ... Flip ... Flip ... Flop: Mortgage Fraud and Property "Flipping" Skew Low-Income Property Markets*, SHELTERFORCE ONLINE (Sept.–Oct. 2000), at www.nhi.org/online/issues/113/focer.html (see the section entitled "A Widespread Problem"). In these cases, according to anecdotal evidence from partners in the Alliance for Healthy Homes' Disclosure Leveraging Project, buyers may not be getting the information they need to comply with the disclosure law and properly maintain their properties.

⁹For additional information on laws to prevent childhood lead poisoning in housing, see Greg Spiegel, *Childhood Lead Poisoning Prevention*, 37 CLEARINGHOUSE REVIEW 483, 490–499 (Jan.–Feb. 2004). For information on environmental sampling and right-to-know strategies, see Don Ryan & Ralph Scott, *New Environmental Sampling and Right-to-Know Strategies for Housing and Tenants' Rights Advocates*, 35 CLEARINGHOUSE REVIEW 373 (Nov.–Dec. 2001).

¹⁰42 U.S.C. § 4852d(a) (2003). Lead-based paint was banned nationwide for consumer use in 1978. See 16 C.F.R. § 1303 (2005).

¹¹42 U.S.C. § 4852d (2003); 24 C.F.R. §§ 35.80 *et seq.* (2004) (HUD regulations); 40 C.F.R. §§ 745.80 *et seq.* (2004) (parallel U.S. Environmental Protection Agency (EPA) regulations). In this article we cite primarily HUD regulations.

lead hazard disclosure law and its implementing regulations in detail below.

A. Scope

Regulations implementing the federal lead hazard disclosure law require a landlord of target housing to disclose to the tenant the presence of any known lead-based paint or lead-based paint hazards or both.¹² Target housing includes all housing constructed before 1978, except housing for the elderly and housing for persons with disabilities (unless any child who is less than 6 years old resides or is expected to reside in such housing) and zero-bedroom dwellings.¹³ According to federal regulations, zero-bedroom dwellings include efficiencies, studio apartments, dormitories, military barracks, and rentals of individual rooms in residential dwellings.¹⁴

All property that meets the definition of target housing, including private and public housing, federally owned housing, and federally assisted housing, is subject to the disclosure law.¹⁵ The only exceptions are housing that a certified inspector has found free of lead-based paint; short-term leases of 100 days or less, where no renewal or extension may occur; and renewals or renegotiation of existing leases where no new information regarding lead-based paint or lead-based paint hazards or both has come into the landlord's possession.¹⁶

B. Requirements

Before a prospective tenant enters into a contract to lease housing, the landlord

must give the tenant the federal lead hazard information pamphlet *Protect Your Family from Lead in Your Home*, which the EPA developed.¹⁷ The landlord must disclose to tenants the presence of known lead-based paint or lead-based paint hazards or both, along with any additional information regarding the paint or the hazards or both (e.g., the basis for the determination that the paint or the hazards or both exist; the location; and the condition of the painted surfaces).¹⁸ If the landlord has no such information, the landlord must make a statement to that effect.¹⁹ The landlord also must give the tenant copies of any lead hazard evaluation reports (including information related to common areas) and reports on other units in the building if the information is gleaned from an effort to evaluate the building as a whole.²⁰

After the landlord discloses all information regarding lead-based paint or lead-based paint hazards or both, the parties may sign the lease.²¹ The lease must include, as an attachment or within the contract, an acknowledgment containing a lead warning statement as prescribed by federal regulations; a statement by the landlord disclosing the presence of known lead-based paint or lead-based paint hazards or both and the additional information explained in the preceding paragraph or indicating that the landlord has no knowledge of such information; a list of any additional records or lead hazard evaluation reports or an indication that no such records or reports are avail-

¹²24 C.F.R. § 35.80 (2004).

¹³*Id.* § 35.86.

¹⁴*Id.*

¹⁵*Id.* Target housing also includes mobile homes constructed before 1978. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & U.S. ENVIRONMENTAL PROTECTION AGENCY, GUIDANCE ON THE LEAD-BASED PAINT DISCLOSURE RULE: PART II, at 2 (1996), www.hud.gov/offices/lead/1018/lea10182.pdf.

¹⁶24 C.F.R. § 35.82 (2004).

¹⁷*Id.* § 35.88(a). The pamphlet is available in several languages on the EPA's website, www.epa.gov/opptintr/lead/leadprot.htm. States may develop their own pamphlets with authorization and approval from the EPA. *Id.* § 35.88(a)(1).

¹⁸*Id.* § 35.88(a)(2).

¹⁹*Id.* § 35.92(b)(2).

²⁰*Id.* § 35.88(a)(4).

²¹The disclosure law applies equally to oral rental agreements and informal subleases. Final Rule, Supplementary Information, 61 Fed. Reg. 9068 (March 6, 1999).

able; a statement by the tenant affirming having received this disclosure and the EPA pamphlet; a statement (when an agent is involved on behalf of the landlord) that the agent has informed the landlord of the landlord's obligations and that the agent is aware of the agent's duty to ensure compliance; and the signatures of the landlord, agent, and tenant certifying to the accuracy of their statements, along with the dates of signature.²² This acknowledgment must be written in the same language as the lease.²³ The landlord must keep a copy of the signed acknowledgment for at least three years.²⁴

When new information on lead-based paint or lead-based paint hazard or both comes to the landlord's attention during an existing lease period, the landlord must disclose this information at the next lease renewal or when renegotiation of existing lease terms (such as a rent increase) takes place.²⁵ Compliance with federal disclosure requirements does not relieve the landlord from the landlord's responsibility to comply with any state or local laws, ordinances, codes, or regulations regarding lead hazard disclosure.²⁶

C. Penalties

Although failure to disclose known lead-based paint and lead-based paint hazards does not affect the validity of the sale or lease, landlords who do not comply with

the federal disclosure law may face severe civil penalties or criminal penalties or both from federal agencies.²⁷ Section 1018(b)(1) authorizes HUD to impose civil monetary penalties for violations of the disclosure law; federal regulations set that figure at up to \$11,000 per violation.²⁸ Section 1018(b)(2) authorizes HUD to enjoin violations of the disclosure law.²⁹

The EPA has similar civil penalty enforcement powers. Section 1018(b)(5) provides that failure or refusal to comply with the disclosure law is a violation of Section 409 of the Toxic Substances Control Act; the violator is subject to up to \$11,000 per violation.³⁰ The agency has the authority to impose criminal sanctions—including monetary penalties or imprisonment for one year or both—for knowing or willful violations.³¹

Each element of the disclosure law is considered a separate and distinct requirement, and failing to meet any one element—for example, giving the EPA pamphlet or including the lead warning statement in the contract—is considered a violation.³² Moreover, each lease agreement is a separate transaction, with the potential for eleven separate violations.³³ As a result, noncompliant landlords with multiple units could be facing significant monetary penalties.

²²42 C.F.R. § 35.92(b) (2004).

²³*Id.*

²⁴*Id.* § 35.92(c). This record-keeping requirement does not place any limitations on civil suits or otherwise affect a tenant's rights under the civil penalty provisions of 42 U.S.C. § 4852d(b)(3).

²⁵42 C.F.R. § 35.82(d) (2004).

²⁶*Id.* § 35.98.

²⁷See 42 U.S.C. § 4852d(c) (2003).

²⁸*Id.* § 4852d(b)(1); 24 C.F.R. § 30.65 (2004).

²⁹42 U.S.C. § 4852d(b)(2) (2003).

³⁰*Id.* § 4852d(b)(5); 40 C.F.R. § 745.118 (2004) (referring to Toxic Substances Control Act, 15 U.S.C. §§ 2615, 2689).

³¹40 C.F.R. § 745.118 (2004) (referring to Toxic Substances Control Act, 15 U.S.C. §§ 2615, 2689).

³²See 24 C.F.R. § 35.96 (2004); see also U.S. ENVIRONMENTAL PROTECTION AGENCY, SECTION 1018—DISCLOSURE RULE, ENFORCEMENT RESPONSE POLICY 12–13 (1999), www.epa.gov/compliance/resources/policies/civil/tsca/lead.pdf.

³³See 40 C.F.R. § 745.118(a) (2003) (noting that enforcement applies against any person who fails to comply with "any" provision); *id.* § 745.118(f) (noting that "each" violation is subject to the regulatory maximum penalty); ENVIRONMENTAL PROTECTION AGENCY, *supra* note 32, at 12.

The tenant may seek—in addition to federal agency enforcement—direct compensation through a civil action brought under Section 1018(b)(3).³⁴ A landlord who violates the disclosure law is jointly and severally liable to the tenant for three times the damages incurred.³⁵ A court may award reasonable attorney fees, expert witness fees, and court costs to a prevailing plaintiff.³⁶ Through the Residential Lead-Based Paint Hazard Reduction Act's reference to the Toxic Substances Control Act, a private party who meets certain criteria also may seek injunctive relief against anyone who violates the act.³⁷

II. Federal Enforcement of the Disclosure Law

Under the federal disclosure law and implementing regulations, HUD, the EPA, and the U.S. Department of Justice have strong enforcement powers and the authority to levy fines and other penalties.³⁸ These give them leverage over landlords who fail to comply. HUD enforcement is handled by headquarters

in Washington, D.C.; EPA enforcement, by the regional offices.³⁹ HUD and the EPA often jointly prosecute the larger and more egregious cases.⁴⁰ HUD and the EPA may enlist the Justice Department to help obtain injunctive relief under Toxic Substances Control Act Section 17(a) to compel a violator to abate lead-based paint or lead-based paint hazards or both.⁴¹ In some cases, the Justice Department enlists U.S. attorneys to enforce violations of the disclosure law.⁴²

All three agencies have successfully pursued “results-oriented” enforcement in a number of high-profile cases; in exchange for reducing fines against landlords, they have won legal settlements that have required landlords to investigate hundreds of thousands of housing units for lead hazards and correct the hazards in more than 177,000 units.⁴³ Some consent agreements impose monitoring and reporting requirements on property landlords to ensure that the landlords carry out lead hazard control activities in a safe and timely manner.⁴⁴ Other settlements have required viola-

³⁴42 U.S.C. § 4852d(b)(3) (2003); see also Gregory D. Luce & Anne M. Phelps, *Using the Federal Lead Hazard Disclosure Rule's Private Right of Action for Compensatory Damages and Broad-Based Injunctive Relief*, in this issue; Gregory D. Luce, *Alliance for Healthy Homes, Private Causes of Action Under the Residential Lead-Based Paint Hazard Disclosure Act of 1992: An Analysis & Guide 4–11* (2004), at www.afhh.org/res/res_Operation_LEAP_toolkit_disclosure_Private_Causes_of_Action.htm (Luce is director of Project 504 in Minneapolis, Minnesota; he contracted to write this report for the Alliance for Healthy Homes).

³⁵24 C.F.R. § 35.96(c) (2004).

³⁶*Id.* § 35.96(d).

³⁷42 U.S.C. § 4852d(b)(5) (2003) (citing section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689); see also Luce & Phelps, *supra* note 34; Luce, *supra* note 34, at 12–18.

³⁸42 U.S.C. § 4852d(b)(1), (2), (5) (2003); 24 C.F.R. § 35.96 (2004).

³⁹See Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, *About HHLHC [Healthy Homes and Lead Hazard Control]* (updated Nov. 8, 2002), at www.hud.gov/offices/lead/leadpboff.cfm; EPA, *Civil Enforcement* (updated March 23, 2005), at www.epa.gov/compliance/civil/index.html.

⁴⁰See, e.g., *Consent Agreement, In re Apartment Investment and Management Company (AIMCO)*, No. TSCA HQ-2002-0003 (Env'tl. Appeals Bd. 2002), available at www.epa.gov/compliance/resources/decrees/civil/r1phra/aimcoca.pdf.

⁴¹Toxic Substances Control Act Section 17(a), 15 U.S.C. § 2616(a) (2003); see also Luce, *supra* note 34, at 8.

⁴²See, e.g., *Consent Decree, U.S. v. DeLuca*, No. CA 02-546T (D.R.I. 2002), 2002 EPA Consent LEXIS 696.

⁴³E-mail interview by Anne M. Phelps with John Shumway, Deputy Assistant General Counsel for Program Compliance, U.S. Department of Housing and Urban Development (Feb. 23, 2005). EPA enforcement varies; some regions are weak on enforcement or routinely apply minimal administrative fines. See *Alliance for Healthy Homes, Summary of Federal Lead Hazard Disclosure Consent Agreements and Consent Decrees* (2004), at www.afhh.org/res/res_pubs/disclosure_consent_%20agreements.pdf.

⁴⁴Monitoring and reporting requirements may include requiring landlords to submit evaluation reports, remediation plans, and completion reports to the EPA for approval. See, e.g., *Consent Agreement ¶ 19(g)–(k), In re Gerald Shields*, No. 03-99-0007 (U.S. Env'tl. Prot. Agency Feb. 25, 2000), 2000 EPA Consent LEXIS 139; *Consent Decree ¶¶ 20, 26.a, United States v. Dominion Management Services*, No. 04-03088 (D. Minn. July 1, 2004) (Clearinghouse No. 55,839), available at www.nomorelead.org/DominiumCD.pdf.



tors to contribute to communitywide prevention efforts.⁴⁵ So far, these contributions have totaled approximately \$489,000.⁴⁶

The EPA uses supplemental environmental projects to secure landlords' investment in lead hazard control and community projects.⁴⁷ HUD uses children's health improvement projects to fund additional efforts, such as health department screening programs and community-based organization education activities about lead-poisoning prevention.⁴⁸ By continuing to pursue these two types of projects and increasing their emphasis on preventing lead poisoning before it occurs, HUD and the EPA can maximize the contribution of disclosure enforcement settlements to protect children in high-risk communities.⁴⁹

III. Strategies for Leveraging the Federal Disclosure Law to Motivate Landlords of High-Risk Rental Housing to Control Lead Hazards

As noted above, the purpose of the alliance's Disclosure Leveraging Project is not to increase compliance with the disclosure law (although that is one logical and beneficial outcome) but to use the disclosure law to motivate landlords of high-risk rental properties to correct and prevent lead hazards. In collaboration with its partners in eleven states, the

alliance has developed four strategies for leveraging the disclosure law: tenant education, outreach to landlords, system changes, and documenting and reporting disclosure law violations to HUD and the EPA. Over the past two years, community-based organizations, state and local health departments, and legal aid organizations have successfully implemented these strategies.

A. Tenant Education

Tenants are empowered by fully understanding their legal rights, including their rights under relevant state and local laws and codes as well as the federal Fair Housing Act and lead hazard disclosure law.⁵⁰ Empowered tenants are more likely to complain to landlords and code agencies and, depending on the housing market, may be motivated and able to find better housing for their families. Tenants can document whether disclosure has occurred, give key information about landlords, allow access to their homes for hazard investigations, and join with other tenants to pressure landlords to make homes lead-safe and work for larger policy changes.

Almost 16,000 tenants so far have been educated about their legal rights under the alliance's project.⁵¹ Tenants were educated primarily through home visits and presentations at workshops and tenant meetings. Some project partners note that many more tenants are willing to

⁴⁵See, e.g., Consent Decree, *United States v. Cornerstone Real Estate Management*, No. 1:99-CV-01906 (D.D.C. 1999), 1999 EPA Consent LEXIS 152, at *13.

⁴⁶E-mail Interview by Anne M. Phelps with John Shumway, Deputy Assistant General Counsel for Program Compliance, U.S. Department of Housing and Urban Development (Feb. 23, 2005).

⁴⁷A supplemental environmental project is an environmentally beneficial project that a violator voluntarily agrees to perform as part of a settlement of an enforcement action. In return, the EPA agrees to reduce the monetary penalty that would otherwise apply as a result of the violation(s). OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA 325R-01-001, BEYOND COMPLIANCE: SUPPLEMENTAL ENVIRONMENTAL PROJECTS 4 (2001), www.epa.gov/Compliance/resources/publications/civil/programs/sebrochure.pdf.

⁴⁸Children's health improvement projects are projects that HUD proposes in order to address issues of childhood lead poisoning in the affected community; a violator agrees to perform these projects as part of a settlement of an enforcement action. See, e.g., Consent Decree, *United States v. East Lake Management*, No. 01 C 7581 (N.D. Ill. 2002), 2001 EPA Consent LEXIS 715, at *9.

⁴⁹See generally Alliance for Healthy Homes, Innovative SEPs [Supplemental Environmental Projects] and CHIPs [Children's Health Improvement Projects] for Inclusion in Lead Hazard Disclosure Settlements (2003), at www.afhh.org/res/res_pubs/disclosure_innovative_SEPs_and_CHIPs.pdf.

⁵⁰Fair Housing Act, 42 U.S.C. § 3604 (2003); Residential Lead-Based Paint Hazard Reduction Act, *id.* § 4852d.

⁵¹See Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

approach their landlords without fear of retaliation when resources such as lead hazard control grants are available.⁵²

Some landlords who are concerned about a child being lead-poisoned on their property may respond by refusing to rent to, or otherwise treating unequally, tenants with a young child. The federal Fair Housing Act prohibits housing discrimination based on familial status (among other characteristics).⁵³ Complaints should be documented and referred to HUD or the local fair housing enforcement agency or both.⁵⁴ Enforcement of Fair Housing Act violations may have the collateral benefit of pressuring landlords to address lead safety issues.

The tenant education strategy complements the other three strategies discussed in the following subsections. For example, when landlords are put on notice about hazards in their properties, reactions vary from making effective repairs to illegally retaliating against tenants. Thus the affected tenants benefit from receiving information about the law and their rights—including laws that deal with retaliation, discrimination, and obtaining needed repairs. Residents also have legal recourse (i.e., standing to sue for triple damages suffered because of a violation)—which may help leverage lead safety—for violations of the disclosure law.⁵⁵

The experience of the Long Beach office of the Legal Aid Foundation of Los Angeles—a member of the Healthy Homes Collaborative, which is one of the alliance's project partners—demonstrates how tenant education supports

the other disclosure strategies. The Legal Aid Foundation includes information about disclosure in the tenant intake process and follows up with tenants when the foundation identifies landlords' non-compliance. The foundation's Healthy Homes advocate Kathleen Overr routinely participates in community meetings to educate tenants about their rights, including rights under the federal disclosure law. This outreach to tenants has helped identify landlords who are out of compliance with the disclosure law, and such identifications have resulted in referrals to HUD for federal enforcement. Tenant outreach also often gives Legal Aid Foundation of Los Angeles staff access to units for environmental sampling, the results of which are then given to landlords as part of the companion strategy of outreach to landlords. According to Overr, tenant education has been valuable in leveraging the federal disclosure law.⁵⁶

B. Outreach to Landlords

For leveraging the federal disclosure law, the strategy of outreach to landlords consists of (1) project partners conducting general outreach to landlords of properties in high-risk communities and (2) giving landlords available property-specific information that they must disclose to tenants. In both types of outreach, the goal is to engage landlords and motivate them to implement lead hazard control.

Project partners conducted general outreach primarily by sending landlords of high-risk rental housing boilerplate letters that contained general information on lead poisoning, prevention, and landlords' legal



⁵²See *id.* HUD operates the Lead-Based Paint Hazard Control Program, which currently provides grants to ninety-four states and cities to control hazards in privately owned high-risk rental and owner-occupied housing. See Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, OHHLC [Office of Healthy Homes and Lead Hazard Control] Grantees (last updated June 30, 2002), www.hud.gov/offices/lead/lhc/leadgrantees.cfm. Through loans and grants, local agencies typically cover a significant portion of eligible landlords' repair costs; this financial support makes lead hazard control much more palatable. See generally Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, Lead-Based Paint Hazard Control Grant Program (last updated March 14, 2005), www.hud.gov/offices/lead/lhc/index.cfm.

⁵³Fair Housing Act, 42 U.S.C. § 3604 (2003).

⁵⁴See generally Alliance for Healthy Homes, Fair Housing Laws and Discrimination Against Families (2003), at www.afhh.org/res/res_pubs/disclosure_Fair_Housing.pdf.

⁵⁵42 U.S.C. § 4852d(b)(3); 24 C.F.R. § 35.96(c) (2004).

⁵⁶Telephone Interview by Anne M. Phelps with Kathleen Overr, Health Promoter and Outreach Worker, Legal Aid Foundation of Los Angeles (Feb. 22, 2005).

responsibilities. The purpose of general outreach to landlords is to inform them of the prevalence of lead-based paint in the community's housing and therefore the likelihood of lead-based paint in their properties; federal lead hazard disclosure requirements and penalties; relevant state and local requirements (e.g., housing codes); the dangers that deteriorated lead-based paint and lead dust hazards pose; the importance of lead-safe work practices; and available resources, such as training in lead-safe work practices, free copies of HUD's *Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work*, clearance dust testing, rehabilitation loans, and HUD grants.⁵⁷ Some of the alliance's project partners have been able to offer technical advice about lead safety through an on-site meeting.

To conduct property-specific outreach, project partners primarily sent certified letters that contained the general information in the boilerplate letters and property-specific information on lead hazards. The purpose of giving property-specific information to landlords is to put them on notice that information is available on lead-based paint and lead hazards in their properties and that they must disclose such information to tenants. Because federal law requires land-

lords to disclose only known information, ignorance can be bliss for landlords.⁵⁸ Informing landlords about lead-based paint or lead-based paint hazards in their property eliminates their option of checking the "Don't know" box on the disclosure form and obliges them to disclose the information to future tenants. Such an obligation is a strong incentive for landlords to correct problems. Sending this information via certified letter makes claiming that they did not have the information more difficult for landlords. Advocates can document property-specific data through reviews of lead inspection or risk-assessment results; reports of laboratory analysis of lead dust wipes, paint chips, or soil samples collected by a lead inspector, risk assessor, or lead sampling technician; and positive results from a home test kit for lead.⁵⁹ State and local health departments have access to historical files of case investigations of children with elevated blood lead levels.

Through the alliance's Disclosure Leveraging Project, partners have informed more than 442,000 landlords about their duties under the federal disclosure law and resources available to help them make their properties lead-safe.⁶⁰ Project partners informed approximately 830 of those land-

⁵⁷OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PUB. NO. HUD-1779-LHC, LEAD PAINT SAFETY: A FIELD GUIDE FOR PAINTING, HOME MAINTENANCE, AND RENOVATION WORK (2001), www.hud.gov/offices/lead/training/LBPguide.pdf. "Lead-safe work practices" are a collection of "best practices"—e.g., work-site preparation and containment, occupant protection, safe paint-removal methods, and specialized cleaning—that minimize the amount of dust and debris during remodeling, renovation, rehabilitation, or repair or during some combination of these changes in pre-1978 housing. See generally 24 C.F.R. § 1350 (2005), e-CFR, www.gpoaccess.gov/ecfr/; see also Office of Community Planning and Development, U.S. Department of Housing and Urban Development, Lead-Safe Work Practices (updated June 18, 2004), www.hud.gov/offices/cpd/affordablehousing/training/leadsafe/keyrequirements/safepactices.cfm; National Safety Council, Lead-Safe Work Practices (Feb. 23, 2004), www.nsc.org/issues/lead/leadsafework.htm.

⁵⁸See 42 U.S.C. § 4852d(a)(1)(B) (2003); 24 C.F.R. §§ 3580 *et seq.* (2004).

⁵⁹Some studies suggest that home test kits for lead are not always accurate and that consumers should not rely on them to confirm their home's safety. See, e.g., Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Interpretive Guidance for the Federal Program TSCA [Toxic Substances Control Act] Sections 402/403, Q/A(4) Documented Methodologies; Home Test Kits at A1 (1999), available at www.epa.gov/lead/qa4.pdf ("Studies conducted by EPA have shown that these chemical test kits cannot reliably discriminate between high and low levels of lead."); WALTER J. ROSSITER JR. ET AL., NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, U.S. DEPARTMENT OF COMMERCE, PUB. NO. NISTIR 6398, SPOT TEST KITS FOR DETECTING LEAD IN HOUSEHOLD PAINT: A LABORATORY EVALUATION (May 2000), available at <http://fire.nist.gov/bfrlpubs/build00/PDF/b00034.pdf>. Despite this concern, if a landlord has obtained information from the use of a home test kit, the landlord must disclose that information; however, the landlord also may disclose information regarding the reliability of home test kit results. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & ENVIRONMENTAL PROTECTION AGENCY, *supra* note 15, at 6.

⁶⁰These 442,000 landlords included 430,000 landlords informed through boilerplate notices enclosed in water bills in Cleveland, Ohio. Cleveland Health Department's Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (April 15, 2004; June 15, 2004) (on file with Maria Rapuano). Because landlords in Cleveland are required to pay water bills, all recipients were landlords. See CITY OF CLEVELAND, OHIO, CODIFIED ORDINANCES § 375.05 (2004), available at http://caselaw.lp.findlaw.com/clevelandcodes/cco_part3_375.html.

lords about property-specific hazards subject to disclosure.⁶¹ In response, hundreds of landlords have participated in training in lead-safe work practices, applied to and enrolled in lead hazard control grant programs, and corrected lead hazards.⁶² According to Gregory D. Luce, executive director of an alliance project partner, Project 504 in Minneapolis, outreach to landlords on their duties to disclose has been Project 504's primary way of getting landlords into local programs that correct lead hazards.⁶³

The effectiveness of boilerplate and certified letters appears to vary from locality to locality. For example, in Greensboro, North Carolina, hundreds of landlords responded to boilerplate letters sent by the Greensboro Housing Coalition, an alliance project partner, by attending informational dinners, attending training in lead-safe work practices, and applying to the city's lead hazard control grant program.⁶⁴ During the first year of the alliance's project, 78 percent of the grant program's applications were from landlords who had received information from the coalition by mail or in person.⁶⁵ By contrast, the Connecticut Citizen Research Group in Hartford, also an alliance project partner, received no response from the 300 boilerplate letters that it mailed but received inquiries from hundreds of landlords who received certified letters.⁶⁶ These landlords attended training in lead-safe work practices and addressed lead hazards in their properties, and a core group is educating other landlords about lead hazards and the disclosure law.⁶⁷

C. System Changes

Code enforcement agencies and state and local health departments have programs and regulations that relate directly or indirectly to preventing and controlling lead hazards. However, in most jurisdictions, state and local programs and regulations do not reflect currently available information about the cost-effective prevention and control of lead hazards in housing. The alliance's project partners are working to institute a variety of "system changes" to strengthen policies, programs, regulations, and enforcement to encourage, require, and reinforce private property landlords in making and keeping their properties lead-safe.

1. Code Enforcement Policies

Project partners' primary target for system changes is code enforcement agencies, which are well situated to address lead paint hazards. Because code inspectors already enter many deteriorating properties, documenting lead hazards in high-risk units should take only limited additional effort. By collecting dust-wipe or loose paint-chip samples or doing swab tests, inspectors can document hazards that landlords must remedy if the hazards are code violations—and that they must disclose to tenants under the federal disclosure law. At a minimum, inspectors should cite chipping and peeling paint. Code inspectors should include information on lead hazards and the legal requirements to disclose them to tenants with notices that inspectors already are obligated to send when they cite a code violation.

⁶¹See Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁶²See *id.*

⁶³Telephone Interview by Maria Rapuano with Gregory D. Luce, Director, Project 504 (March 2, 2005). In 2004 applicants to the federal lead hazard control grant programs of Hennepin County—Minneapolis's county—came primarily from landlords who received disclosure materials from Project 504. *Id.*

⁶⁴Greensboro Housing Coalition's Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁶⁵*Id.*; Greensboro Housing Coalition's Final Report to Alliance for Healthy Homes, Disclosure Leveraging Project (June 2004) (on file with Maria Rapuano).

⁶⁶Connecticut Citizen Research Group's Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Jan. 2004–Jan. 2005) (on file with Maria Rapuano).

⁶⁷*Id.*

Code enforcement agencies can take additional steps to prevent lead poisoning. The alliance's project partners are urging code officials and policymakers to

- target for inspections high-risk properties or problem landlords or both identified through this project;
- treat peeling paint as an urgent health hazard rather than a cosmetic problem;
- train inspection staff to identify lead hazards in peeling paint and settled dust;
- cite lead hazards officially and remind landlords of their duty to disclose this information to tenants;
- warn landlords (when peeling paint violations are cited) about the dangers of lead dust, give them copies of HUD's *Field Guide*, and refer them to training in lead-safe work practices; and
- update local codes to include lead paint hazards or a local disclosure requirement or both.⁶⁸

Even in jurisdictions in which lead hazards are not code violations, simply giving information about potential hazards may motivate some property landlords to take remedial action. Other landlords may take action due to legal liability concerns, especially if lead hazard information comes from an official source such as a code enforcement agency. In jurisdictions in which lead hazards and related conditions (e.g., chipping and peeling paint, moisture) are enumerated code violations, code enforcement may be used to force even the most recalcitrant landlords to make repairs.

The alliance's project partners held multiple meetings with code enforcement officials and conducted staff training

sessions and, as a result, succeeded in having about a dozen system changes implemented; these changes included training inspectors in lead-safe work practices and adding language to violation notices and inspection forms on lead-safe work practices and disclosure requirements.⁶⁹ Most project partners reported an increase in inspections in high-risk neighborhoods, citations for chipping and peeling paint, and inspectors' awareness of the link between lead-poisoning prevention and code enforcement.⁷⁰ Inspectors are responding to complaints about lead hazards much more promptly.⁷¹

The experience of Durham, North Carolina, exemplifies the benefits of involving code inspectors in lead-poisoning prevention. The Durham Affordable Housing Coalition, an alliance project partner, convinced code officials to have their inspectors trained as lead inspectors. After taking the lead inspector certification course, one inspector realized that repairs on a unit to address housing code violations were disturbing lead-based paint without lead-safe work practices being used. The inspector instructed the resident to contact the Durham Affordable Housing Coalition, which arranged to have the property and children tested. The risk assessment found lead hazards, and the inspector helped the tenants relocate and required the landlord to remedy all lead hazards before reoccupancy. This was the first time a housing code inspector in Durham used the housing code to get lead hazards remedied.⁷²

2. Health Department Policies and Practices

Health department policies and practices on lead-poisoning prevention and responses to a lead-poisoned child often fall well short of current science and

⁶⁸See generally Alliance for Healthy Homes, Model State/Local Lead Disclosure Law (2003), at www.afhh.org/res/res_pubs/disclosure_model_law.pdf; *id.*, Preventing Childhood Lead Poisoning Through Code Enforcement: Ten Effective Strategies (2003), at www.afhh.org/res/res_pubs/strategies.pdf.

⁶⁹See Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁷⁰See *id.*

⁷¹See *id.*

⁷²See Durham Affordable Housing Coalition's Quarterly Report to Alliance for Healthy Homes, Disclosure Leveraging Project (June 2004) (on file with Maria Rapuano).

accepted practice in these areas. Thus the alliance's project partners are encouraging health departments to make system changes such as requiring landlords to use lead-safe work practices when repairing deteriorated paint, offering free training in lead-safe work practices, and requiring clearance testing after the health department orders repairs in the home of a child with an elevated blood lead level.⁷³

Project partners' work with health departments is paying off. For example, as the result of the work of the Healthy Homes Collaborative in Los Angeles, local health agencies have changed some policies and practices to enhance their ability to protect children from lead poisoning:

- the Los Angeles County Health Department's Environmental Health Services reformed how they conduct investigations of unsafe work practice complaints and now follows the collaborative's recommendations to issue stop-work orders when unsafe work is identified, require lead-safe work practices for all subsequent repairs, and conduct follow-up monitoring of work to ensure compliance;
- the Los Angeles County Childhood Lead Poisoning Prevention Program inspects all units of a building where a lead-poisoned child is identified, rather than just the unit where the child was identified;
- the Childhood Lead Poisoning Prevention Program attaches a notice of lead hazard violations to a property's title when a poisoned child and lead hazards

are found in the unit; such a notice warns future buyers of possible lead dangers and perhaps gives current landlords an incentive to control hazards; and

- the Childhood Lead Poisoning Prevention Program trained more than 100 building and safety staff members around the county in lead safety.⁷⁴

3. State and Local Disclosure Laws

Another way to make system changes is to seek the passage of state and local lead hazard disclosure ordinances. The most obvious benefit to states and localities of having their own disclosure law is that it gives them enforcement power. HUD and the EPA lack the staff and resources to pursue every violator of the federal law; state and local governments may have the resources, but they lack the power to enforce federal law.

State and local laws can strengthen the federal disclosure law in at least a couple of ways. First, the federal law contains several exemptions, including zero-bedroom dwellings.⁷⁵ Advocates around the country have identified this exemption as the greatest shortcoming in the federal disclosure law.⁷⁶ Zero-bedroom dwellings include studio apartments and lofts.⁷⁷ Shortages of affordable housing in many areas have forced low-income families to live in these types of dwellings. Children of low-income families, who are at higher risk for lead poisoning due to their economic status, deserve the same protection as children living in other types of housing.⁷⁸ State and local disclosure rules can fill the

⁷³Clearance testing is an activity conducted following lead-based paint hazard reduction to determine that the hazard-reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or work site. 24 C.F.R. § 35.110 (2004). The clearance process includes a visual assessment and collection and analysis of environmental samples. *Id.* The accepted dust-level standards are those required of federally owned and assisted properties; for these standards, see *id.* § 35.1320(b).

⁷⁴Healthy Homes Collaborative's Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (April 2004; Jan. 2005) (on file with Maria Rapuano).

⁷⁵24 C.F.R. § 35.86 (2004).

⁷⁶See Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁷⁷24 C.F.R. § 35.86 (2004); see also U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & U.S. ENVIRONMENTAL PROTECTION AGENCY, GUIDANCE ON THE LEAD-BASED PAINT DISCLOSURE RULE: PART 1, Q. 7 (1996), www.hud.gov/offices/lead/guidelines/disclosure/index.cfm.

⁷⁸Poor children are eight times as likely to be lead-poisoned as children in high-income families. For the most current breakdown by income, see Centers for Disease Control and Prevention, *Update: Blood Lead Level—United States, 1991–1994*, 46 MORBIDITY AND MORTALITY WEEKLY REPORT, Feb. 21, 1997, at 141, 144, & tbl.2, available at www.cdc.gov/mmwr/preview/mmwrhtml/00048339.htm.

gap left by federal law by requiring disclosure for zero-bedroom dwellings.

Second, state and local laws can offer additional protective provisions, such as requiring disclosure whenever a hazard is identified, rather than waiting for lease renewal, and informing every tenant of a multifamily dwelling of identified hazards, not just the tenants of the unit in question.⁷⁹ Because all units in a single building are probably painted and maintained in a similar manner, the presence of lead-based paint or lead-based paint hazards in one unit is a good indicator of similar conditions in other units. Disclosing the presence of lead-based paint or hazards in a building to all tenants puts them on notice of the possibility of lead-based paint or lead-based paint hazards in their own units and increases the opportunities for hazards to be addressed before children are poisoned. Disclosing a hazard as soon as the landlord knows about it, rather than waiting for lease renewal, may prevent children from being poisoned in the interim.

For example, in 2004 Cleveland passed a new lead ordinance, which included a disclosure component. This ordinance gives local officials the power to enforce disclosure requirements and has two additional protective provisions: it requires disclosure of hazards within ten days of discovery, regardless of when the lease expires; and it allows nonprofit organizations to bring civil action on behalf of an aggrieved individual and recover its costs.⁸⁰ An alliance project partner, the Cleveland Childhood Lead Poisoning Prevention Program, collaborated with the city's law department to draft the new lead ordinance. The effort was successful due in part to media exposure of the living conditions of children in economically depressed areas of the city; Cleveland's mayor was prompted to endorse the ordinance. The diligence of

program staff, the commissioner of environment, and the environmental attorney assigned to the task and the inclusion of other stakeholders, such as the Cleveland Tenants Organization, the building department, and the housing department, contributed to the ordinance's successful passage.⁸¹

D. Documenting and Reporting Disclosure Violations to HUD and the EPA

The strategy of documenting and reporting disclosure violations to HUD and the EPA has perhaps the greatest potential for obtaining lead-safe repairs in the maximum number of units (see sidebar). However, its use primarily focuses on larger landlords or property management companies with extensive hazards and serious violations of the disclosure law, state and local lead-poisoning prevention laws, and housing codes.

For enforcement actions, HUD and the EPA properly target large landlords with the most extreme violations. For example, HUD and the EPA pursue landlords of buildings where lead poisoning has occurred, where a pattern of bad maintenance or code violations or both has emerged, or where disclosure records have been falsified. After HUD or the EPA opens a case, the agency typically ceases communication with the referring organization until the case is resolved because negotiations with landlords are necessarily confidential between the agency and the subject of the investigation.

In addition to referring cases to HUD and the EPA, state and local governments can get involved by intervening in federal disclosure enforcement actions and alleging that defendants also violated state and local laws.⁸² Intervention has been used in cases involving large and moderately sized coop-

⁷⁹Regarding the federal law allowing landlords to wait for lease renewal before being required to disclose specified information, see 24 C.F.R. § 35.88(a) (2004); see also *id.* § 35.82(d); regarding the federal law requiring that only the tenants of the unit in question be informed of hazards, see *id.* § 35.88(a)(4); see also DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT & ENVIRONMENTAL PROTECTION AGENCY, *supra* note 77, Q. 15.

⁸⁰CITY OF CLEVELAND, OHIO, CODIFIED ORDINANCES § 240.06 (2004).

⁸¹See City of Cleveland Childhood Lead Poisoning Prevention Program's Quarterly Report to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003) (on file with Maria Rapuano).

⁸²"Intervention" refers to a party joining a judicial action already in progress to protect an interest or right that may be affected by the proceedings. BLACK'S LAW DICTIONARY 820 (6th ed. 1990).

Making Effective Referrals to Federal Agencies

Federal agencies do not pursue all violators of the federal disclosure law; they have discretion to choose which cases to pursue for enforcement. The U.S. Department of Housing and Urban Development (HUD) and the U.S. Environmental Protection Agency (EPA) receive information about possible disclosure violations from their joint hotline (800.424.LEAD) and from the Alliance for Healthy Homes' partners in its Disclosure Leveraging Project. HUD also conducts targeted investigations in conjunction with state and local health and housing departments.

In such instances, HUD uses these departments' data identifying known recalcitrant landlords or property managers or both. Advocates should note that neither HUD nor the EPA has the authority to compel landlords to abate their properties. However, the agencies regularly negotiate with landlords to include testing and abatement as part of a civil settlement or as a way to mitigate civil monetary penalties or both. The ultimate goal is safe housing.

HUD and the EPA aggressively pursue cases involving landlords with larger property portfolios. They may send small-time "mom and pop" landlords of few properties information regarding disclosure and a warning that noncompliance is a violation of federal law. Referrals should include the name of and contact information for the landlord or property manager or both; the number of housing units owned or managed or both and the age of the properties; the name of and contact information for the tenant, including the address

of the violation; a description of the violation; and the presence of known lead-based paint or lead-based paint hazards or both. If children are in the property or one of them is found to have an elevated blood lead level, this information should be included with any documented housing code violations.

When making referrals to HUD and the EPA, state and local agencies, community-based organizations, and legal aid organizations should suggest local projects that could be incorporated into any supplemental environmental projects and children's health improvement projects negotiated in a federal settlement. For example, the settlement could include the landlord sponsoring training in lead-safe work practices and lead-poisoning prevention for health department staff, tenant organizations, and community-based organizations. Settlements also can be used to obtain free laboratory tests for dust, soil, and paint-chip samples for low-income homeowners, small rental property landlords, agency staff, and community-based organizations. Other settlement provisions could include funds for community-based organizations working on lead-poisoning prevention. Ideally such funding should be long term with no strings attached. For more information on settlement provisions that focus on prevention and meet the needs of high-risk communities, see Alliance for Healthy Homes, Innovative SEPs [Supplemental Environmental Projects] and CHIPs [Children's Health Improvement Projects] for Inclusion in Lead Hazard Disclosure Settlements (2003), at www.afhh.org/res/res_pubs/disclosure_Innovative_SEPs_and_CHIPs.pdf.

erative and recalcitrant landlords. Intervention is most likely to achieve an outcome satisfactory to the intervening state or local government when state or local officials are involved from the start by working with federal enforcement officials to bring about a disclosure enforcement action. Intervention creates opportunities for local authorities to leverage federal enforcement cases to recover financial penalties, require correction of code violations, and direct resources to local

lead-poisoning prevention efforts. By intervening, state and local governments can ensure for themselves a role in designing settlements, including the terms of supplemental environmental projects and children's health improvement projects. In some cases, the settlement may include penalty payments to the intervenors.⁸³

The experience of the Chicago Department of Public Health, an alliance project partner, is a good example of successful inter-

⁸³See, e.g., Consent Decree at 10, *United States v. Wolin-Levin Inc.*, No. 01 C 7580 (N.D. Ill. 2001), 2001 EPA Consent LEXIS 716.

vention in federal disclosure suits. The department was a coplaintiff in disclosure enforcement actions. The department identified large properties with lead-based paint violations that were ripe for action. The EPA conducted site investigations, reviewed property management files, and determined that disclosure had not occurred in any of the properties. The EPA and HUD began negotiations with the property management companies and asked the department to do property “sweeps” to inspect as many units as possible and characterize the conditions of the buildings by identifying hazardous conditions in violation of other state and local laws. The department has the authority to conduct investigations under the city’s lead-poisoning control ordinance.⁸⁴

The results of the investigations gave extra leverage in negotiating the subsequent consent decrees because the local ordinance, which requires correction of hazards whether or not a poisoned child is present, applied.⁸⁵ By intervening, the department was able to review the language of the consent decrees and give input on children’s health improvement projects, which have provided funds for abatement, blood lead sampling at community clinics, and lead-awareness training to tenants. The city realized other advantages by cooperating with federal agencies on disclosure enforcement. First, federal agencies can more easily identify all of the properties in a landlord’s portfolio; such identification is difficult for the health department. Second, consent decrees and agreements can require risk assessments of a landlord’s entire portfolio—a power that the city does not have.⁸⁶

Federal agency enforcement of the disclosure law can give leverage when state and local laws are weak or are not being

enforced. In North Carolina an alliance project partner, the Greensboro Housing Coalition, used the federal disclosure law to target a notorious slumlord who had been taking advantage of tepid enforcement and loopholes in local codes for over three decades. For years, local newspapers would not publish stories on this landlord because he habitually threatened to sue the newspapers. For unknown reasons, the code enforcement agency rarely forced the landlord to address the hundreds of code violations for which his properties had been cited. The Greensboro Housing Coalition pressured local code officials by generating press coverage that embarrassed local officials. The coalition prepared a dossier, including a several-hundred-page printout of code violations on this landlord’s properties, and submitted it to HUD for enforcement. HUD conducted an on-site investigation of this landlord in fall 2004. This landlord already is showing signs of change—he is investing \$300,000 in one of his properties to bring it up to code and prevent demolition by the city. The Greensboro Housing Coalition hopes that if HUD finds him to have violated the disclosure law, this will spur him to fix the other properties in his portfolio.⁸⁷

In Providence, Rhode Island, the Childhood Lead Action Project, another alliance project partner, relied on federal agency enforcement of the federal disclosure law to get a city councilman to clean up his properties. Because of this landlord’s prominent position in the city, local enforcement officials were unwilling to enforce local laws. The Childhood Lead Action Project referred the landlord to the EPA, which had no such reservations. The EPA found the landlord to have violated the federal disclosure law, and the resulting settlement required him to clean up his properties.⁸⁸

⁸⁴CHICAGO, ILL., MUNICIPAL CODE ch. 7-4, § 090 (1999), available at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/leadordinance.pdf; also available at www.municode.com/.

⁸⁵*Id.* §§ 30, 100(3); see also John L. Wilhelm, Commissioner, Chicago Department of Public Health, Control and Mitigation of Lead Bearing Substances (May 19, 2004) (promulgating Chicago City Ordinances Ch. 7-4), available at http://egov.cityofchicago.org/webportal/COCWebPortal/COC_EDITORIAL/LeadReg.5.19.04_3.pdf.

⁸⁶Telephone Interview by Maria Rapuano with Anne Evens, Director, and Patrick MacRoy, Epidemiologist, Lead Poisoning Prevention, Chicago Department of Public Health (April 10, 2003).

⁸⁷See Greensboro Housing Coalition’s Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (June 2004–Jan. 2005) (on file with Maria Rapuano).

⁸⁸Telephone Interview by Maria Rapuano with Liz Colon, Director of Training and Outreach, and Roberta Hazen Aaronson, Executive Director, Childhood Lead Action Project (April 9, 2003).

Legal aid attorneys believe that referring cases to federal agencies for enforcement can be a valuable tool for improving housing conditions in the communities that they serve. For example, the Legal Aid Foundation of Los Angeles includes questions regarding disclosure in its intake process, and the Legal Aid Society of Greater Cincinnati documents disclosure violations through its comprehensive housing services.⁸⁹ The Legal Aid Society uses this information to compile for federal enforcement a referral that includes information on lead poisoning, identified hazards, code violation citations, vacate orders, information on other older housing owned by that landlord, and any personal experience that the attorney may have had with the landlord or tenant.⁹⁰ Both organizations have made multiple referrals that HUD is currently investigating.⁹¹

However, by definition, legal aid organizations represent individual tenants; typically this means that the focus is on collecting damages so that the tenant can relocate to safer housing. Although this approach is in the individual tenant's best interest, it does nothing to improve the condition of the property or protect subsequent tenants. Referring cases for federal enforcement is one way for legal aid organizations to attempt to improve the condition of a unit even after the tenant moves—and not just the specific unit but the landlord's entire portfolio.⁹²

The strategy of documenting and reporting disclosure violations may not always be effective. Tenants are often fearful of retaliation and do not want disclosure violations referred to federal agencies.⁹³ And federal agencies take much time to complete an enforcement action—after a referral is made, two or more years can pass before the agencies reach the settlement negotiation stage.⁹⁴ Thus, while federal agency enforcement of the disclosure law might make many thousands of units lead-safe, it may not protect children in the short term.



Reaching HUD's national goal of eliminating childhood lead poisoning by 2010 will require all stakeholders, including community-based organizations, health departments, and legal aid attorneys, to take advantage of the full range of tools available—penalties and incentives—to motivate landlords to invest in lead safety.⁹⁵ The experience of the alliance and its project partners in implementing strategies for leveraging the federal disclosure law demonstrates the benefits of such strategies for preventing lead poisoning. Perhaps the lasting power of the disclosure law is that it is not dependent on local policies, laws, and enforcement; instead, it works by using federal authority and enforcement, which can be more effective.

⁸⁹Telephone Interview by Anne M. Phelps with Kathleen Overr, Health Promoter and Outreach Worker, Legal Aid Foundation of Los Angeles (Feb. 22, 2005); Telephone Interview by Anne M. Phelps with Marcheta Gillam, Senior Housing Attorney, Legal Aid Society of Greater Cincinnati (Feb. 17, 2005).

⁹⁰Telephone Interview by Anne M. Phelps with Marcheta Gillam, Senior Housing Attorney, Legal Aid Society of Greater Cincinnati (Feb. 17, 2005).

⁹¹Healthy Homes Collaborative's Quarterly Report to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2004) (on file with Maria Rapuano); Legal Aid Society of Greater Cincinnati's Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003; April 2004; Oct. 2004; Jan. 2005) (on file with Maria Rapuano).

⁹²The alliance's project partners also have been encouraging legal aid attorneys representing tenants in housing-related lawsuits to include lack of disclosure as a cause of action. Including federal disclosure violations among the other claims appears to get the landlord's attention and strengthen local cases.

⁹³See Project Partners' Quarterly Reports to Alliance for Healthy Homes, Disclosure Leveraging Project (Oct. 2003–Jan. 2005) (on file with Maria Rapuano).

⁹⁴Walter Wynn & John Shumway, Remarks at the Disclosure Leveraging Project Meeting (March 2, 2005).

⁹⁵HUD's Healthy People 2010 aims to eliminate blood lead levels greater than or equal to ten µg/dL in children under 6 years old by 2010. HUD, the EPA, and the Centers for Disease Control and Prevention are coordinating efforts to achieve this goal. See, e.g., Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, HUD's Strategic Plan to Eliminate Childhood Lead Poisoning by 2010 (updated June 1, 2004), at www.hud.gov/offices/lead/StrategicPlans.cfm.