

ALLIANCE FOR HEALTHY HOMES

Protecting Children from Lead and Other Environmental Health Hazards



STRATEGIES FOR MAKING THE MOST OF THE FEDERAL LEAD HAZARD DISCLOSURE LAW

Revised and Updated August 15, 2004

HUD and EPA regulations took effect in 1996 mandating that owners and agents disclose information about the presence of lead-based paint and known lead hazards to prospective buyers and tenants of most residential properties built before 1978. In addition, owners and agents are required to provide the EPA pamphlet, *Protect Your Family From Lead in Your Home* (or an EPA-approved equivalent); an attachment to the lease or sales contract including a Lead Warning Statement; and signature lines certifying that the required information was provided.

Initially, the primary focus of federal implementation assistance and enforcement activities was on owner-occupied housing and purchase-sale transactions. For the most part, disclosure now routinely occurs for most single-family home sales. Unfortunately, compliance is low for rental housing in many places, and many health departments and local leaders report that noncompliance is rampant in low-income, high-risk housing in their cities.

The federal lead hazard law is “only” a disclosure law – it does not require the investigation of hazards or even the correction of identified hazards. However, over the past several years, HUD, EPA, and DOJ have demonstrated the power of this law by taking enforcement action against violators, including some notorious slumlords. These enforcement actions have resulted in more than \$22 million in commitments from landlords to address lead hazards in more than 165,000 units around the country and provided more than \$360,000 for community-based projects to combat childhood lead poisoning. But many local agency staff, advocates, and organizers are convinced that we have just begun to tap this law’s full potential.

The Alliance for Healthy Homes is working with community-based organizations, health departments, legal services agencies, and advocates at all levels to explore and implement strategies to leverage the disclosure law to motivate property owners to control lead hazards in high-risk rental housing. The following pages describe the four central/major strategies that have been developed by the Alliance and its Operation LEAP project partners to achieve this goal. The four strategies are:

1. Tenant Education
2. Outreach to Landlords
3. Systems Change
4. Document/Report Disclosure Violations

1. Tenant Education

Educating tenants about their legal rights under the disclosure law, federal Fair Housing Act, and relevant state and local laws (e.g., lead-safety, discrimination, and retaliation laws) makes sense for several reasons. First, these tenants are the people to whom lead disclosure is required and their health is most directly affected by lead hazards in their home. Indeed, the purpose of this “right-to-know” law is to provide tenants (and buyers) with information to help them make informed choices about housing that is safe for their children. Informed tenants also can help leverage the disclosure law by providing information about owners, indicating whether disclosure has occurred, providing access to homes for hazard investigations, lodging complaints with landlords and housing code and other agencies, and otherwise joining with advocates in putting pressure on landlords to make homes safe.

This strategy complements all of the others. For example, when landlords are put on notice about hazards in their properties, reactions may vary from making effective repairs to illegally retaliating against tenants. For this reason it is beneficial that the tenants involved receive information about the law and their rights – including related laws that deal with retaliation, discrimination, and obtaining needed repairs. Residents also have legal recourse for violations of the disclosure law (e.g., standing to sue for triple damages suffered because of a violation) that may help leverage lead safety.

Some landlords who are concerned about a child being lead-poisoned in their property may respond by refusing to rent to, or otherwise treat unequally, tenants with a young child. The federal Fair Housing Act prohibits discrimination in housing based on familial status (among other characteristics). “Familial status” includes families with children under the age of 18, pregnant women, and people securing custody of children under 18. The Act covers most housing, except properties specifically designated as “elderly only.” In some circumstances, the Act also exempts owner-occupied buildings with no more than four units and single-family housing sold or rented without the use of a broker. Discrimination can take many forms, including refusing to rent or negotiate for housing, or setting different terms, conditions or privileges for the rental of a dwelling. It is also illegal for anyone to advertise or make any statement that indicates a limitation or preference based on familial status. (This prohibition against discriminatory advertising also applies to single-family and owner-occupied housing that is otherwise exempt from the Act.)

While working with tenants, community-based organizations and health department staff should be alert to tenant complaints or seek to identify landlords who discriminate against families with children. (Some landlords are remarkably blunt in explicitly refusing to rent to families with young children, while others are more subtle. Often tenant suspicion of illegal discrimination is borne out by subsequent fair housing testing.) Complaints should be documented and referred to HUD and/or the local fair housing enforcement agency. (See Alliance paper, *Fair Housing Laws and Discrimination Against Families*, www.afhh.org/res/res_pubs/disclosure_Fair_Housing.pdf). Conceivably, enforcement of Fair Housing Act violations might offer the collateral benefit of pressuring landlords to address lead safety issues.

Planning Considerations

- Learn beforehand about related tenant legal rights and include this information in your educational efforts.
- Assess content and format of current tenant education materials.
- Develop curriculum and educational materials and messages that simplify the issues involved in disclosure and related laws and that are tailored to other complementary strategies. (See tenant slide show and script, in both English and Spanish at www.afhh.org/res/res_Operation_LEAP_toolkit.htm.)
- Pilot-test materials to ensure they are user-friendly and effective.
- Organize education with groups of tenants (building- or complex-wide, block clubs, etc.) for efficiency and to build tenant cohesiveness.
- Consider partnering with public interest housing/tenant rights/legal services that can provide assistance as needed or act as intermediaries.

Implementation Options

- Conduct workshops/educational sessions – in English, other languages, and/or bilingual, as appropriate.
- Mail information on lead hazards, disclosure, and legal rights to tenants – in English, other languages, and/or bilingual, as appropriate.
- Mail copies of letters sent to property owners on disclosure responsibilities and property-specific information on lead hazards to tenants (see Strategy #2, Outreach to Landlords, below).
- Educate intermediaries about disclosure (e.g., tenant organizations, health care providers) and provide them with written information to provide to clients.
- Include disclosure in other outreach activities (e.g., first-time homebuyer seminars).
- Include disclosure in other tenant outreach materials (e.g., fair housing).
- Door-to-door outreach/scheduled in-home visits.
- Distribute flyers/educational materials at relevant venues, such as churches, schools, and health fairs.
- Place stories in print and broadcast media, including non-English.
- Track tenant follow-up actions (e.g., providing tips on disclosure violations, complaints to landlords, complaints to housing code or other agencies, etc.).
- Respond to tenant inquiries.
- Document incidents of retaliation and track eviction complaints.
- Refer fair housing violations to appropriate agencies, and follow up.
- Recruit tenants to engage in activities described in strategies 2 through 4.

Possible Evaluation Factors

- Number of tenants who attend workshops and educational sessions.
- Pre- and/or post-evaluation/test for workshops/education sessions.
- Number of tenants reached individually through door-to-door or other venues.

- Number of complaints to landlords.
- Number of complaints to housing code or other agencies.
- Number of intermediary organizations educated and the number of tenants they educate.
- Number of flyers/educational brochures distributed.
- Number of newspapers contacted, number of stories run, total column inches.
- Number of organizations contacted, number that participate (e.g., by hosting workshop or distributing educational materials).
- Landlord responses.
- Number of complaints referred to the relevant Fair Housing agency.
- Number of complaints successfully resolved by the Fair Housing agency.
- Lead safety measures that are required of property owners in settlement of Fair Housing Act violations.
- Feedback from tenants.

2. Outreach to Landlords

This strategy includes general outreach to owners of properties in high-risk communities, and, where available, providing property-specific information that needs to be disclosed. In both cases, the goal of the outreach is to engage landlords and motivate them to implement lead hazard control.

The purpose of general outreach to landlords is to inform them of: the prevalence of lead-based paint in the community's housing – and the likelihood of lead-based paint in his property; federal lead hazard disclosure requirements and penalties; relevant state and local requirements (housing codes, etc.); the danger posed by deteriorated lead-based paint, the danger of lead dust hazards, and the importance of lead-safe work practices; and available resources, such as training in lead safe work practices (LSWP), free copies of *Federal Field Guide*, clearance dust testing, rehab loans, or HUD grants. Ideally, partners also would be able to offer technical advice about lead-safety, such as through an on-site meeting.

Presumably, landlords who “want to do the right thing” would be the mostly likely to respond favorably to general outreach. Such outreach would seem unlikely to motivate “bad landlords” to act.

The purpose of providing property-specific information to property owners is to put them on notice that there is information available on lead-based paint and hazards in their properties that must be disclosed. Since federal law only requires disclosure of known information, ignorance can be bliss for landlords. “Giving the landlord knowledge” about LBP or lead hazards in his property takes away the option of checking the “Don't Know” box and obliges him to make disclosures to future tenants, which provides a strong incentive to correct problems. Providing this information via certified letter makes it more difficult for the owner to claim they did not have the information. Such property-specific data can be documented through: reviews of historical files of EBL case investigations; 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 spot test kit.

Providing property-specific information may be a useful way to put pressure on hostile or recalcitrant landlords – or to get the attention of landlords who otherwise do not respond. This strategy might alienate landlords with whom a working relationship is being established.

Planning Considerations

- Develop curriculum/educational materials and pilot-test them to ensure they are user-friendly and effective.
- Develop pre- and post-workshop tests/evaluations to test changes in property owner knowledge and attitudes.
- Mine existing data about LBP and lead hazards to the maximum extent possible.
- Protect patient privacy in reviewing health department records.

- In collecting new data, prioritize highest risk units and decide what's needed to pass muster: certified risk assessor or lead inspector; government inspector; or Lead Sampling Technician.
- Use spot test kits judiciously. EPA guidance calls for disclosure of such results, but these tests are less accurate than lab analysis, are subject to false positives, and may be challenged.
- Coordinate and ensure availability of resources to be offered to landlords, e.g., be prepared to follow up on requests for *Field Guide*, training in LSWP, etc.

Implementation Options

- Mail a “boilerplate” letter to owners of rental properties in high-risk areas.
- Mail a “boilerplate” letter to landlords and real estate agents advertising properties for rent in high-risk areas or targeted to high-risk populations (e.g., Spanish language publications).
- Including notices on disclosure in other mailings to property owners, such as water bills.
- Mail a registered letter to owners of properties where specific information on lead-based paint and hazards are available.
- Call owners of properties with known lead-based paint and/or hazards.
- Meet individually with priority landlords and property managers, i.e., those owning multiple older and “problem” properties.
- Develop remediation proposals as a result of individual meetings.
- Convene workshops/seminars to educate property owners about their legal responsibilities and available resources.
- Collaborate with landlord associations to educate landlords about disclosure and lead hazard control.
- Develop a website where owners can access information and provide feedback anonymously.

Possible Evaluation Factors

- Number of “boilerplate” letters mailed.
- Number of “boilerplate” letters returned as undeliverable.
- Number of registered letters mailed.
- Number of registered letter receipts signed and returned; number of undeliverable letters.
- Number of workshops/seminars and number of attendees.
- Pre- and post-workshop test scores.
- Number of on-site meetings with landlords.
- Number of *Federal Field Guides* distributed.
- Number of owners who attend or send workers to LSWP trainings.
- Number of owners applying to lead hazard control grant programs.
- Number of units made lead-safe.
- Amount landlords invest in lead safety.

3. Systems Change

State and local health departments, housing agencies, and code enforcement agencies have a range of programs and regulations that relate directly or indirectly to preventing and controlling lead hazards. Unfortunately, in the vast majority of jurisdictions, state and local programs and regulations do not reflect current knowledge about the cost-effective prevention and control of lead hazards in housing. Across the country, lead poisoning prevention and other public health advocates are working to institute a variety of “systems changes” to strengthen policies, programs, regulations, and enforcement to encourage, require, and reinforce action by private property owners to make and keep their properties lead-safe.

A primary target for systems changes is code enforcement agencies, which are well address lead paint hazards. Code agencies should be urged to target inspections to high-risk properties and/or problem landlords identified through this project. Code inspectors should treat peeling paint as an urgent health hazard rather than a cosmetic problem and need to be trained to identify lead hazards in peeling paint and settled dust. Whenever code agencies document violations that are lead hazards they should officially cite the violations to the landlord and remind them of their duty to disclose this information to occupants. Code enforcers who cite peeling paint violations can warn landlords about the dangers of lead dust, provide copies of the *Federal Field Guide*, and refer them to training in lead-safe work practices. When a lead paint hazard constitutes an actual code violation, code agencies can use their legal powers to order the landlord to correct the problems. Finally, updating local codes to include lead paint hazards and/or a local disclosure requirement should be considered. (See *Model State/Local Lead Disclosure Law*, http://www.afhh.org/res/res_pubs/disclosure_model_law.pdf; and *Preventing Childhood Lead Poisoning Through Code Enforcement: Ten Effective Strategies*, http://www.afhh.org/res/res_pubs/strategies.pdf).

Code inspectors already enter many properties with deteriorated conditions, so it should take only limited additional effort for them to document lead hazards in high-risk units. Collecting dust wipe or loose paint chip samples or doing swab tests can document hazards that owners must remedy if they are code violations – and which they must disclose to tenants in any case. Information on hazards and legal requirements to disclose them can be included with notices that code enforcers would send to owners anyway. At a minimum, chipping and peeling paint should be cited.

Information about hazards in their properties alone may motivate responsible landlords to take remedial action. Other landlords may take action due to legal liability concerns – especially in light of the official source of the notice they are receiving. Code enforcement provides the authority to force even the most recalcitrant owners to make repairs.

In many jurisdictions, health departments’ policies and practices fall well short of current science and accepted practice. For example, CBOs can also work to encourage health departments to make systems changes, such as requiring landlords to use LSWP when repairing deteriorated paint, offering free training in LSWP, requiring clearance testing after repairs are ordered in the home of an EBL child.

Planning Considerations

- Analyze your housing code with regard to how it addresses deteriorated paint, lead hazards, and underlying causes of paint deterioration.
- Identify significant weaknesses and opportunities for improvement through systems change.
- Convene strategy meeting(s) with key community groups and activists.
- Assess whether relevant local agencies have the capacity to add real value as partners, and if so, initiate discussions to identify common interests and opportunities.
- Develop systems for sharing information among health and code agencies and advocacy groups about code and lead violations as they are found.

Implementation Options

- Meet with code enforcement officials regarding integrating lead and disclosure into inspections and enforcement processes.
- Meet with/present to city officials (e.g., city council, mayor) and housing court judges to gain their support.
- Secure agreements from code enforcement officials to target high-risk neighborhoods, take chipping and peeling paint seriously, distribute the *Federal Field Guide*, notify owners of lead hazards and their duty to disclose, and provide information on LSWP.
- Draft MOUs and new language for codes, as appropriate (e.g., requiring LSWP when correcting violations).
- Work with code enforcement agency to modify materials (e.g., violation letters, inspection forms) to include information on lead and disclosure, as needed.
- Train code enforcement employees on the dangers of lead, the role of code enforcement in prevention, and the federal disclosure law.
- Train code inspectors in lead safety (e.g., sampling technician, LSWP).
- Monitor code enforcement actions.

Possible Evaluation Factors

- Number of meetings with code enforcement officials.
- Number of meetings with/presentations to city officials.
- Number of policy changes made.
- Number of *Federal Field Guides* distributed by code inspectors.
- Number of code enforcement employees trained on the dangers of lead, the role of code enforcement in prevention, and the federal disclosure law.
- Number of agency staff trained in lead safety.
- Results of pre- and post-training tests.
- Increase in number of inspectors.
- Increased inspections of high-risk housing.
- Increased citations for peeling paint or lead hazards.

- Number of units for which corrective action occurred.
- Estimated amount landlords invest in lead safety.

4. Document/Report Disclosure Violations

This strategy has perhaps the greatest potential for obtaining lead-safe repairs in the maximum number of units, but its use is primarily focused on larger landlords or property management companies with extensive hazards and serious violations. HUD and EPA are properly targeting enforcement actions against large landlords with the most extreme violations. For example, they seek larger landlords of buildings where lead poisonings have occurred, where there's a pattern of bad maintenance and/or code violations, and/or where disclosure records have been falsified. In some places, the US Department of Justice (DOJ) has enlisted US Attorneys to enforce violations of the disclosure law.

Federal agencies have strong enforcement powers and the ability to levy fines and other penalties, giving them leverage over landlords who fail to comply. HUD, EPA, and DOJ have pursued "results-oriented" enforcement in a number of high-profile cases over the past four years, winning legal settlements that have required landlords to investigate tens of thousands of housing units for lead hazards and correct hazards in thousands of units. Some settlements also have included contributions by violators to community-wide prevention efforts.

Documenting and prioritizing violations to report to federal agencies for enforcement is a necessary first step. Health and code enforcement agencies usually know who the worst landlords are, and some community groups have even better information. Systematically documenting violations of the disclosure law, including failure to deliver the EPA pamphlet, is something that few groups have tried to do previously. It may be helpful to collaborate with organizations that routinely receive tenant complaints (e.g., tenant hotlines or groups, legal services, etc.) to identify violators. Actively checking with tenants in units or buildings where lead hazards have been previously cited requires more effort, but is an effective way to find high priority cases. Additional research may be necessary in some instances to identify the actual owners of some properties. (See *Guide to Identifying and Documenting Disclosure Law Violations*, www.afhh.org/res/res_pubs/disclosure_documenting_violations_guide.pdf.) Once a case is opened, federal agencies typically cease communication with the referring organization until the case is resolved, since negotiations with landlords are "enforcement sensitive."

In addition to referring cases, state and local governments can get further involved by intervening. "Intervention" is a legal term that refers to a party joining a judicial action already in progress in order to protect an interest or right that may be affected by the proceedings. For example, state and local governments have intervened in federal disclosure enforcement actions, alleging that defendants also violated state and local laws. Intervention has been used in a range of cases involving large and moderately-sized, cooperative and recalcitrant landlords. It is likely to be most effective when a state or local agency has worked with federal enforcement officials to bring about a disclosure enforcement action, so that local officials are involved from the start.

This approach 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 them-

selves a role in designing settlements. In some cases, the settlement may include penalty payments to the intervenors.

Planning Considerations

- Review *Guide to Identifying and Documenting Disclosure Law Violations*, (www.afhh.org/res/res_pubs/disclosure_documenting_violations_guide.pdf).
- Consider how to identify landlords with large holdings and widespread violations, document the extent of violations, and prioritize worst-case landlords who are not complying with the disclosure law.
- Develop a working relationship with HUD, EPA, DOJ and/or your local US Attorney and identify the appropriate federal agency to refer cases to. Are they willing to use disclosure enforcement as a tool to get lead hazards corrected?
- Determine whether violators of the federal disclosure law also may be held accountable under local laws and regulations.

Implementation Options

- Use Strategy #1, Tenant Education (e.g., workshops, door-to-door outreach) to identify disclosure violation cases.
- Liaise with tenant organizations, legal services, etc. to identify disclosure violation cases.
- Profile owners and properties.
- Document violations.
- Refer priority cases to federal agencies for enforcement.
- State and local agencies intervene to intervene in disclosure enforcement (or community-based organizations encourage appropriate agencies to intervene).
- If an equivalent state or local lead disclosure law is on the books, initiate local enforcement (or community-based organizations encourage appropriate agency to enforce).
- Identify priority projects for SEPs and CHIPs and suggested settlement conditions and share them with HUD. (See www.afhh.org/res/res_pubs/disclosure_innovative_SEPs_and_CHIPs.pdf).
- Follow up with HUD to track progress and get information on settlement results.
- Monitor and document implementation of settlement agreements.

Possible Evaluation Factors

- Number of properties/owners profiled.
- Number of violations documented.
- Number of cases referred to HUD and enforcement actions undertaken.
- Number of settlements resulting from such referrals.
- Number of properties investigated for lead paint hazards.
- Number of properties made lead-safe.
- Amount landlords invest in lead safety.

- Resources generated from penalties for community-wide lead safety projects, including abatement, community-based organizations, local governments, or child health improvement projects.
- Number of cases in which additional plaintiffs intervened in disclosure enforcement actions.
- State and local laws enforced as a result.