

## FAIR HOUSING AND LEAD-BASED PAINT

U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-2000

August 1, 1997

OFFICE OF THE ASSISTANT SECRETARY  
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: Directors, Fair Housing Enforcement Centers  
Directors, Program Operations and Compliance Centers

FROM: Susan M. Forward, Deputy Assistant Secretary for Enforcement and Investigations, EE

SUBJECT: **Requirements Concerning Lead-Based Paint and the Fair Housing Act**

This document clarifies the interaction between lead-based paint hazard control activities and the requirements of the Fair Housing Act.

Children under the age of six are particularly vulnerable to lead poisoning both because they are more likely to ingest lead in housing situations and because ingested lead can adversely affect the development of children's brains, central nervous systems, and other organ systems. The importance of this issue has raised questions concerning lead-based paint and the requirements of the Fair Housing Act.

Question: May a housing provider affirmatively market units where lead-based paint hazards have been controlled to families with children?

Answer: Yes. Affirmatively marketing units where lead-based paint hazards have been controlled to families with children is consistent with fair housing laws and with the need to protect the public welfare. A housing provider may verbally or through advertisements advise the public or potential applicants for housing that such units are available, or that families with children are welcomed for such units. In addition, a housing provider may recommend a unit where lead-based paint hazards have been controlled to families with children under the age of six, or inform the family of the availability of a waiting list for units where lead-based paint hazards have been controlled.

Question: May a housing provider exclude families with children from units where lead-based paint hazards have not been controlled?

Answer: If a unit which has not undergone lead hazard control treatments is available and the family chooses to live in the unit, the housing provider must advise the family of the condition of the unit<sup>1</sup> but may not decline to allow the family to occupy the unit because the family has children. Similarly, it would violate the Fair Housing Act for a housing provider to seek to terminate the tenancy of a family residing in a unit where lead-based paint hazards have not been controlled against the family's wishes because of the presence of minor children in the household. The housing provider may offer transfers, with or without incentives, to a family residing in a unit where lead-based paint hazards have not been controlled to enable the family to move to a unit where lead-based paint hazards have been controlled, including for the purpose of addressing hazards in the family's current unit.

Question: If resources allow lead-based paint hazards in only a few units to be controlled at a time, may these units be reserved for families with young children?

Answer: Housing providers may hold open vacant units where lead-based paint hazards have been controlled for families with young children and may offer such families a preference. However, as noted above, if units where lead-based paint hazards have not been controlled are available, a housing provider cannot refuse to allow a family with young children to live in such units. A housing provider must provide a family with young children information about the hazards of lead poisoning. If only a few units where lead-based paint hazards have been controlled are available at any given time, we recommend that such units be scattered throughout a site rather than segregated in one area.

Question. May housing providers give priority to addressing lead-based paint hazards in units occupied by families with small children?

Answer: Yes. As noted above, however, families cannot be required to vacate units in order to address lead-based paint hazards. (Families can of course be required to temporarily relocate to another dwelling unit so that the lead hazard control work may be done safely.) Nothing in this memo affects the separate obligation of a housing provider to make reasonable accommodations to people with disabilities.

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1. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d).

([http://www.fairhousing.com/hud\\_resources/leadpaint.htm](http://www.fairhousing.com/hud_resources/leadpaint.htm))

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### **DISCRIMINATION AND LEAD POISONING**

By Rachel Bedor

The question is whether or not a landlord can discriminate against a tenant because of lead poisoning. The answer: NO!

The story behind the answer lies with Jane Doe, a single mother with four children. After Jane Doe had given a security deposit for a three-bedroom, single family house, one of her children was diagnosed with lead poisoning. The Health Department was notified and Ms. Doe was told to bring her daughter to Children's Hospital for treatments. Later, a representative from the Health Department called her at home and wanted to know her landlord's name and phone number. Ms. Doe explained that she would be moving soon and the inspector asked her where and asked her the new landlord's name and number in order to set up an inspection of the new apartment. Ms. Doe gave the inspector this information.

Approximately an hour after Ms. Doe spoke with the Health Department, the new landlord called her. She said that she had received a phone call from the Health Department and that she would not rent to Ms. Doe because her daughter had lead poisoning. The landlord stated that she could not take a child who has lead problems because she could not afford to have lead abatement done in her house. Ms. Doe tried to explain to the landlord that the Health Department just wanted to inspect the property. The landlord told her that if the Health Department performed an inspection and found lead, she would be forced to do the lead abatement before the Health Department would allow her to rent to anyone. That day, the landlord gave Ms. Doe her security deposit back.

On the same day, Ms. Doe called Housing Opportunities Made Equal to make a complaint alleging that this landlord had discriminated against her because of her familial status (having children) and her child's lead poisoning disability. After determining that there was reason to believe discrimination had occurred, HOME tested for discrimination based on lead poisoning disability, found evidence to support Ms. Doe's allegation, and assisted Ms. Doe to file a case with the U.S. Department of Urban Development (HUD) alleging discrimination based on disability and familial status.

In December 2000, a settlement was reached in which the defendants agreed 1) to pay Ms. Doe \$3,000, 2) not to deny the availability of a rental unit to any applicant based on race or disability, and 3) to abide by the residential Lead Based Hazard Reduction Act of 1992.

#### **NOTE:**

**IT WOULD VIOLATE THE FAIR HOUSING ACT TO MAKE HOUSING AND/OR FINANCIAL ASSISTANCE UNAVAILABLE BECAUSE A FAMILY HAS CHILDREN.**

**SIMARILY, IT WOULD VIOLATE THE FAIR HOUSING ACT TO DENY HOUSING AND/OR ASSISTANCE TO FAMILIES WITH CHILDREN TO AVOID REMOVAL OF LEAD.**