



Housing Discrimination Testing Program

Lingering Lead:

Strategies for eliminating familial status discrimination due to lead paint

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Massachusetts has enacted some of the strongest legislation in the United States to address the health hazards of lead paint in housing.¹ The Federal government has regulated the use of lead in consumer products, including paint, since 1971; however, the fact that today we still continue to battle the health effects of lead exposure proves what a stubborn problem it can be.² Despite success in consistently decreasing the number of children exposed as well as the severity of exposure across greater Boston, scientific research has shown that there are no safe blood lead levels and even low levels have serious negative health effects on children.³ More detailed information regarding the health concerns related to lead in blood can be found in Appendix A.

While Boston and the Commonwealth of Massachusetts have carried-out a robust response to lead exposure, the job is not finished. Legislative efforts to safeguard families with children from lead exposure have resulted in the unfortunate consequence of discrimination to subvert compliance with the law.⁴ Now is the time to leverage over three decades of knowledge in fighting lead exposure and enact smart reforms to end this scourge on Boston and the Commonwealth's children once and for all.

¹ See MASS. GEN. LAWS ch. 111, § 189A-199B (2012); Rafael Mares, Enforcement of the Massachusetts Lead Law and Its Effects on Rental Prices and Abandonment, A.B.A. J. Affordable Housing, Spring 2003, at 343.

² See Report of the Massachusetts Special Legislative Commission on Lead Poisoning Prevention, The Continuing Toll: Report on Lead Poisoning Prevention in the Commonwealth, 21 (1985) [hereinafter "Commission on Lead Poisoning"].

³ See Memorandum from Mass. Dept. of Pub. Health, New Recommendations from CDC on Blood Lead Levels in Children (July 20, 2012) (on file with author) [hereinafter "CDC on Blood Lead Levels"]; See Terry Howard, Assistant Director, Childhood Lead Poisoning Prevention Program, Address at the Massachusetts Attorney General's Office [PowerPoint slides] (July 8, 2013).

⁴ Commission on Lead Poisoning, supra note 2, at 52.

Discrimination

While the number of children suffering from lead toxicity in Massachusetts has decreased, a side-effect of M.G.L. ch. 111, s. 199A has been discrimination.⁵ Discrimination against families with young children in the rental market today is a systemic problem.⁶ While State law requires property owners to remove lead hazards from homes occupied or to be occupied by children age six and under, landlords are incentivized not to rent to this cohort to avoid lead abatement costs.⁷ This was not an unforeseen consequence; as evidenced by the Massachusetts legislature's outright ban on such behavior.⁸

Discrimination against families in the Boston rental market is both overt and subtle.⁹ Facially discriminatory advertising identifying a property's lead status as not lead compliant steers homeseekers away from such properties.¹⁰ The Suffolk University Law School Housing Discrimination Testing Program ("Suffolk Housing Discrimination Program") identified and tested 27 facially discriminatory housing ads in the Boston market between September 2012 and

⁵ Cf. MASS. GEN. LAWS ch. 111, § 199A(a) (2012) ("It shall be an unlawful practice for purposes of chapter one hundred and fifty-one B for the owner, lessee, sublessee, real estate broker, assignee, or managing agent of any premises to refuse to sell, rent, lease or otherwise deny to or withhold from any person or to discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of such premises, because such premises do or may contain paint, plaster or accessible structural materials containing dangerous levels of lead, or because the sale, rental or lease would trigger duties under sections one hundred and eighty-nine A to one hundred and ninety-nine B, inclusive . . ."); United States Environmental Protection Agency, Effective Partnerships Working to Virtually Eliminate Childhood Lead Poisoning in Boston, MA, <http://www.epa.gov/region1/eco/uep/ma/success.html> (last visited Sept. 28, 2013).

⁶ See Victoria L. Williams, Boston Fair Housing Commission, City of Boston Analysis of Impediments to Fair Housing Choice, 74-75 (2010).

⁷ See MASS. GEN. LAWS ch. 111, § 194 (2012); see Williams, supra note 6, at 74 ("The combination of complaints alleging discrimination based on children (6.5%, family status (5.7%) and lead paint – often an indicator for unwillingness to rent to families with young children – total 17.7% of all alleged violations.)

⁸ See MASS. GEN. LAWS ch. 111, § 199A(a) (2012) ("Any person claiming to be aggrieved by an alleged unlawful practice as herein defined may file a complaint pursuant to section five of chapter one hundred and fifty-one B and all provisions of said chapter shall be applicable to such complaints.")

⁹ Williams, supra note 6, at 85.

¹⁰ See Jarret Bencks, Landlord is fined for discriminatory ad, Boston Globe, June 2, 2012, available at 2013 WLNR 13527074.

September 2013.¹¹ The testing revealed evidence of discrimination in 25 of the 27 cases prompted by discriminatory advertising, or 93%. It is also common for families to be denied housing once a housing provider learns a young child is to reside in a home.¹² As Rafael Mares, a lawyer with the Hale and Dorr Legal Services Center stated in a 2007 Boston Globe Article, “If you put an ad on Craigslist and asked for people who are experiencing discrimination, everyone with a child under six would tell you they’ve experienced discrimination.”¹³ The truth in Mares statement can be seen in the fact that familial status discrimination due to lead paint comprises over half the housing discrimination allegations brought to the Fair Housing Center of Greater Boston.¹⁴

In the City of Boston 2010 Analysis of Impediments to Fair Housing Choice, which includes data from Cambridge, 17.7 percent of all complaints alleged discrimination related to children, familial status or lead paint.¹⁵ Reports under these categories typically indicate an unwillingness to rent to families with young children.¹⁶ A 2001 audit conducted by the Fair Housing Center of Greater Boston found evidence of familial status discrimination in 67 percent of completed tests.¹⁷ Discrimination based on familial status was more prevalent than either race or income related discrimination in the study.¹⁸ The Suffolk Housing Discrimination Program completed 36 tests based on familial status between September 2012 and August 2013. Of the

¹¹ The advertisements included the words “not dealeded.”

¹² See Kathleen Burge, Lead Law Fallout: Lead paint is down, but families face another hardship Landlords don’t want them, Boston Globe, Mar. 18, 2007, at 2, available at 2007 WLNR 5368452.

¹³ Id. at 1-2.

¹⁴ Id. at 2.

¹⁵ Williams, supra note 6, at 74.

¹⁶ Id.

¹⁷ Williams, supra note 6, at 76 (Fair housing audits use paired tester methodologies to determine the incidence at which real estate agents, landlords, and other housing providers in the for-sale and rental markets discriminate).

¹⁸ Id.

36, strong evidence of discrimination has been found in 50% of tests and only 11% have shown no evidence of discrimination.

Additionally, while the internet has proven a powerful tool in the housing market, it provides an environment where discrimination can easily go undetected. Much of the housing search process now occurs online with the exchange of information taking place between seekers and providers before ever meeting face-to-face.¹⁹ A 2010 cybersegregation study examining Boston and Dallas, “Is Neil a More Desirable Tenant than Tyrone or Jorge?” unfortunately answered in the affirmative.²⁰ This study found the greatest disparities between white and minority testers who were invited to inspect the unit of their inquiry.²¹ It is easy to understand how the same results can play out among prospective house seekers with children and without.

Available Resources

Lead abatement can carry significant financial costs; however resources are available to lessen the financial burden. Both the Commonwealth of Massachusetts and City of Boston offer incentives for lead abatement; and other major metropolitan areas offer assistance when funding is available. Currently Massachusetts offers a Lead Paint Removal Tax Credit up to \$1,500 and zero percent interest loans for qualified owner-occupied housing.²² Lead Safe Boston provides technical assistance from lead specialists for Boston property owners in addition to forgivable

¹⁹ Samantha Friedman et al., Cybersegregation in Boston and Dallas: Is Neil a More Desirable Tenant than Tyrone or Jorge?, 6 (May 2010).

²⁰ Id. at 14.

²¹ Id. at 15.

²² Massachusetts Executive Office of Health and Human Services, Deleading, <http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/exposure-topics/lead/delead/> (follow “Is There Financial Assistance for Deleading?” hyperlink) (last visited July 12, 2013) [hereinafter Deleading].

loans up to \$8,500.²³ Aside from the Lead Paint Removal Tax Credit, most lead abatement incentive programs do set income eligibility guidelines. More detailed information is available on incentive programs in Massachusetts and their requirements in Appendix B.

Solutions/Recommendations

It is time to end discrimination against parents seeking healthy housing for their children, and to put behind us the damaging effects of lead poisoning. In order to remove the barriers of access to suitable housing for families with young children, reforms are needed which disincentivize property owners and real estate professionals from engaging in lead-based discrimination.²⁴ The acknowledgment of a need for legal reform in addressing lead-based discrimination is not new as proposals have been put forth since the 1970's.²⁵ Some reform has occurred over the years; however, the unabated presence of lead is still the cause of a significant amount of discrimination.²⁶ No amount of lead ingestion is safe for a developing child and ultimately what is needed is a housing stock free of lead.²⁷ Unfortunately, public funding is insufficient to address the weight of the problem and as John MacIsaac, President of ASAP Environmental stated, "Most people don't do this voluntarily."²⁸ The following recommendations are targeted at increasing the available lead safe housing stock, empowering families in the marketplace and increasing industry knowledge and accountability.

²³ City of Boston, Lead Safe Boston, http://www.cityofboston.gov/dnd/bhc/Lead_Safe_Boston.asp (last visited July 19, 2013).

²⁴ Williams, supra note 6, at 84-85.

²⁵ Massachusetts Advocacy Center, *State of Danger: Childhood Lead Paint Poisoning in Massachusetts*, 1 (1974) (on file with the author); Staff of S. Legis. Comm. on Lead Poisoning Prevention, *Mass. General Court, The Continuing Toll*, 2 (1986) [hereinafter "Continuing Toll"].

²⁶ See Williams, supra note 6, at 84.

²⁷ See CDC on Blood Lead Levels, supra note 3.

²⁸ Burge, supra note 12, at 2.

Legislative Recommendations:

A. Require the sale or transfer of real property constructed prior to 1978 to include a definitive disclosure on the presence of lead

- 1. Revise CLPPP Form 94-3 Seller's Disclosure (a)(i)-(b)(ii) to state the results of lead testing eliminating the option for "seller has no knowledge" and requiring seller to identify documentation provided to purchaser**
- 2. Amend M.G.L. ch. 111, s. 197A to require all persons selling premises constructed prior to 1978, before the signing of a purchase and sale agreement, to provide lead testing results to the prospective buyer**

This recommendation works to enhance transparency in the real estate market so consumers may be more knowledgeable about the presence of lead in a home and harness that to prevent lead exposure. While Massachusetts already utilizes a property transfer lead paint notification, it does not require definitive knowledge be obtained regarding a property's lead status.²⁹ The notification provides details of the physical harms of lead and legal rights available to potential property transferees, but allows for sellers to claim "no knowledge."³⁰ With the speed in which home sales often take place in today's housing market, the lead paint notification is reduced to a formality often providing no information about the actual lead dangers a property may possess.

Implementation of this recommendation will require sellers to test for lead prior to signing a purchase and sale agreement if such testing has not already been conducted. Providing lead testing data to prospective buyers will safeguard future children who may inhabit the home.

²⁹ Childhood Lead Poisoning Prevention Program (CLPPP) Property Transfer Lead Paint Notification, CLPPP Form 94-2, June 30, 1994, rev. Oct. 2009.

³⁰ Id.

Under the current framework a buyer without children may purchase a pre-1978 home unaware of its lead status and likely with little concern over the issue. If at some point a child under the age of six comes to reside in the home the parents through unintentional ignorance may not be aware of the need for lead abatement. Additionally, required lead status notification facilitates discussion of lead abatement between the buyer and seller at the time of sale. As a result, the recommended notification requirement helps to prevent accidental lead exposure and provides opportunity for discussion in the marketplace to increase the stock of lead safe housing. Enactment of this recommendation will require legislative proposals and partnering with the Childhood Lead Poisoning Prevention Program to draft an updated notification form.

B. Amend M.G.L. ch. 112, s. 87AAA to allow for the license revocation of any broker or salesperson who is legally found in violation of M.G.L. ch. 151B or M.G.L. ch. 111, s. 199A by the Massachusetts Commission Against Discrimination (MCAD) or any agency or court of law with jurisdiction

Massachusetts General Law ch. 112, s. 87AAA reads in relevant part:

The board shall, after notice by the Massachusetts commission against discrimination that said commission has made a finding, which finding has become final, that a licensed broker or salesman committed an unlawful practice in violation of chapter one hundred and fifty-one B arising out of or in the course of his occupation as a licensed broker or salesman, shall suspend forthwith the license of said broker or salesman for a period of sixty days, and, if the said commission finds that said violation by such licensed broker or salesman occurred within two years of the date of a prior violation of said chapter one hundred and fifty-one B, which finding has been final, it shall so notify the board, and the board shall forthwith suspend the license of such broker or salesman for a period of ninety days

This recommendation is put forth to align the penalties of housing discrimination and lead-related discrimination with the severity of their effects. Under current State law the Board

of Registration of Real Estate Brokers and Salespeople does not have the explicit authority to revoke licensure for unlawful discrimination under M.G.L ch. 151B or M.G.L. ch. 111, s. 199A. Real Estate Agents and Brokers play an integral role in the Massachusetts housing market, particularly Greater Boston, and are often incentivized by the desires of property owners to steer prospective buyers and renters. Whether it is a result of race, familial status, or the presence of lead such action by a licensed real estate professional is discriminatory and illegal. While license revocation is not foreseen as a common or standard practice for isolated incidents, it should be available to remove those individuals who demonstrate a pattern of fair housing violations. Licensure revocation is a tool already available to the Board for various violations including the commingling of funds, substantial misrepresentations or the solicitation of the sale of residential property based on a change in value resulting from the entry or proposed entry into the neighborhood of a person(s) of a different race or religion.³¹ This recommendation can be achieved through the addition of the following language at M.G.L. ch. 112, s. 87AAA line 46 after the words “ninety days” the following:-

, if the commission finds that the violation by such licensed broker or salesperson³² occurred within two years of the date of a prior violation of chapter one hundred and fifty-one B, and is the third such finding which has been final, it shall so notify the board, and the board shall revoke the license of such broker or salesperson.

C. Increase tax incentives under the Lead Paint Removal Tax Credit, support for the passage of H2068 “An Act relative to lead abatement”

- 1. Mandatory code enforcement beginning at 10 µg/dL**
- 2. Interim control tax credit increased from \$500 to \$1,000**
- 3. Full compliance tax credit increased from \$1,500 to \$3,000**

³¹ MASS. GEN. LAWS ch. 112, § 87AAA(k) (2012).

³² The gender-neutral term “salesperson” has been substituted for “salesman.”

This recommendation lends its support to House Bill 2068, but is not to be misconstrued as only in favor of H2068. Sharing the cost of lead abatement is critical across the Commonwealth in both preventing lead exposure and eliminating discrimination. Much of the lead found in homes today was not placed there by their current owners, and even those who did use lead paint did so under the belief it was the best product available.³³ Until 1961 federal regulations required the use of lead paint in public housing receiving federal funds.³⁴ Lead abatement is a common good for all residents of the Commonwealth and is an expense worth sharing.

Tax incentives serve as a useful tool bringing lead abatement in reach, and serving as an incentive for those with more resources. The Lead Paint Removal Tax Credit has provided up to \$1,500 in credits per residential unit abated since 1994 when it was increased from \$1,000³⁵ It is time to adjust the incentives to be commensurate with the cost of lead abatement today. In 1985 the average abatement costs totaled \$2,500-\$3,000 per unit, today that range is \$8,000-\$10,000.³⁶ Increasing available incentives for lead removal will aid families in emergency abatement situations, spur preventive lead abatement and increase the available lead safe housing stock. This recommendation can be achieved through the passing of House Bill H2068 or similar legislative proposal.

Settlement Recommendations:

D. Full compliance lead abatement in lead related discrimination settlements regardless of the presence of a child under the age of six

³³ Continuing Toll, supra note 25, at 55.

³⁴ Id.

³⁵ MASS. GEN. LAWS ch. 482, § 2(e) (1994) (current version at MASS. GEN. LAWS ch. 62, § 6(e) (2012)).

³⁶ Continuing Toll, supra note 25, at 55; Lead Safety Trends Boston, (Mayor Thomas M. Menino, Department of Neighborhood Development, Boston, M.A.) Sept. 2002, at 5.

Full compliance lead abatement is recommended to be included in any settlement reached with a property owner allegedly engaged in lead-related discrimination and in the orders following a MCAD or equivalent judicial finding of lead-based discrimination. Full compliance constitutes conformity with 105 CMR 460. Uniform implementation will discourage lead-based discrimination and add value to prompt reporting which will increase the availability of lead safe housing. Requiring lead abatement strongly disincentivizes larger property owners from engaging in repeated violations. This recommendation will advance the legal responsibility property owners have to engage in lead abatement and to not discriminate.

E. Inclusion of private discrimination testing in settlements with “large-scale” organizations (owner or agency) found in violation of 151B and 199A

This recommendation recognizes the need for additional safeguards following discovery of a large scale entity engaged in discriminatory acts under Massachusetts law. Any form of discrimination is harmful, but the ability for discriminatory practices to take hold as “standard” within large organizations is cause for a heightened response. Follow-up testing can be a valuable tool for management to ensure compliance with settlement agreements.

Private discrimination testing is conducted for the purpose of reporting on an organization’s compliance with discrimination laws for management’s internal assessment. Private testing is generally reserved for cases whose scope of discrimination is significant. Details as to the number of tests, funding mechanisms, and other logistics should be part of the settlement negotiation process. This recommendation prevents the public from bearing the cost associated with policing known bad actors.

Agency Recommendations:

F. Update 254 CMR 3.00(14)(c) Realtor/Broker Professional Standards of Practice to include prohibiting discrimination in the provision of services based on “familial status” and “the presence of lead paint”

This recommendation does not impose any new standard on real estate professionals in Massachusetts. It seeks only to update 254 CMR 3.00(14)(c) to mirror 151B and 199A to which Realtors and Brokers are already bound. The current CMR is explicit in prohibiting some forms of banned discrimination, but not all. In the interest of transparency and to remove the possibility of any confusion, it is recommended that the standards be updated to plainly prohibit *all* forms of discrimination included in 151B and 199A including familial and lead-based discrimination. This recommendation will require outreach and partnership with the Massachusetts Board of Registration of Real Estate Brokers and Salespersons.

G. Align full CLPPP case management services with CDC “reference value” of 5µg/dL

This recommendation is the result of the CDC’s new “reference value” of concern regarding childhood blood lead levels. In a July 20, 2012 letter to its clinical partners, the Massachusetts Department of Public Health, which oversees the Childhood Lead Poisoning Prevention Program (CLPPP), urged collaboration due to its inability to offer in-home education and environmental investigations for all children with blood lead levels between 5µg/dL and 10µg/dL.³⁷ This is in large part due to the elimination of federal funding for CLPPP programs. There is no safe blood lead level for children and without proper education or knowledge lead poses a continuous threat. This recommendation requires collaboration between clinicians and

³⁷ CDC on Blood Lead Levels, *supra* note 3.

CLPPP and a determination of the actual funding gap. Once the required resources are identified legislative proposals and/or grant opportunities can be considered.

H. Focus cross-agency resources on neighborhoods with highest numbers of children with elevated blood levels

Medical providers, fair housing advocates and multiple city agencies are among the many organizations that focus resources on issues arising from the presence of lead paint in the housing stock. A cross disciplinary approach to solving the interrelated problems of housing discrimination against families with children and the exposure of children to lead paint should be implemented. The Health of Boston 2012-2013 report identified North Dorchester as having the highest average annual percentage rate of children with elevated blood levels in the City of Boston.³⁸ Fair housing testing and education about tenant rights, the danger of lead exposure and resources for the abatement of lead should be focused on the area in an effort to both decrease the number of children with elevated blood lead levels and eliminate housing discrimination against families with children.

Final Vision

Both lead poisoning and lead-based discrimination are solvable problems. With the abatement of lead in housing children will no longer face the dangers of lead exposure, and accordingly the root cause of lead-based discrimination will be removed. Eliminating lead-based discrimination does not require changing the hearts and minds of society, but instead the proper incentives and resources to educate on the responsibilities of fair housing laws and facilitate abatement for middle and low income property owners. The size of the problem stopped

³⁸ Boston Pub. Health Comm'n, Health of Boston 2012-2013, p. 181 (2013).

growing over 40 years ago when the use of lead-based paint was prohibited, but families continue to struggle to find safe housing and children are still getting sick. Now is the time to put lead and its negative side effects behind us once and for all in the Commonwealth of Massachusetts.

Appendix A

Lead is a neurotoxin, which means it attacks the nervous system including the brain.¹ Young children, particularly those six years old and younger, are most vulnerable to lead exposure because their bodies are less developed and absorb lead faster than adults.² Lead toxicity causes permanent brain damage in children leading to behavior and learning problems, reduced IQ and hearing problems.³ Lead has also been identified as a cause of slow growth and anemia and under the worst circumstances lead toxicity can cause seizures, coma or death.⁴

When one envisions a healthy home for a child, safety is always a central component, but for hundreds of Boston children every year preventable lead exposure has robbed them of safety in their own homes.⁵ Young children are more commonly in contact with surfaces which have the potential to release lead such as window sills, loose paint chips, and toys, thus increasing their overall risk.⁶ Lead dust gets on children's hands which they are apt to put in their mouths, or they simply breathe in particulates. What is commonly referred to as "Pica" the hand-to-mouth behavior of young children typically accounts for the ingestion of lead paint chips or flakes.⁷ Additionally, the toxicity of lead paint does not diminish with age; it is as toxic today as the day it was laid on the wall.⁸

¹ United States Environmental Protection Agency, [Learn About Lead](http://www2.epa.gov/lead/learn-about-lead#effects), <http://www2.epa.gov/lead/learn-about-lead#effects> (last visited Aug. 23, 2013); Terry Howard, Assistant Director, Childhood Lead Poisoning Prevention Program, Address at the Massachusetts Attorney General's Office [PowerPoint slides] (July 8, 2013).

² E.P.A., [supra](#) note 1; Howard, [supra](#) note 1.

³ E.P.A., [supra](#) note 1.

⁴ [Id.](#)

⁵ [See generally](#) e-mail from Paul Hunter, Director, Massachusetts Department of Health Childhood Lead Poisoning Prevention Program, to Seth Urbanoski, Clinical Intern, Suffolk University Law School (July 15, 2013, 08:24 EST) (MA children with 5µg/dL+ based on "fingerstick" test results excel spreadsheet on file with author).

⁶ E.P.A., [supra](#) note 1.

⁷ Daniel Penofsky, [Childhood Lead-Based Paint Poisoning Litigation](#), 66 Am. Jur. Trials § 10, at 47, 94 (1998).

⁸ Penofsky, 66 Am. Jur. Trials § 8, at 47, 91-93 (1998).

As greater understanding has developed surrounding the effects of lead exposure and lead poisoning public health officials have updated regulations and definitions to be commensurate with that knowledge. Lead is measured in the body by micrograms per deciliter of blood expressed as $\mu\text{g}/\text{dL}$.⁹ In 1975 the Center for Disease Control “CDC” defined lead poisoning as a blood lead level (BLL) of $30\mu\text{g}/\text{dL}$.¹⁰ Following studies during the 1980’s about the effects of lead in children, the CDC decreased the threshold of lead poisoning to $25\mu\text{g}/\text{dL}$.¹¹ A level of $25\mu\text{g}/\text{dL}$ is currently the legal standard for lead poisoning in Massachusetts.¹² In 1991 the CDC introduced a “level of concern” for BLL’s of $10\mu\text{g}/\text{dL}$ in children.¹³ Massachusetts, through the Childhood Lead Poisoning Prevention Program, which is a division of the Executive Office of Health and Human Services, case manages children with BLL’s of $10\mu\text{g}/\text{dL}$ or greater.¹⁴

In January of 2012 the CDC, under guidance from the Federal Advisory Committee on Childhood Lead Poisoning Prevention, adopted a new standard for blood lead levels.¹⁵ The CDC adopted a “reference value” based on the 97.5th percentile of blood lead level distribution in children one to five years old in the U.S.¹⁶ Based upon cumulative scientific evidence concerning the spectrum of negative health effects from lead exposure the reference value is now

⁹ United States National Library of Medicine, Medline Plus Lead Levels – Blood, <http://www.nlm.nih.gov/medlineplus/ency/article/003360.htm> (last visited Aug. 23, 2013).

¹⁰ Howard, supra note 1.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Memo to Clinicians, Mass. Dept. of Pub. Health, New Recommendations from CDC on Blood Lead Levels in Children (July 20, 2012) (on file with author) [hereinafter “CDC on Blood Lead Levels”].

¹⁶ Id.

5µg/dL.¹⁷ In 2012, 8,328 Massachusetts children tested with blood lead levels at or above
5µg/dL.¹⁸

¹⁷ Id.

¹⁸ Howard, supra note 1.

Appendix B

Massachusetts Lead Incentive Programs

State-Wide:

1. Lead Paint Removal Tax Credit¹
 - Up to \$1,500 credit for cost of permanent lead abatement per unit
 - Tax credit may be applied year-to-year until total dollar amount is exhausted up to seven years
 - Alternative \$500 credit for interim control measures, deducted from \$1,500 total eligible tax credit
 - Must be residential premises, but does not need to be owner occupied
 - **NOTE:** Current pending legislation would increase the interim tax credit to \$1,000 and permanent lead abatement to \$3,000
2. Get the Lead Out²
 - 1-4 Family **owner occupied** properties eligible for 0% deferred payment loan not due until sale/transfer/refinancing of property
 - 0% fully amortizing loan 5-20 years **for non-profit organizations** renting to income eligible households (HUD Stds.)
 - 3% fully amortizing loan 5-20 years **for investor-owners** renting to income eligible households (HUD Stds.)
 - Restricted loan amounts are as follows-
 - Single Family \$30k
 - 2 Family \$35k
 - 3 Family \$40k
 - 4 Family \$45k
3. Home Improvement Loan Program (HILP)³
 - 1-4 Family properties and residential condominiums only
 - 5% interest loans for lead abatement ranging from a minimum of \$7.5k to a maximum of \$50k with a repayment period of 5-15 years
 - Can be used to compliment the “Get the Lead Out” program for large scale projects
 - Requires good credit and stable income
 - Income limits for major metropolitan areas are as follows-

Income Limits

¹ Massachusetts Executive Office of Health and Human Services, Deleading, <http://www.mass.gov/eohhs/gov/departments/dph/programs/environmental-health/exposure-topics/lead/delead/> (follow “Is There Financial Assistance for Deleading?” hyperlink) (last visited July 12, 2013) [hereinafter Deleading]; Cf. H.R. 2068, 188th Gen. Court, Reg. Sess. (Mass. 2013) (petition seeking to double respective tax incentives).

² Deleading, supra note 1.

³ Deleading, supra note 1; MassHousing, <https://www.masshousing.com/portal/server.pt?mode=2&uuID={E461353D-94DD-4F45-A7A3-BFF86C4126ED}> (follow “income eligibility limits” hyperlink) (last visited July 19, 2013).

Market Area	1-2 Persons	3 or More Persons
Metropolitan Areas		
A. Barnstable	\$92,000	\$104,000
B. Boston	\$100,000	\$114,000
C. Brockton	\$92,000	\$104,000
D. Fall River	\$92,000	\$104,000
E. Fitchburg/Leominster	\$92,000	\$104,000
F. Lawrence	\$94,000	\$108,000
G. Lowell	\$100,000	\$114,000
H. New Bedford	\$92,000	\$104,000
K. Worcester	\$92,000	\$104,000

4. HUD 203(k) Program (Available in all States)⁴

- Primary benefit loan can be up to 110% of post renovation value
- Current homeowners and investor-owners can refinance or finance to pay for rehabilitation costs including lead abatement costs
- Only 1-4 family homes are eligible, condominiums must be owner occupied
- Minimum \$5,000 in repairs must be performed
- Can be used in three ways-
 - i. Purchase a dwelling and the land on which it is located and rehabilitate it
 - ii. Purchase a dwelling on another site, move it onto a new foundation on the mortgaged property and rehabilitate it
 - iii. Refinance existing liens secured against the subject property and rehabilitate it
- Mixed use residential property is eligible under certain restrictions

5. DHCD Massachusetts Lead Abatement Program (MLAP)⁵

- \$3.0 million in total funds focused on high risk communities including-
 - i. Athol
 - ii. Ayer
 - iii. Brockton
 - iv. Fall River
 - v. New Bedford
 - vi. Peabody
 - vii. Fitchburg
 - viii. Pittsfield
 - ix. Quincy
- Grant program, average assistance for each unit tested and abated \$7,500
- HUD low income standards
- Anticipated abatement of 125 units
- \$2,175,00.00 disbursed to date

⁴ U.S. Department of Housing and Urban Development, Rehab a Home w/ HUD's 203(k), http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/203k/203kabou (last visited July 19, 2013).

⁵ Massachusetts Executive Office of Housing and Economic Development, Lead Abatement Program, <http://www.mass.gov/hed/housing/affordable-rent/lead-abatement-program.html> (last visited July 19, 2013).

Boston:

1. Lead Safe Boston⁶
 - Must be a property owner in Boston
 - Forgivable loan of up to \$8,500 for lead abatement
 - Receive technical assistance from city's lead specialists
 - Owner occupied 1-4 family home or condo with a child under 6 years of age
 - i. Household income cannot exceed 80% of HUD Community Development Block Grant Moderate Income standard
 - ii. Must reside in unit for 5 years
 - Investor-Owner 1-4 family home
 - i. Rental preference must be given to families with children under six and at least 50% of the building's residents must be low or moderate income
 - ii. Remaining units occupied by families with a household income which cannot exceed 80% of HUD Community Development Block Grant Moderate Income standard
 - iii. Must maintain ownership for 5 years
2. Boston Public Health Commission Community Assessment Unit⁷
 - Provides comprehensive case management services to families with children who are less than six years of age and who have been screened for lead poisoning in accordance with the Mass Lead Law (>10 µg/dL std.)
 - Free home assessments
 - Lead hazard reductions to temporarily stabilize lead paint hazards
 - Surveillance and intervention
 - Both parents and property owners may request inspections
 - Environmental unit provides free moderate risk lead abatement training for property owners or their agents to significantly reduce the overall costs of lead abatement

⁶ City of Boston, Lead Safe Boston, http://www.cityofboston.gov/dnd/bhc/Lead_Safe_Boston.asp (last visited July 19, 2013).

⁷ Boston Public Health Commission, Lead Poisoning Prevention Program, <http://www.bphc.org/programs/cib/environmentalhealth/leadpoisoning/Pages/Home.aspx> (follow "Community assessment" hyperlink) (last visited July 19, 2013).