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OLD PAINT, NEW LAWS: ACHIEVING EFFECTIVE COMPLIANCE WITH THE RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT

Amy E. Souchuns

Lead-based paint is the major source of childhood lead poisoning, an illness currently affecting nearly two million American children. Although Congress authorized the Consumer Product Safety Commission

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1. See YOUNG CHILDREN CENTERS FOR DISEASE CONTROL AND PREVENTION, PREVENTING LEAD POISONING 18-19 (1991) [hereinafter PREVENTING LEAD POISONING IN YOUNG CHILDREN]. Although lead-based paint is the primary source of poisoning, children are exposed to lead through a variety of ways. See id. at 17. Soil often contains lead from paint, leaded gasoline, or industrial use and poisons children after entering the body following typical childhood play. See id. at 19-20. Lead is also present in plumbing and fixtures, thereby contaminating the water passing through them. See id. at 20-21. Additionally, children face exposure to lead because of parental hobbies or occupations, such as furniture refinishing or metal refining which bring lead into the home. See id. at 22. Although less common, lead poisoning also may be due to airborne lead, lead in food, or folk remedies for illness. See id. at 23-25; see also U.S. ENVIRONMENTAL PROTECTION AGENCY, PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME 2, 10 (1995) [hereinafter PROTECT YOUR FAMILY]; U.S. DEP'T OF HOUS. & URBAN DEV., GUIDELINES FOR THE EVALUATION AND CONTROL OF LEAD-BASED PAINT HAZARDS IN HOUSING 1-6 to 1-7 (1995) [hereinafter GUIDELINES FOR EVALUATION].

2. See LEAD-BASED PAINT HAZARD REDUCTION AND FINANCING TASK FORCE, U.S. DEPT OF HOUS. & URBAN DEV., PUTTING THE PIECES TOGETHER: CONTROLLING LEAD HAZARDS IN THE NATION'S HOUSING 3 (1995) [hereinafter PUTTING THE PIECES TOGETHER]. The Task Force, created as part of the Residential Lead-Based Paint Hazard Reduction Act in 1992, estimates 1.7 million children are affected, including 500,000 possessing blood-lead levels necessitating an "environmental investigation." See id. at 4; see also OFFICE OF LEAD HAZARD CONTROL, U.S. DEPT OF HOUS. & URBAN DEV., MOVING TOWARD A LEAD-SAFE AMERICA: A REPORT TO THE CONGRESS OF THE UNITED STATES 2 (1997) [hereinafter MOVING TOWARD A LEAD-SAFE AMERICA] (noting that the 1.7 million figure was reached through the 1988-91 National Health and Nutrition Examination Survey (NHANES)). In 1991, the Department of Health and Human Services and the Centers for Disease Control stated that 1.8 to 2 million children resided in housing with hazardous paint conditions. See U.S. DEPT OF HEALTH & HUMAN SERVS., STRATEGIC PLAN FOR THE ELIMINATION OF CHILDHOOD LEAD POISONING, app. 1, at 3 (1991). Elevated blood levels were estimated in 1.2 million of those children. See id. But see MOVING TOWARD A LEAD-SAFE AMERICA, supra, at 2 (finding that preliminary data from phase two of the 1991-94 NHANES reported a decline in the number of children with elevated blood levels).
to ban lead-based paint for most uses after 1978, homes still containing lead-based paint remain a dangerous source of child exposure. While minority and inner city children are at greatest risk for lead poisoning, the illness transcends racial and economic lines. Even at low levels, the


4. See U.S. DEP'T OF HOUS. & URBAN DEV., REPORT TO CONGRESS, COMPREHENSIVE AND WORKABLE PLAN FOR THE ABATEMENT OF LEAD-BASED PAINT IN PRIVATELY OWNED HOUSING 2-10 (1990) [hereinafter COMPREHENSIVE AND WORKABLE PLAN]. Fifty-seven million homes built before 1980 contain some lead-based paint. See id. at 3-6. Among homes built before 1940, 90% contain lead-based paint. See id. Sixty-two percent of homes built between 1960 and 1979 contain lead-based paint. See id. Of all pre-1980 housing units, 13.8 million (18%) contain “nonintact” cracked or peeling paint, the most dangerous lead-based paint hazard. Id. 3-10.

The United States Code defines deteriorated paint as “any interior or exterior paint that is peeling, chipping, cracking or any paint located on an interior or exterior surface or fixture that is damaged or deteriorated.” 15 U.S.C. § 2681(3) (1994); 42 U.S.C. § 4851b(5) (1994). Paint in this nonintact state is considered a “lead-based paint hazard.” See 15 U.S.C. § 2681(10); 42 U.S.C. § 4851b(15). This term is defined as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.” 15 U.S.C. §2681(10); 42 U.S.C. § 4851b(15); see also infra note 6 (discussing friction and impact surfaces).

5. See Clifford L. Rechtschaffen, The Lead Poisoning Challenge: An Approach for California and Other States, 21 HARV. ENVTL. L. REV. 387, 392-93 (1997). Nationwide, African American and low income children are four times more likely to have increased blood-lead levels than Caucasian and upper income children. See PUTTING THE PIECES TOGETHER, supra note 2, at 3. A recent study indicated that nearly 22% of African American children had blood-lead levels over the “level of concern” established by the Centers for Disease Control and Prevention (CDC). MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 5. Despite these statistics, children living in homes above the poverty income level comprise the largest risk group for lead poisoning. See Rechtschaffen, supra, at 393; see also COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 2-7
lead found in paint and paint dust in some structures has a permanent, debilitating effect on young children. Decreased intelligence quotients (noting that while rates are higher for minorities and inner city children, children in all economic and racial groups are affected by lead poisoning; MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 45 (disclosing that in 1994 "rural" rates of lead poisoning were approximately 20%); Martha R. Mahoney, Four Million Children at Risk: Lead Paint Poisoning Victims and the Law, 9 STAN. ENVTL. L.J. 46, 49 (1990) (describing the scope of the lead poisoning problem in the United States); Bush, supra note 3, at 647 n.11 (noting several statistics indicating the prevalence of lead poisoning in middle income families); Robert E. Sheriff, Inner-City Kids Not Only Ones at Risk From Lead, REAL EST. WKLY., Oct. 2, 1996, at S12, available in 1996 WL 9288541 (supporting the fact that children from all income groups are susceptible to lead poisoning).

6. The common assumption is that children suffer lead poisoning after eating paint chips that are appealing because of a sweet lemon flavor. See Mark A. Meyer, Lead Poisoning: Will Missouri's New Legislation Get the Lead Out?, 2 MO. ENVT. L. & POL'Y REV. 16, 17 (1994). Lead-based paint dust is the primary source of childhood lead poisoning. See Rechtschaffen, supra note 5, at 395. The dust is created by friction and impact surfaces or through remodeling and construction, and often is increased by cleaning activities like vacuuming. See 42 U.S.C. § 4851(b)(10) & (11) (defining friction surface as "an interior or exterior surface that is subject to abrasion or friction, including certain window, floor, and stair surfaces," and defining impact surface as "an interior or exterior surface that is subject to damage by repeated impacts, for example, certain parts of door frames"); Rechtschaffen, supra note 5, at 393 (noting that children also may be exposed to lead dust when parents' clothing brings it into the home from a worksite).

Limited recognition of the harm of lead dust yields unsafe renovation practices that create tremendous amounts of lead dust. See id. at 396 (describing the types of ordinary construction and renovation activities that cause this dust). The dust is created when lead-based paint is scraped and removed from walls without any type of protective measures. See GUIDELINES FOR EVALUATION, supra note 1, at 4-4 ; see also PREVENTING LEAD POISONING IN YOUNG CHILDREN, supra note 1, at 18-19 (warning of the potential dust hazards from improperly conducted lead-based paint removal); Jackie Powder, Lead Puts Family's Dream on Hold, BALTIMORE SUN (Carroll County ed.), Feb. 25, 1996, at 1B, available in 1996 WL 6607415 (detailing the experiences of a family whose children suffered severe lead poisoning from their historic dream home and who faced significant difficulties when they refused to move); infra Part III.B.1.b (examining the Maryland lead-based paint removal program's failure to include post-treatment provisions to insure that the removal did not increase the amount of hazardous dust).

Because of this lack of awareness, the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA) have developed a new educational campaign entitled "Take the Lead Against Lead", designed to inform people of these dangers. See Mrs. Gore, Cuomo and Browner Announce Clinton Administration Campaign for a Lead-Safe America to Protect Nation's Children, HUD Press Release No. 97-274, Nov. 19, 1997 [hereinafter HUD Press Release]. This campaign, announced in November, 1997, by Tipper Gore, EPA Administrator Browner, and HUD Secretary Cuomo, combines private and public industry with government groups to teach people about the dangers of lead-based paint. See id. This goal will be accomplished through public service announcements, pamphlets distributed at hardware stores, educational videos, and interest group campaigns. See id.

7. See Meyer, supra note 6, at 19. Because children's bodies are still developing, lead has a profound impact on their health. See PUTTING THE PIECES TOGETHER, supra note 2, at 3. The amount of lead that causes significant physical danger is the equivalent of consuming three sugar granules on a daily basis; consumption of even one granule daily
and attention spans, learning disabilities, and behavioral problems are typical consequences of lead poisoning, and greater levels of exposure can result in blindness, kidney disease, brain damage, and potentially, death.\(^8\)

Because lead-based paint can cause great harm to children and few treatment options are available,\(^9\) Congress and several states have attempted to lower blood-lead levels above the level of concern. See Meyer, supra note 6, at 19; see also PREVENTING LEAD POISONING IN YOUNG CHILDREN, supra note 1, at 11 (explaining how young children experience greater lead poisoning because of the "nonfood items" that enter their bodies); Rechtschaffen, supra note 5, at 390 (describing how children are more prone to lead poisoning because of higher absorption rates and more susceptible nervous systems). As a result of improved understanding of lead poisoning, the level of concern for children's blood levels was adjusted to 10 \(\mu g/dL\) in 1991, reduced from 60 \(\mu g/dL\) in the 1960s. See PUTTING THE PIECES TOGETHER, supra note 2, at 34. This measurement quantifies the number of micrograms of lead present in each deciliter of blood. See id.

8. See PUTTING THE PIECES TOGETHER, supra note 2, at 3 (emphasizing the potential consequences of lead poisoning in young children); Bush, supra note 3, at 647-48 (describing the broad range of harmful effects from lead poisoning).

Adults also face the possibility of lead poisoning from certain occupations or hobbies. See PREVENTING LEAD POISONING IN YOUNG CHILDREN, supra note 1, at 22. These include furniture restoration, construction, stained glass and pottery work, and metalwork. See id.; PROTECT YOUR FAMILY, supra note 1, at 10 (listing sources of lead, other than paint, that may poison adults and children). The threshold hazardous blood level is higher for adults than children (25 \(\mu g/dL\) in contrast to 10 \(\mu g/dL\)). See MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 5. The NHANES III survey data concluded that nearly 700,000 adults have blood levels equal to or higher than the threshold level. See id.

In addition to the same problems experienced by children, lead-poisoned pregnant women experience higher rates of miscarriages and stillbirths, and lower birth weights and premature delivery, thus prompting the inclusion of these women in recent legislation. See id. at 43.

9. In the mid-1970s, it was thought that the damage of lead poisoning could be reversed if treated immediately. Cf. Lead Based Paint Poisoning Prevention - Amendments, S. REP. NO. 93-130, at 4 (1973), reprinted in 1973 U.S.C.C.A.N. 2403, 2406, 2409. Today, however, it is known that the physical damage caused by lead poisoning is irreversible. See supra notes 7-8 and accompanying text (discussing the irreparable harm caused by lead poisoning).

The foremost method among the few treatments for lead poisoning is chelation therapy. See PUTTING THE PIECES TOGETHER, supra note 2, at 34-35. This treatment is used only for high blood-lead level victims and is designed to remove the lead from the blood of poisoned children. See id. Chemicals are injected intravenously in order to bond with the lead; a potential side effect is kidney damage. See Alfaro v. Capone, No. 926664, 1994 WL 879472, at *2 (Mass. Super. Ct. Sept. 19, 1994) (describing the painful effects of chelation therapy on a poisoned two and a half year-old girl). Because this treatment is used solely in severe cases, children at lower levels suffer the effects of lead poisoning without any real possibility of improvement. Cf. PUTTING THE PIECES Together, supra note 2, at 35 (stating that reduced exposure to lead is the preferred treatment method for children with lower blood-lead levels). The only true path to prevention is to remove the child from a hazardous environment. See id. at 35; see also Powder, supra note 6, at 1B (reporting on a Maryland case in which state officials threatened to remove two lead-poisoned children from their parents' custody if they were not moved to a lead-safe environment).
tempted to eliminate the hazards which cause lead poisoning. Recognizing its dangers, Congress imposed limitations in the 1970s on the use of lead-based paint and passed legislation addressing lead-based paint hazards in publicly supported housing.\(^\text{10}\) Few states expanded upon Congress' efforts, but some cities, such as Baltimore, New York, and Philadelphia—which had experienced high rates of lead poisoning—remained committed to its prevention.\(^\text{11}\)

Although Congress enacted laws regulating lead-based paint hazards, this early legislation specifically did not target private housing.\(^\text{12}\) Congress' most recent enactment, the Residential Lead-Based Paint Hazard Reduction Act,\(^\text{13}\) attempts to fill this void by requiring disclosure of lead-

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Northern cities have high percentages of older residential buildings that are most likely to contain lead-based paint. See NATURE & EXTENT OF LEAD POISONING, supra, at I-4, fig. I-1 (indicating that the vast majority of older housing stock is in the northern half of the country); Gilligan & Ford, supra, at 250. For example, over 50% of Baltimore's housing was built before 1940, suggesting a prevalence of lead-based paint in those homes. See id. In contrast, southern states have fewer homes with lead-based paint because urbanization occurred later, resulting in a more recently constructed housing stock. See COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 3-6. The Midwest also has extensive numbers of homes with lead-based paint, as seen in Wisconsin, a state in which estimates indicate almost 75% of all housing has lead-based paint. See Anita Clark, Protecting Kids From Lead Poses Health Challenge, WIS. ST. J., Aug. 24, 1997, at 1C. Similarly, approximately 60% of Cincinnati, Ohio's housing stock contains some lead-based paint, and one estimate indicates that 76% of the homes in St. Louis County, Missouri have lead-based paint. See John G. Carlton, Lead Paint Poisoning Menaces New Generation, ST. LOUIS POST-DISPATCH, Sept. 14, 1997, at 1A; Cameron McWhirter and Tim Bonfield, Enquirer Investigation: $1 Million Spent, Not One Dwelling Fixed: City Lead Cleanup Stalled, CINCINNATI ENQUIRER, July 6, 1997, at A1; See generally NATURE & EXTENT OF LEAD POISONING, supra, at I-4, fig. I-1 (providing a map with the nation's percentages of the housing stock built prior to 1940).

\(^\text{12}\) See Rechtschaffen, supra note 5, at 396 (mentioning that despite recent efforts, federal law still focuses primarily on public housing); Bush, supra note 3, at 662 (noting the passage of recent legislation based on the congressional realization that lead poisoning problems exist in private housing).

Prior to this legislation, most states lacked any lead-based paint disclosure, inspection, or abatement requirements for private homes and apartments. After the passage of the Act, a growing number of states began formulating various legislative responses due to increased lead-based paint hazard awareness. Setting the pace are Massachusetts and Maryland, the two states dealing most comprehensively with lead-based paint issues, including both the hazards and resulting illnesses. Intermediate level states have recognized the dangers of lead-based paint, but have failed to implement wide-scale remedial programs due to legislative or political obstacles.

This Comment investigates why, in spite of congressional and state legislative efforts, attempts to eradicate lead poisoning in children have been unsuccessful during the last twenty-five years. In Parts I and II, this Comment analyzes the legislation adopted to date by the federal government and the states. In Part III, this Comment examines the regulations promulgated by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) in an effort to understand if and how these rules facilitate the goals set forth by congressional enactments over the past twenty-five years. This Comment also focuses on how Massachusetts and Maryland have developed effective legislation alleviating the harms caused by lead poisoning and examines the provisions of intermediate states currently formulating their lead prevention programs. In Part IV, this Comment suggests how, through legislative reform, more effective enforcement, and penalties, the federal government and the states can achieve their preventative goals and eliminate lead poisoning. This Comment concludes that a commitment to effective enforcement by all levels of government and the public will eradicate childhood lead poisoning.

14. See 42 U.S.C. § 4852d(a); see also infra notes 52, 57 and accompanying text (discussing the disclosure requirements and their exceptions).

15. Cf. COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 5-2 (indicating that most early state legislation was passed for state governments to obtain congressionally authorized funds). Funding was made available for states to implement screening and testing programs as well as for abatement measures. See Lead-Based Paint Poisoning Prevention Act, Pub. L. No. 91-695, §§ 101, 201, 84 Stat. 2078, 2078-79 (1971) (codified as amended at 42 U.S.C. §§ 4801-46 (1994)).

16. See infra Part II.B. (detailing lead poisoning prevention programs being established in various states).

17. See infra Parts II.A. and III.B.1 (describing and analyzing Massachusetts and Maryland's efforts to eliminate childhood lead poisoning).

18. See infra Parts II.B. and III.B.2 (explaining and analyzing the various intermediate level state approaches to solving lead poisoning in children).
I. UNDERSTANDING PAST AND PRESENT FEDERAL LAWS

The federal government has had only limited success in eradicating lead poisoning, but the recent actions by Congress continue to widen the scope of the solution.\textsuperscript{19} Congress first realized the extent of the lead poisoning problem in the early 1970s and attempted to remedy the situation with legislation targeting the neediest children.\textsuperscript{20} Although early programs applied only to federally-supported housing, significant administrative obstacles appeared throughout the process.\textsuperscript{21} Congress persevered, however, as demonstrated by its most recent program, the 1992 Residential Lead-Based Paint Hazard Reduction Act, which expanded upon its earlier legislation.\textsuperscript{22}

A. The Lead-Based Paint Poisoning Prevention Act: The First Legislative Attempt to Eliminate the Hazards of Lead-Based Paint

In 1971, in response to early concerns about lead poisoning, Congress passed the Lead-Based Paint Poisoning Prevention Act (LPPPA).\textsuperscript{23} The LPPPA waged a four-part attack on lead-based paint poisoning.\textsuperscript{24} Title I furnished money for detection of lead-based paint and for treatment of lead-based paint poisoning.\textsuperscript{25} Title II offered grants for programs to identify and eliminate lead-based paint hazards.\textsuperscript{26} Title III authorized the
Secretary of HUD to identify the geographic regions most affected by lead-based paint poisoning and the most effective means of removal.27 Title IV banned the use of lead-based paint in federally owned or subsidized housing after January 13, 1971.28 Amendments to the LPPPA in 1973 required that HUD “eliminate as far as practicable the hazards of lead based paint poisoning” in all federally-subsidized housing constructed before 1950.29 Congress authorized HUD and other agencies to execute these changes as quickly and completely as possible.30 HUD moved slowly in developing new regulations, however, and failed to release amended regulations until 1976.31 Some citizens believed the federal government’s efforts to remedy lead poisoning were inadequate, challenging HUD’s implementation of the

(repealed 1978); S. REP. NO. 91-1432, at 3 (1970), reprinted in 1970 U.S.C.C.A.N. 6130, 6132 (calling for a “vigorous campaign” to rehabilitate the most dangerous housing). But see NATURE & EXTENT OF LEAD POISONING, supra note 11, at IX-20 (reporting that money was authorized, but that no funding was ever provided).


29. Lead-Based Paint Poisoning Prevention-Amendments, Pub. L. No. 93-151, § 302, 87 Stat. 560, 566 (1973) (codified as amended at 42 U.S.C. § 4822(a)(1)). Housing covered by HUD mortgage insurance or housing payments was the target of this provision. See id. Owners of such housing would receive information about potential dangers, and immediate attention would be given to lead paint hazards in existence. See id.


31. See Lead-Based Paint in Housing and HUD’s Response: Hearing Before the Employment and Housing Subcomm. of the House Comm. on Gov. Operations, 102d Cong. 25 (1991) [hereinafter Lead-Based Paint in Housing] (testimony of Cushing Dolbeare) (asserting that HUD failed to meet its lead-based paint regulation mandate of 1972 because of “timid administration” and the downplay of the seriousness of lead hazards); Mahoney, supra note 5, at 65-66 (voicing disdain for the lackadaisical manner in which HUD implemented lead-based paint regulations for two decades). One commentator went so far as to accuse HUD of “using young children as lead detectors.” See Lead-Based Paint in Housing, supra, at 25.
LPPPA and its amendments. In *City-Wide Coalition Against Childhood Lead Paint Poisoning v. Philadelphia Housing Authority*, the United States District Court for the Eastern District of Pennsylvania issued an injunction prohibiting HUD housing sales, finding that the agency had sold homes violating Philadelphia's lead-based paint regulations. The court held that HUD violated the spirit of the LPPPA and its amendments when it refused, due to expense, to eliminate the lead-based paint hazards in the homes.

Despite this ongoing litigation, the federal government did not increase its efforts to eliminate lead-based paint hazards. In *Ashton v. Pierce*, the United States Court of Appeals for the District of Columbia Circuit rejected HUD's implementation of the amendments in 1983. HUD had interpreted the preventative phrase “as far as practicable” in the amendments to require cost-effective, but not necessarily the most beneficial, means of implementation. In affirming the district court’s


34. See id. at 124, 126 (finding of fact 17). The city codes of Philadelphia required complete removal of all lead-based paint accessible to a child. See id. at 126 (finding of fact 10). Accessibility was defined as any surface up to five feet from the floor in buildings where children were living. See id. During an inspection by the Philadelphia Department of Public Health, lead-based paint was discovered, and the residence was deemed unfit for humans and condemned until removal was completed. See id. at 127 (findings of fact 19 & 23).

35. Cf. id. at 129 (stating that plaintiff's request for a preliminary injunction (which was granted) was premised on HUD's failure to adhere to the "spirit" of the LPPPA). At the time, HUD owned approximately 1,650 homes in Philadelphia with an additional 200 acquired each month. See id. at 126 (findings of fact 11 & 12). The costs to abate lead-based paint at each of these houses ranged from $400 to $2,000; the average resale price of the home was $8,000. See id. at 127 (findings of fact 20 & 21).

36. See id. at 129-31 (rejecting HUD's attempt to sell homes classified "as unfit for human habitation" according to the Philadelphia regulations). The court further declared that HUD's position "raise[d] issues that no amount of rationalization or legal theory can justify on moral grounds," due to its unwillingness to comply with regulations that mandated additional spending. See id. at 131.

37. 716 F.2d 56 (D.C. Cir.), amended by 723 F.2d 70 (D.C. Cir. 1983).

38. See id. at 63-64 (holding that HUD regulations did not effectively meet the congressional goals for the LPPPA).

39. See Ashton v. Pierce, 541 F. Supp. 635, 641-42 (D.D.C. 1982), order aff'd, 716 F.2d 56 (D.C. Cir.), amended by 723 F.2d 70 (D.C. Cir. 1983). HUD's regulations only targeted immediate hazards, defined as cracked, peeling, or loose paint, for repair or abatement. See Ashton, 716 F.2d at 61. Lead-based paint that did not present any immediate danger
decision, the court of appeals determined that this interpretation was contrary to congressional intent. The court concluded that Congress had an expansive understanding of what conditions presented lead-based paint hazards and intended the statutory language to form a minimum standard. With that intent, Congress sought to remedy all the hazardous lead-based paint conditions in federal housing, not only those that presented immediate dangers.

Three years after these decisions, HUD released amended regulations that redefined the term "immediate hazard" and shifted the applicable housing construction date from 1950 to 1973. Despite these changes, HUD faltered in its interpretation and enforcement of the mandates set forth by both Congress and the courts. The ineffectiveness of the LPPPA prompted Congress to pass another set of amendments to the Act in 1987, adopting a housing approach that mandated the inspection of residences covered by the LPPPA. These changes also directed was not removed because the additional costs seemed unnecessary. See Ashton, 541 F. Supp. at 642 (describing alternatives HUD considered when adopting its regulations, including greater levels of repair and abatement).

40. See Ashton, 716 F.2d at 63-64 (concluding that HUD's failure to address certain statutorily recognized hazards violated congressional intent).

41. See id. at 61-62 (noting that the legislative history included references to City-Wide Coalition and changes to the LPPPA encompassed that decision's holding).

42. See id. (analyzing the language used in the statute as an indicator of congressional intent).

43. See Lead-Based Paint Hazard Elimination in Public and Indian Housing, 51 Fed. Reg. 27,774, 27,774 (1986) (noting the changed interpretation in HUD regulations); COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 1-3 (noting the change in construction dates of new HUD housing programs to include a more expansive timeframe). However, HUD still retained a "health" approach, inspecting and testing homes only after someone had contracted lead poisoning. See infra note 45 (providing a description of the two approaches to lead-based paint poisoning prevention); see also Mahoney, supra note 5, at 66-67 (arguing that the new regulations still allowed HUD to postpone testing until after a poisoned child was discovered).

44. See Mahoney, supra note 5, at 65-67 (disapproving of the continued problems caused by HUD's LPPPA administration).

45. See Lead-Based Paint Poisoning Prevention Act, Pub. L. No. 100-628, sec. 1088, §302(d), 102 Stat. 3280, 3280 (1988) (codified as amended at 42 U.S.C. § 4822(c) (1994)). Contrary to the "health" approach, the "housing" approach takes a more anticipatory role. See Bush, supra note 3, at 651. Pursuant to the health approach, agencies spend program resources to test children's blood levels to determine if lead poisoning is present. See id. at 650. In contrast, the housing approach seeks to eliminate lead poisoning through inspection, testing, and abatement prior to any reports of illness. See id. at 651. This approach is regarded as the better of the two methods, because it seeks to proactively prevent poisoning, rather than eliminate it after diagnosis. See id.; see also NATURE & EXTENT OF LEAD POISONING, supra note 11, at IX-3 (noting that active approaches are more difficult to attain but can be achieved through increased public education).

HUD to research and develop an extensive plan for abatement in private housing.\textsuperscript{47} Although efforts were made under these new provisions, the federal government’s lead-based paint laws failed to remedy lead dangers adequately.\textsuperscript{48}

\textbf{B. Residential Lead-Based Paint Hazard Reduction Act: Improving the Federal Foundation}

In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act\textsuperscript{49} (Title X) to expand prevention of lead poisoning to private housing and to improve the LPPPA’s deficiencies.\textsuperscript{50} Title X sought to eliminate the hazards of lead-based paint through mandatory disclosure of hazards in target housing.\textsuperscript{51} The congressional definition of target housing included all dwellings built prior to 1978 except housing for the elderly or persons with disabilities and “[zero] bedroom” dwellings.\textsuperscript{52} Title X required EPA and HUD to set forth regulations implementing Ti-


\textsuperscript{48} Cf. \textit{ALLIANCE TO END CHILDHOOD LEAD POISONING, UNDERSTANDING TITLE X: A PRACTICAL GUIDE TO THE RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992} at 5 (1993) [hereinafter \textit{UNDERSTANDING TITLE X}] (noting that the wording of the LPPPA’s objective was “too vague to stimulate widespread action”).


\textsuperscript{50} See id. § 1003 (codified at 42 U.S.C. § 4851(a)) (detailing purposes of Title X).

\textsuperscript{51} See id. § 1018(a) (codified at 42 U.S.C. § 4852d(a)) (setting forth Title X’s goals, including the development of a lead-based paint hazard educational strategy, establishment of sale and rental procedures that take lead-based paint into account, and elimination of both lead poisoning and lead-based paint in housing).

\textsuperscript{52} See id. § 1004(27) (codified at 42 U.S.C. § 4851b(27)); \textit{infra} note 57 and accompanying text (detailing exceptions to the EPA and HUD disclosure requirements).
tle X within two years of the Act's passage.  

In late 1996, one year after the scheduled implementation date, the Title X regulations promulgated by HUD and EPA went into effect. These rules cover both the sale and lease of residential property. Compliance with the regulations is not required in certain situations including: when the house is sold at foreclosure; the housing is found to be lead-free by a certified inspector; the transaction is a nonrenewable, short-term lease of 100 days or less; or there is a lease renewal where all pertinent information has been disclosed previously. A prospective purchaser or lessee is not obligated to complete the transaction until the seller or lessor satisfies the disclosure requirements. Additionally, the regulations provide a purchaser with an optional ten-day period for completion of a lead-based paint hazard assessment before the purchaser


54. See 24 C.F.R. § 35.84 (indicating that the effective date was either Sept. 6, 1996, for owners of more than four residential dwellings, or Dec. 6, 1996, for owners of one to four dwellings); 40 C.F.R. § 745.102 (same). Because HUD and EPA did not meet the congressional deadline due to promulgation delays, final regulations became effective in September and December, 1996, approximately one year after the original date of October 1995, set by Title X. See Proposed Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing, 59 Fed. Reg. 54,984, 54,993 (1994) (proposed Nov. 2, 1994) (explaining that congressional intent called for a minimum of one year before regulations went into effect to allow affected parties to gain familiarity with the new rules).


56. Official certification is another element discussed in the regulations. See 24 C.F.R. § 35.82(b) (providing interim certification guidance); 40 C.F.R. §745.101(b) (same). State certified inspectors are presumed qualified under the federal program until a federal program is established or a state program in compliance with the regulations is approved. See id.; see also Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. 9,064, 9,067 (1996) (codified at 24 C.F.R. pt. 35; 40 C.F.R. pt. 745) (providing qualifications for certification under the EPA standards). Individuals and firms may apply for certification beginning on March 1, 1999. See 40 C.F.R. §§ 745.226(a)(2), (f)(5) (detailing the process for achieving EPA certification, including descriptions of required education, training, and experience).

57. See 24 C.F.R. § 35.82 (listing exceptions to the regulations); 40 C.F.R. § 745.101 (same); see also Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,067-68 (explaining the administrative and policy rationales for the exclusion of certain types of transactions from the regulations).

58. See 42 U.S.C. § 4852d(a)(1)(A)-(C); see also 24 C.F.R. § 35.88(a) (providing notice of required activities for completion before there is any contractual liability); 40 C.F.R. § 745.107(a) (same); Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,071-73 (indicating when contractual liability attaches).
must buy the property.  

Disclosure, required for all sales and leases under the regulations, involves several key steps. First, the purchaser or lessee must receive the EPA pamphlet entitled *Protect Your Family From Lead in Your Home.* The pamphlet describes health risks associated with lead poisoning, sources of lead in the home, methods to eliminate lead hazards, and contacts for further information. Sellers and lessors then must disclose any knowledge they have about lead-based paint in the prospective housing, including any pertinent documents in their possession. The final provision requires completion of a signed certification and acknowledgment

59. See 24 C.F.R. § 35.90 (1997) (requiring that an opportunity for inspection be given to purchasers); 40 C.F.R. § 745.110 (1997) (same). By agreement, the parties can extend or shorten the authorized time period for inspection, or the purchaser can waive the right to conduct an inspection. See 24 C.F.R. § 35.90; 40 C.F.R. § 745.110. Both of these agreements must be in writing. See 24 C.F.R. § 35.90; 40 C.F.R. § 745.110.

60. See 15 U.S.C. § 2686(a) (1994). Congress mandated the inclusion of information on a number of topics in the pamphlet. See id. Topics include descriptions of exposure risks, testing recommendations prior to the purchase or rental of a home, state and local requirements, and listings of certified contractors. See id. § 2686(a)(1)-(9). An EPA-approved state brochure may be substituted for the federal pamphlet. See 24 C.F.R. §35.88(a)(1); 40 C.F.R. § 745.107(a)(1); see also Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,073.

61. See generally *Protect Your Family,* supra note 1. Title X also established the National Lead Information Clearinghouse (NLIC) to provide additional resources for technical information about lead poisoning, its associated health risks, and clean-up measures. See Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. No. 102-550, tit. X, § 405(e)(1), 106 Stat. 3897, 3919 (1992) (codified at 15 U.S.C. § 2685(e)). The EPA pamphlet and other lead information can be obtained from the NLIC at 1-800-424-LEAD. See Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,064. Information available from the NLIC includes pertinent articles, federal guidelines, pamphlets and updates, reference lists of certified labs, and information about regional and state agencies handling lead issues. See MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 28. Since the implementation of the Title X regulations in the fall of 1996, the NLIC has received approximately 20,000 calls per month. See id. Information is also available on the Internet. See Environmental Health Center (visited Aug. 16, 1998) <<http://www.nsc.org/ehc/lead.htm>>.

62. See 24 C.F.R. §35.88(a)(2)-(4) (detailing the elements required for full disclosure); 40 C.F.R. §745.107(a)(2)-(4) (same). Sections 35.88(a) and 745.107(a) are identical and reflect three subsections. Subsection two requires disclosure of any actual knowledge by the seller or lessor. See 24 C.F.R. §35.88(a)(2); 40 C.F.R. §745.107(a)(2). Subsection three requires that any agent involved in the transaction also be informed of any information disclosed under subsection two. See 24 C.F.R. §35.88(a)(3); 40 C.F.R. §745.107(a)(3). Subsection four requires that purchasers and lessees receive a copy of any documents relating to lead-based paint hazards. See 24 C.F.R. §35.88(a)(4); 40 C.F.R. §745.107(a)(4); see also Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,071-72 (providing detailed information about required knowledge and document disclosure compliance by sellers and lessors).
statement within the lease or sales contract. This acknowledgment contains congressionally-mandated language from Title X, ensuring that both parties have complied with federal law.

The EPA and HUD have developed comparable guidelines to enforce Title X. The EPA developed an Enforcement Response Policy (ERP) that requires EPA personnel to follow uniform procedures. Under this

63. See 24 C.F.R. §35.92(b) (stating lessor's responsibilities for lease inclusion); 40 C.F.R. § 745.113(b) (same). For the lease of property, the following requirements must be included: a lead warning statement, the lessor's statement of disclosed information, a list of any reports about lead-based paint or hazards, the lessee's statement of receipt of required disclosure information, and an agent's statement if applicable. See 24 C.F.R. §35.92(b); 40 C.F.R. §745.113(b). These items were included to alert all parties of their responsibilities and also to create a “clear record of compliance.” See Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,071.

64. See 24 C.F.R. §35.92(a) (1997) (noting the seller's contractual obligations under Title X); 40 C.F.R. §745.113(a) (1997) (same). For the sale of property, the certification must contain the following elements: a lead warning statement, the seller's statement of disclosure, a list of any reports about lead-based paint and hazards, the purchaser's statement of receipt of disclosed information, the purchaser's statement regarding the inspection period, and an agent disclosure, if applicable. See 24 C.F.R. § 35.92(a); 40 C.F.R. 745.113(a). Disclosures relating to the sale of property enable prospective purchasers to inspect and possibly alter sales negotiations. See Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,071.

65. The Lead Warning Statement contained in sales contracts informs prospective purchasers of the following:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

24 C.F.R. § 35.92(a)(1); 40 C.F.R. § 745.113(a)(1). The Lead Warning Statement contained in leases warns prospective tenants of the following:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

24 C.F.R. § 35.92(b)(1); 40 C.F.R. § 745.113(b)(1).

66. See Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,077-78 (describing comments received by both agencies regarding enforcement provisions).

67. See id. at 9,078 (discussing enforcement goals of ERPs).
policy, the EPA can provide notice without penalty to those not in compliance in an effort to gain greater regulatory adherence while also pursuing continuing violations of the law. 68 Similarly, HUD enforcement procedures also provide for notice, hearings, and appeals for violators. 69 The two agencies also have developed a “memorandum of understanding” that provides the groundwork for national enforcement of the disclosure rules. 70

Within the regulations, several penalties exist for non-compliance. 71 Under provisions in existence before Title X, as part of the Toxic Substances Control Act, 72 the government can impose civil penalties of $10,000 for a knowing violation of the regulations and enjoin activities which further violate the regulations. 73 When a monetary fine is necessary, a HUD penalty panel considers various factors to determine a suitable amount. 74 Violators are subject also to the applicable Toxic Substances Control Act provision, carrying a criminal penalty of a $10,000 fine per violation. 75 Although violators face both civil and criminal liability, non-compliance with the regulations does not render a sales contract or lease invalid, nor does it produce a defective real property title. 76 If, however, poisoning occurs subsequent to non-compliance with the disclosure provisions, a person who knowingly violated the regulations is jointly and severally liable for treble damages. 77 In addition, courts can

68. See id. (detailing enforcement options of ERPs).
69. See id. (outlining HUD procedures on civil penalties, administrative hearings, and judicial review).
70. See HUD Press Release, supra note 6 (describing recent HUD and EPA action under Title X).
73. See 24 C.F.R. § 35.96(a)-(b), (f) (providing a description of sanctions imposable to enforce the regulations); 40 C.F.R. § 745.118(a)-(b), (f) (same); see also 42 U.S.C. § 3545(f) (indicating permissible civil monetary penalties).
74. See Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. 9,064, 9,078. Among the factors that enter into consideration are prior history, gravity of public injury, ability to pay the fine, future deterrence, and culpability. See id.
75. See 15 U.S.C. § 2615(a)-(b); 42 U.S.C. § 4852d(b)(5); Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing, 61 Fed. Reg. at 9,077 (summarizing standard penalties under the Toxic Substances Control Act and noting the Title X modifications to those penalties).
77. See 24 C.F.R. § 35.96(c) (1997) (highlighting treble damage liability for non-compliance); 40 C.F.R. § 745.118(c) (1997) (same).
award reasonable litigation costs and fees to prevailing plaintiffs.\textsuperscript{78}

II. STATES TACKLE THE POISONING PROBLEM

State legislation enacted to address the issues surrounding lead poisoning varies greatly.\textsuperscript{79} Comprehensive states have enacted large-scale operations to prevent lead poisoning, but intermediate states have just begun to develop wide-reaching programs.\textsuperscript{80} Other states still have not sought solutions to lead-based paint problems because of either the relative scarcity of such hazards in the particular state or deference to the federal program.\textsuperscript{81}

A. Comprehensive States: Wide Reaching Programs to Solve the Problem of Residential Lead Poisoning

Few states have enacted expansive lead prevention programs due to the requisite commitment of state financial and administrative resources that are necessary to ensure a strong program.\textsuperscript{82} Massachusetts and Maryland are model states in the area of lead poisoning laws because of the comprehensive nature of their prevention programs.\textsuperscript{83} Several characteristics distinguish the Massachusetts and Maryland approaches from the programs of other states.\textsuperscript{84} These key features include interagency

\textsuperscript{78} See 24 C.F.R. \S 35.96(d) (authorizing a court to award appropriate attorney and expert witness fees); 40 C.F.R. \S 745.118(d) (same).

\textsuperscript{79} See COMPREHENSIVE AND WORKABLE PLAN, \textit{supra} note 4, at 5-3 to 5-7 (describing lead-based paint legislation of various states and cities); \textit{infra} Part III.B. (surveying the provisions enacted by both comprehensive and intermediate states).

\textsuperscript{80} See \textit{infra} Parts II.A & B. (detailing various preventative state provisions).

\textsuperscript{81} See COMPREHENSIVE AND WORKABLE PLAN, \textit{supra} note 4, at 5-1; \textit{PUTTING THE PIECES TOGETHER, supra} note 2, at 16 (noting state justifications implementing lead poisoning prevention programs).

\textsuperscript{82} See COMPREHENSIVE AND WORKABLE PLAN, \textit{supra} note 4, at 5-5 to 5-6 (distinguishing comprehensive state programs from those of other states and discussing the resources utilized by these programs). \textit{But see MASS. GEN. LAWS ANN. ch. 111, \S\S 189A-99B (West 1996) (codifying comprehensive state lead poisoning programs); MD. CODE ANN., ENVIR. \S\S 6-801 to -52 (1996) (same).}

\textsuperscript{83} See COMPREHENSIVE AND WORKABLE PLAN, \textit{supra} note 4, at 5-5 (complimenting the exemplary nature of the Maryland and Massachusetts programs); \textit{cf.} Jane Schukoske, \textit{The Evolving Paradigm of Laws on Lead-Based Paint: From Code Violation to Environmental Hazard}, 45 S.C. L. REV. 511, 558 (1994) (describing how comprehensive states offer "carrot - providing incentives" to increase compliance and noting that Massachusetts and Maryland have established task forces for the prevention of childhood lead poisoning).

\textsuperscript{84} See COMPREHENSIVE AND WORKABLE PLAN, \textit{supra} note 4, at 5-5 to 5-7 (listing characteristics unique to the Massachusetts and Maryland programs); Schukoske, \textit{supra} note 83, at 558 (supporting the "interdisciplinary approach" of Massachusetts, Maryland, and other states); Rechtschaffen, \textit{supra} note 5, at 422-23 (sharing Professor Schukoske's
involvement, notification to buyers and lessees, enforcement methods, licensing, certification and training of lead-based paint workers, abatement standards and funding, private physician and laboratory involvement, and research authorization.\textsuperscript{85}

In 1971, Massachusetts became the first state to enact a statute aimed at eliminating lead-based paint poisoning.\textsuperscript{86} By expanding its programs well beyond federal government attempts, Massachusetts has reduced drastically the number of children affected by lead poisoning.\textsuperscript{87} Following Massachusetts's broad legislative efforts to prevent lead poisoning, Maryland adopted the Lead Paint Poisoning Prevention Act (Maryland LPPPA) in 1994.\textsuperscript{88} Intended to operate apart from Title X,\textsuperscript{89} the Maryland LPPPA was designed to modify a tort system unfavorable to lead-poisoned plaintiffs.\textsuperscript{90} Though not as comprehensive as the Massachusetts belief that Maryland and Massachusetts are broad-based programs).

\textsuperscript{85} See COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 5-5 to 5-7 (detailing features common to the Maryland and Massachusetts approaches); Rechtschaffen, supra note 5, at 422 (asserting that Maryland and Massachusetts have the most expansive lead-based paint prevention programs). See, e.g., MASS. REGS. CODE tit. 105, § 460.750 (1995) (detailing the notification and reporting procedures in place for inspectors under the Massachusetts program).

\textsuperscript{86} See Lead Poisoning Prevention and Control Act, MASS. GEN. LAWS ANN. ch. 111, §§ 190-99 (West 1996).

\textsuperscript{87} See COMMONWEALTH OF MASSACHUSETTS, REPORT OF THE ATTORNEY GENERAL'S LEAD POISONING TASK FORCE 43 (1992) [HEREINAFTER MASS. TASK FORCE REPORT] (noting that 25% of Massachusetts children had blood-lead levels greater than 25 µg/dL prior to 1970 but by 1990, the figure declined to less than 1% of children having dangerous blood-lead levels); Judy Foreman, Mass. Rate of Lead Poisoning Hits Low, BOSTON GLOBE, Feb. 25, 1997, at B5 (reporting that the number of Massachusetts children afflicted with lead poisoning dropped from 487 cases in 1995 to 323 cases in 1996, giving Massachusetts what appears to be the lowest industrial state poisoning rate).

\textsuperscript{88} MD. CODE ANN., ENVIR. §§ 6-801 to -52 (1996).

\textsuperscript{89} See Susan A. Winchurch, Environmental Law, Recent Developments: The Maryland General Assembly, 54 MD. L. REV. 891, 928 (1995) (noting that the Maryland LPPPA was created to function independently from Title X).

\textsuperscript{90} See id. at 924 & n.2 (identifying Maryland tort recovery difficulties due to landlords' insurance policies with "lead exclusions"); see also Christopher M. Placitella & Barry R. Sugarman, Issues in Lead Poisoning Litigation, in LEAD-BASED PAINT HAZARDS: ASSESSMENT AND MANAGEMENT 221, 222-26 (Vincent M. Coluccio ed., 1994) [hereinafter LEAD-BASED PAINT HAZARDS] (indicating principal causes of action under which a lead-poisoned victim may bring suit).

Lead poisoning victims have been rather unsuccessful in alleging tort liability claims. See Rechtschaffen, supra note 5, at 416-17 (noting judicial and systemic tort liability system obstacles for lead poisoning victims). This lack of success is caused by several factors, including victim ignorance of applicable laws, limited financial resources of poisoned victims, and legal economics which make lead poisoning cases fairly unprofitable and risky. See id.; see also Mahoney, supra note 5, at 58-59. In addition, most courts have concluded that landlords must have either actual or constructive notice of the presence of lead-based
law, it represents a significant commitment to the elimination of the illness.91

1. Scope of the Laws

The Massachusetts Lead Poisoning Prevention and Control Act92 (MLPPCA) incorporates the housing approach, creating a far-reaching program of education, testing, and reporting93 that effectively reduces incidents of illness.94 It applies to all housing in which children under age six reside.95 Furthermore, health care workers must report any new occurrence of lead poisoning within three days of the diagnosis, and these reports must remain on file with the lead poisoning control director.96 In


Market share liability is another avenue that has not garnered any success for lead poisoning victims. See Jefferson v. Lead Indus. Assoc., 106 F.3d 1245, 1247-48 (5th Cir. 1997) (concluding that market share liability for lead-based paint manufacturers would be contrary to the intent of the Louisiana legislature); Santiago v. Sherwin-Williams Co., 3 F.3d 546, 550-51 (1st Cir. 1993) (determining that market share liability theory is difficult to apply when a specific timeframe for manufacture cannot be determined); City of Philadelphia v. Lead Indus. Assoc., Inc., 994 F.2d 112, 125-26 (3rd Cir. 1993) (refusing to adopt market share liability theory under Pennsylvania law, due to lack of national agreement and overall disapproval of the theory's applicability to lead-based paint manufacturers); see also Placitella & Sugarman, LEAD-BASED PAINT HAZARDS, supra, at 231-33 (reporting on litigation against the lead paint industry). See generally Michael B. Sena, Sorting Out the Complexities of Lead-Paint Poisoning Cases, 4 J. AFFORDABLE HOUS. & COMMUNITY DEV. L. 169, 174-78 (1995) (detailing various theories under which plaintiffs have brought suit against landlords, owners, and lead-based paint manufacturers).

91. See Rechtschaffen, supra note 5, at 425-26 (describing key flaws of the Maryland program); cf. Winchurch, supra note 89, at 924 (stating that the Maryland LPPPA's purpose is to maintain affordable residential dwellings while also eliminating lead poisoning).


93. See id. §§ 191, 192, 192B, 193, 195 (establishing the various educational, reporting, and record-keeping requirements of the MLPPCA).

94. See supra note 45 and accompanying text (detailing the housing approach to lead-based paint poisoning); see also Schukoske, supra note 83, at 540 (demonstrating how Massachusetts embodies the concepts of a legal environmental paradigm).

95. See MASS. GEN. LAWS ANN. ch. 111, § 197(a) (requiring owners to contain or abate lead-based paint whenever a child resides on the premises); see also infra notes 108-09 and accompanying text (distinguishing between abatement and containment of lead-based paint).

96. MASS. GEN. LAWS ANN. ch. 111, § 191 (describing the procedure for reports pro-
addition, children under age six undergo screenings for lead poisoning, the findings of which also are retained on file with the director. 97 Finally, the MLPPCA established a lead poisoning detection laboratory. 98

In contrast, the Maryland LPPPA applies only to rental housing built prior to 1950, 99 but any owner of rental property can comply voluntarily with the provisions. 100 Exceptions exist for property "owned or operated" by a government or corporation that is subject to more stringent standards than the Maryland LPPPA imposes 101 or property certified lead-free by an approved inspector. 102 Property subject to the Maryland LPPPA must be registered with the Maryland Department of the Environment 103 and updated and renewed annually. 104 Owners also must satisfy the "risk reduction standard" after each change in occupancy, either by passing a lead dust contamination test or by performing specified treatments designed to eliminate lead-based paint hazards. 105 Finally, owners must notify tenants of their rights, before tenancy commences, under the liability and compliance sections. 106

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97. See id. § 193 (authorizing the development of a childhood screening program).
98. See id. § 195 (establishing a state lead poisoning laboratory and indicating that the laboratory reports are to be prima facie evidence of the facts within them in a court proceeding).
99. See Md. Code Ann., Envir. § 6-801(b)(1)(i) (1996) (providing definitions of affected property under the Act); id. § 6-803(a) (stating the applicability of the Act).
100. See id. § 6-803(a)(2) (permitting all rental property owners to participate voluntarily in the Maryland LPPPA).
101. See id. § 6-803(b)(2) (creating exceptions for government-owned property subject to higher standards).
102. See id. § 6-803(b)(3); see also id. § 6-804. An exception also exists for property not specifically mentioned in the statute. See id. § 6-803(b)(1).
103. See id. § 6-811(a). Information that must be submitted to the Department of the Environment includes: the name and address of the owner; address of the property; name and address of the property manager (if applicable); name and address for the insurance company of the property along with any policy numbers; name and address of the owner's agent or contact person in the state; whether the property was built before or after 1949-50; date of the latest occupancy change; dates and types of any risk reduction procedures; and the latest date of certified compliance. See id. § 6-811(b)(1)-(9).
104. See id. § 6-812(a) (addressing the time frame for registration renewal).
105. See Md. Code Ann., Envir. § 6-815 (1996). Examples of these treatments are repairing and repainting chipping or peeling paint, replacing windowsills, and rehanging doors. See id. §§ 6-815(a)(2)(ii), (iv), (vii). These actions must be completed before the first change in tenancy after October 1, 1994, and after all subsequent tenancy changes. See id. §§ 6-815(a), (b).
106. See id. § 6-820 (mandating the schedule and means by which landlords must notify tenants of their rights).
2. Abatement Requirements

The duty to abate lead-based paint falls squarely on the property owner in both Massachusetts and Maryland. Abatement is defined in this regard as a "set of measures designed to permanently eliminate lead-based paint hazards or lead-based paint," while encapsulation, often referred to as containment, is "any covering or coating that acts as a barrier between lead-based paint and the environment." In Massachusetts, abatement or containment procedures are required throughout the residence if a child under six resides on the premises. Generally, neither state allows individuals to reside on the premises during "deleading" activities. Exceptions are permitted in Massachusetts when a specific determination is made that the residents may remain. In Maryland, exceptions are granted when the tenant refuses to move. Landlords in both states are responsible for relocation of tenants, as well as compensation for any additional expenses the tenants incur as a result of the temporary move. In light of these requirements, the costs of which are often prohibitively high, Massachusetts has established a fund which

107. See id. § 6-815 (detailing owners' responsibilities in the removal and containment of lead-contaminated dust and paint); MASS. GEN. LAWS ANN. ch. 111, § 197(a) (West 1996) (requiring owners to abate all paint, plaster, and structural materials containing lead in premises where children under six reside).
108. See GUIDELINES FOR EVALUATION, supra note 1, at G-1.
109. See id. at G-4.
110. See MASS. GEN. LAWS ANN. ch. 111, § 197(a). Required procedures include abating or containing all peeling paint, plaster, or other structural material containing lead on both interior and exterior surfaces. See id. § 197(c)(1).
111. See MD. CODE ANN., ENVIR. § 6-821(a) (1996); MASS. GEN. LAWS ANN. ch. 111, § 197(g); see also Alisa Valdés, Tenants' Concerns Delay Plan to Remove Lead Paint, BOSTON GLOBE, Jan. 22, 1997, at B2 (reporting on public housing residents who refused to leave their apartments from 8 a.m. to 5 p.m. on seven consecutive days when state-mandated lead-based paint abatement was to occur).
112. See MASS. GEN. LAWS ANN. ch. 111, § 197(g). The regulations permit the lead poisoning control director or local board of health agency to allow exceptions under the section. See id. However, these exceptions are inapplicable to pregnant women and children under six. See id.
113. See MD. CODE ANN., ENVIR. § 6-821(b) (eliminating an owner's liability for damages occurring as a result of the tenant's refusal to move).
114. See id. § 6-817(d) (classifying the expenses of temporary relocation as the owner's responsibility); MASS. GEN. LAWS ANN. ch. 111, § 197(h) (West 1996) (stating that reasonable notice should be given prior to the commencement of abatement procedures, and that tenants remain responsible for all additional expenses if they refuse the landlord's substitute living arrangements).
115. See COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at xix (listing estimated costs associated with both containment and abatement of lead-based paint under HUD Guidelines removal methods). The estimate for the containment of intact paint was $5,500 per unit, while containment of deteriorated paint or dust was $8,900. See id. The
provides loans to property owners seeking to abate their residences.\textsuperscript{116}

3. Compliance Incentives

Both Massachusetts and Maryland have set forth mechanisms for compliance; these provisions assist citizens in meeting the statutory standards. Under the Massachusetts scheme, benefits to encourage compliance include a tax credit of up to $1,500 for those property owners who undertake abatement procedures.\textsuperscript{117} Containment procedures are also permissible under the program, reducing the costs to property owners of full compliance with the law.\textsuperscript{118} Owners adhering completely to the provisions gain legal relief in the form of reduced liability.\textsuperscript{119} Specifically, they are subject to a standard of reasonable care while adhering to the provisions\textsuperscript{120} and thus cannot be held strictly liable for any damages that occur after obtaining a letter of compliance.\textsuperscript{121} Similarly, Maryland en-

\textsuperscript{116} See MASS. GEN. LAWS ANN. ch. 111, § 197E (instituting a loan program and setting forth eligibility requirements for funds); MASS. REGS. CODE tit. 760, § 14.01 (1997) (describing the applicability & purpose of the loan program).
\textsuperscript{117} See MASS. GEN. LAWS ANN. ch. 111, §§ 197(c), 199(a) (stating that owners in full statutory compliance are immune from suits based on strict liability theory).
\textsuperscript{118} See id. § 199(a). To qualify for reduced liability, the owner must obtain a letter of full compliance from a licensed inspector. See id.
\textsuperscript{119} Strict liability is defined as "liability without fault." BLACK'S LAW DICTIONARY 1422 (6th ed. 1990). Historically, strict liability developed as a tort law concept. See generally W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 75 (W. Page Keeton, ed., 5th ed. 1984). It disregards both intentional and negligently inflicted harms. See id. at 534.
Courages statutory compliance by its owners through the availability of a qualified offer. Under this provision, a landlord must pay reasonable costs and expenses for an at-risk tenant, up to an aggregate maximum of $17,000, thereby releasing the landlord from all future liability to that tenant.

B. Surveying Intermediate State Approaches

The legislation of most states fall into an intermediate category of lead-based paint legislation. These states have enacted at least some lead-based paint poisoning prevention laws, but these laws are less comprehensive than the Massachusetts and Maryland statutes. The basic characteristics of the laws in these states focus on identifying and responding to children diagnosed with lead poisoning. Programs typically are implemented by the department of public health and feature blood screening for children and public distribution of educational information. Medical and environmental intervention seldomly occur at a preventative stage, but instead take place only after a child is poisoned. Intermediate level states generally require abatement in some form, but lack clear standards for its completion.

122. See Md. Code Ann., Envir. §§6-826 to -42 (1996) (describing the various provisions associated with the qualified offer). But see infra notes 189-90 and accompanying text (discussing the detrimental aspects of the qualified offer).

123. See id. §§ 6-835, 6-839 to -40 (requiring owners to pay a maximum of $7,500 for necessary medical expenses and $9,500 for relocation expenses under the qualified offer).

124. See Comprehensive and Workable Plan, supra note 4, at 5-2 (noting that many state lead-based paint laws were enacted to receive funding under the LPPPA and thus may not be comprehensive); see also Rechtschaffen, supra note 5, at 419-21 (contending that states need to develop more comprehensive and preventative approaches to lead-based paint problems to overcome the private market forces defeating current programs).

125. See Comprehensive and Workable Plan, supra note 4, at 5-2; infra notes 132-42 and accompanying text (detailing the applicable state provisions); see also Bush, supra note 3, at 649-50 (describing the various state provisions for the regulation of, and testing for, the presence of lead-based paint); Jennifer Tiller, Recent Development, Easing Lead Paint Laws: A Step in the Wrong Direction, 18 Harv. Envtl. L. Rev. 265, 267-69 (1994) (classifying the types of programs available under various state lead-based paint laws).

126. See Comprehensive and Workable Plan, supra note 4, at 5-2. Massachusetts and Maryland are the only states with proactive prevention-based programs. See id.

127. See id. at 5-2 to 5-3 (explaining the typical statutory provisions in the majority of states).

128. See id. at 5-3 (describing the intervention programs in place in most states).

129. See id. at 5-3 to 5-4 (noting the lack of specifications in the area of abatement).
I. Similarities to Comprehensive States

Additional states have begun to develop programs emulating the expansive provisions set forth by Massachusetts and Maryland.\textsuperscript{130} States implementing these programs have gone beyond the typical state provisions, closing the gap with comprehensive approaches.\textsuperscript{131} Approximately one-third of the states require abatement of lead-based paint found in residential buildings;\textsuperscript{132} Connecticut and New Jersey even have established financial assistance programs for those undertaking lead paint abatement procedures.\textsuperscript{133} The involvement of private physicians and laboratories in the detection and recording of lead poisoning is common in a number of states.\textsuperscript{134} These provisions typically require that a medical report be filed with the appropriate state health official within a specific time frame.\textsuperscript{135} In the area of non-compliance, South Carolina’s enforcement provision allows a lien to be placed on the affected property if the State must abate lead-based paint,\textsuperscript{136} while Maine violators face a $500 fine, six months imprisonment, or both.\textsuperscript{137}

\textsuperscript{130} See, e.g., R.I. GEN. LAWS § 23-24.6-5 (1996). Rhode Island expressly adopted a “coordinated and comprehensive program for primary lead poisoning prevention.” \textit{Id.}

\textsuperscript{131} See supra Part II.A. (describing the characteristics of a comprehensive approach to lead poisoning).


\textsuperscript{133} See CONN. GEN. STAT. ANN. § 8-219(e) (providing funding program guidance); N.J. STAT. ANN. § 26:2-136 (stating that local boards of health are eligible to receive lead-based paint abatement loans).

\textsuperscript{134} See CONN. GEN. STAT. ANN. § 19a-110(a); 410 ILL. COMP. STAT. ANN. 45/7; KY. REV. STAT. ANN. § 211.902; LA. REV. STAT. ANN. § 30:2351.52 (West Supp. 1998); ME. REV. STAT. ANN. tit. 22, § 1319; MINN. STAT. ANN. § 144.9502, subd. 3; R.I. GEN. LAWS § 23-24.6-11; S.C. CODE ANN. § 45-53-1380.

\textsuperscript{135} See, e.g., CONN. GEN. STAT. ANN. § 19a-110(a) (requiring that a report of poisoning be sent to the Director of Public Health within 48 hours of diagnosis); ME. REV. STAT. ANN. tit. 22, § 1319 (requiring a physician’s report to be sent to the Department of Human Services within five days); R.I. GEN. LAWS § 23-24.6-11 (requiring a report to be sent to the Director of Health within ten days).

\textsuperscript{136} See S.C. CODE ANN. § 44-53-1470 (indicating that the building also may be deemed uninhabitable until abatement occurs, thus eliminating the possibility of rent collection).

\textsuperscript{137} See ME. REV. STAT. ANN. tit. 22, § 1325 (stating that violations within the same
2. Differences Between Intermediate and Comprehensive States

Most states have not reached comprehensive levels, although some have passed legislation that differs from both Massachusetts and Maryland. States with post-abatement provisions in force require maintenance and inspection following any type of lead removal work.\(^{138}\) Minnesota requires a post-abatement inspection to ensure that "deleading" activities are successful and Vermont residents must perform "essential maintenance practices" on their homes to maintain a lead-safe environment.\(^{139}\)

Several states also look beyond a child's home to the places where many children spend a majority of their time: school and day care.\(^ {140}\) Connecticut, Maine, Rhode Island, and Wisconsin are among the states that inspect for potential lead hazards in day care centers and schools as part of their lead prevention programs.\(^ {141}\) Similarly, evidence of a blood screening test for lead poisoning is required before a child can enter school in Connecticut, Delaware, the District of Columbia, Illinois, New Jersey, Rhode Island, and Wisconsin.\(^ {142}\) This inclusion of mandatory blood testing prior to commencing school demonstrates the intermediate states' commitment to lead-based paint poisoning prevention.

III. IMPLEMENTING EFFECTIVE LAWS DESIGNED TO ELIMINATE LEAD POISONING

In an effort to prevent lead poisoning, both the federal government and the states have employed a variety of measures.\(^ {143}\) Unfortunately, the federal government's success has been limited to achieving minor goals due to ineffective administration and the restricted application of dwelling are considered independently when assessing penalties).

\(^{138}\) See GUIDELINES FOR EVALUATION, supra note 1, at xxiv (advocating the use of post-abatement practices to ensure successful removal).

\(^{139}\) See MINN. STAT. ANN. § 144.9504, subd. 9 (West Supp. 1998); VT. STAT. ANN. tit. 18, § 1759 (Supp. 1997) (detailing the cleaning and maintenance work that reduces lead-based paint hazards).

\(^{140}\) Cf. NATURE & EXTENT OF LEAD POISONING, supra note 11, at XI-7 (emphasizing the importance of evaluating schools and day care centers for lead-based paint).


\(^ {142}\) See CONN. GEN. STAT. ANN. § 10-206(b); DEL. CODE ANN. tit. 16, § 2603 (1995); D.C. CODE ANN. § 31-2402 (Supp. 1997); 410 ILL. COMP. STAT. ANN. 45/7.1 (West 1997); N.J. STAT. ANN. § 26:2-137.4 (West Supp. 1997); R.I. GEN. LAWS § 23-24.6-8; WIS. STAT. ANN. § 24.162.

\(^ {143}\) See supra Parts I and II (detailing the provisions enacted by Congress and the states).
early prevention legislation to public housing alone. Similarily, the states, while addressing private housing in their laws, have failed to implement effective strategies that value children's health over property owners' interests. Title X has shown an improvement by adopting a more expansive approach as evidenced by the deadlines, reports, and scope of the program.

A. Federal Regulations Must Develop a Viable Law Enforcement Strategy

Title X appears to provide a solid foundation upon which truly effective legislation can develop. Rather than requiring “lead-free” housing, Congress wisely selected the goal of “lead-safe” housing. This goal acknowledges that the proper execution of correct encapsulation methods can allow for lead-based paint to remain in a home without adverse consequences to its residents. In addition, under Title X, all lead inspectors, assessors, and workers must be certified under EPA standards, thereby ensuring that the finished work will be completed with safe tech-

144. See UNDERSTANDING TITLE X, supra note 48, at 2-3 (discussing the groundwork upon which Title X was developed with specific reference to the ineffectiveness of prevention efforts in the many decades prior to enactment); Tiller, supra note 125, at 266-67.

145. See Rechtschaffen, supra note 5, at 397.

146. See UNDERSTANDING TITLE X, supra note 48, at 1 (characterizing Title X as “unquestionably the most comprehensive and significant lead poisoning prevention legislation in more than two decades”); Rechtschaffen, supra note 5, at 398-400 (providing an overview of Title X’s comprehensive key provisions and applicability); Tiller, supra note 125, at 267; see also Vincent M. Coluccio & David Chambers, Key Federal Regulations, in LEAD-BASED PAINT HAZARDS, supra note 90, at 43, 51 (noting that interagency involvement at the federal level, although one of the lesser known provisions of Title X, provides for smoother regulatory development and enforcement).

147. See 42 U.S.C. § 4851a (1994) (stating the multiple goals and purposes of Title X); PUTTING THE PIECES TOGETHER, supra note 2, at 88 (calling for involvement by the federal government to encourage state adoption of federal benchmark standards); UNDERSTANDING TITLE X, supra note 48 (citing endorsement page) (supporting the expanded framework that Title X embraces). See generally Bush, supra note 3, at 660-67 (providing an overview of the Title X federal program).

148. See Rechtschaffen, supra note 5, at 398 (contending that “lead-safe” housing is a more efficient goal than “lead-free”); see also UNDERSTANDING TITLE X, supra note 48, at 3 (emphasizing that Title X’s goal is the reduction of lead hazards, not the removal of all lead-based paint); Jack L. Anderson, Jr., Legal Liability, Risk Management, and Insurance Considerations for Lead Hazard Control Professionals, in LEAD-BASED PAINT HAZARDS, supra note 90, at 209, 210 (supporting the decision to choose “lead-safe” methods to preserve lower value property units).

149. See Rechtschaffen, supra note 5, at 398-99 (addressing the tactics of Title X by its use of long and short term procedures to control lead-based paint hazards instead of eliminating lead-based paint); see also PUTTING THE PIECES TOGETHER, supra note 2, at 12-14 (stating that the extent of the hazards may only require certain containment procedures, thereby reducing costs).
By adopting a housing approach to lead poisoning, Congress demonstrated its commitment to effective prevention of lead-based paint hazards.

The key mandatory disclosure provision of Title X enables prospective tenants and purchasers to gain invaluable knowledge that could save children from potential harm. By refusing to rent or purchase dangerous premises, informed consumers provide an incentive for landlords and owners to eliminate property hazards. Over time, the existence of knowledgeable consumers will allow market forces to remedy the present situation, encourage owners to invest in abatement and place a premium on lead-free homes.

The most notable omission from Title X is specific clean-up require-

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150. See 40 C.F.R. § 745.225 (1997) (providing stringent EPA certification requirements); see also GUIDELINES FOR EVALUATION, supra note 1, at 2-8 to 2-9 (describing the training and knowledge of risk assessors and inspectors); supra note 56 (discussing the certification process).

151. See Bush, supra note 3, at 662 & n.145 (citing Title X provisions which assert that housing conditions, not residents' health, guide implementation of the Act); see also MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 1 (noting Title X adoption of a housing approach to lead poisoning); Schukoske, supra note 83, at 539-40 (indicating that Title X also adopts the environmental paradigm model advocated by the author); supra note 45 (discussing the differences between the housing and health approaches). But cf. UNDERSTANDING TITLE X, supra note 48, at 13 (arguing that although Title X emphasizes prevention, the Act fails to mandate any procedures when a child is indentified as lead poisoned).

152. See 42 U.S.C. § 4851a(3) (1994) (stating that one of the goals of Title X is "to encourage effective action to prevent childhood lead poisoning by establishing a workable framework" for assessment and elimination of lead-based paint hazards).

153. See Schukoske, supra note 83, at 534-35 (supporting disclosure of existing and potential hazards before final sale); Bush, supra note 3, at 669 (asserting that hazard disclosure is vital to a successful lead prevention program). But see Rechtschaffen, supra note 5, at 403 (recognizing that rental discrimination and limited lending are potential problems unintentionally caused by hazard disclosure).

154. See Jacobs, supra note 115, at 5 (asserting that informed purchasers and lessees will stimulate lead abatement); see also Rechtschaffen, supra note 5, at 402-03 (proposing that disclosure and mortgage requirements will encourage economically beneficial voluntary abatement); Schukoske, supra note 83, at 514 (asserting that disclosure and aversion to liability and financial loss will result in voluntary compliance with lead-based paint laws); infra notes 198-99 and accompanying text (highlighting potential problems if costs exceed an owner's aggregate investment).

155. See Jacobs, supra note 115, at 4 (arguing that market demands for lead-free homes will render abatement a wise investment); Schukoske, supra note 83, at 538 (predicting effects on real estate market values once investors demand lead-free housing).

Some commentators argue that in order for market forces to work efficiently, government intervention must provide a number of inputs. See id. at 559. These include technology, disclosure laws, requirements for safe abatement, provisions for civil and criminal liability, and government funding. See id. With these policy components, the lead-safe housing market will be able to operate effectively. See id.
ments. While Congress sought to eliminate the hazards of lead-based paint, it made no provisions requiring private housing owners to implement any containment or abatement measures. Congress also has failed to specify a standard of care to which landlords or sellers would be held liable for damages, creating uncertainty about the extent of their responsibilities. Consequently, compliance with Title X and its regulations will be challenging until Congress articulates a clear duty of care.

Title X and its regulations also falter because they defer to state and local governments for a majority of significant determinations regarding private residences. The EPA and HUD should use their respective knowledge and expertise to create workable and effective solutions to lead poisoning because half of the states lack any type of lead-based paint law and even fewer have substantive preventative statutes.

156. Cf. Bush, supra note 3, at 671 (noting that Title X does not contain any lead-based paint abatement provisions applicable to private housing).

157. Abatement or containment measures are required for federally owned or subsidized housing defined under various laws. See 42 U.S.C. §§ 4822, 4851, 4851b(7), 4851b(8), 4851b(21), 4852 (1994) (detailing the requirements placed upon HUD and local housing authorities to abate federally assisted housing hazards); infra notes 160-62 and accompanying text (describing inefficiency caused by failure to apply established federal standards to state programs regulating private housing).

158. See PUTTING THE PIECES TOGETHER, supra note 2, at 56 (recommending more lucid uniform standards of lead hazard control because the present standards are unclear); Rechtschaffen, supra note 5, at 400 (emphasizing that Congress declined to resolve a number of issues, including determination of liability, leaving those decisions to the states).

With a clear standard of care enunciated by the laws, insurance for lead-based paint injuries for property owners would be more readily available because a consistent pattern of claims could be developed. See id. at 438-39. Additionally, insurance would assist in compliance because owners could not receive insurance against future claims unless certified compliance is achieved. See PUTTING THE PIECES TOGETHER, supra note 2, at 111-14, 123 (developing a framework for providing certification of lead-safe status to insurers when owners seek liability insurance); see also infra note 230 and accompanying text (listing cases in which insurance policies refused to cover lead poisoning).

159. See Lead-Based Paint Hazard in American Housing: Hearing Before the Subcomm. on Hous. and Urban Affairs of the Senate Comm. on Banking, Hous. and Urban Affairs, 102d Cong. 246, 252 (1991) [hereinafter 1991 Hearings – Pollack Testimony] (written testimony of Stephanie Pollack, Director of Lead Poisoning Project, Conservation Law Foundation) (contending that "liability drives compliance" and asserting that a clear duty of care would benefit parties participating in transactions involving lead-based paint); Rechtschaffen, supra note 5, at 420 (concluding that efforts to eliminate lead-based paint are "stalemate" due to unclear requirements for property owners).

160. See Schukoske, supra note 83, at 548 (noting that Title X places the burden of developing standards regarding lead-based paint on the states); Bush, supra note 3, at 668 (reasoning that because Title X defers to states, an uncoordinated effort by various states in making important decisions regarding lead poisoning detracts from the efficacy of the overall regulatory scheme).

161. See Bush, supra note 3, at 668 (recognizing the weaknesses in implementing Title
already has made the majority of these decisions due to the mandatory abatement in federal housing, and these standards could apply easily to private dwellings. Title X includes provisions which describe procedures for inspection and abatement of federally-assisted housing. These provisions could become applicable to private residences by amending Title X.

While Title X has proven successful in some limited aspects, it still lacks adequate provisions in other key preventative areas. Implementation of the Title X Task Force’s recommendations may assist in filling this void. Title X must be enforced strongly and expanded if the federal government is to meet its goal of eradicating lead-based paint poisoning.

B. State Approaches: Finding What Works

States have taken a variety of approaches in addressing the problems of residential lead-based paint hazards. State legislation has been most successful when it defines clearly the duties and responsibilities of property owners and provides financial and administrative assistance. States have failed when duties of care have not been clear, leaving both owners and victims uncertain of the outcome when someone is poisoned.
1. Comprehensive States: Massachusetts and Maryland

Massachusetts and Maryland provide the most comprehensive and preventative approaches, encompassing a majority of issues surrounding lead poisoning. While both states have made progress in reaching their goals, continuing improvement is needed.

a. Successful Provisions

The current Massachusetts provisions arguably create the nation's most comprehensive program for the eradication of childhood lead poisoning. In the area of prevention, Massachusetts requires screening of children and maintenance of lead poisoning records. Similarly, in Maryland, the registration of property provision creates a useful database for future research and study. This database benefits potential victims of lead poisoning by enabling state officials to determine the lead safety levels in their rental housing and to track recurring problems.

Both Massachusetts and Maryland encourage owners and landlords to accept a substantial share of the responsibility in eliminating lead poisoning. The Maryland LPPPA compels owners to perform risk reduction treatments to prevent further illness resulting from ineffective abatement. These risk-reduction requirements can eventually eliminate the hazardous conditions that result from peeling paint and lead dust.

lead poisoning remedy provisions and detailing Ohio's landlord tort liability under statutory and judicial remedies of lead-based paint issues); supra notes 90-91 and accompanying text (highlighting Maryland's legislative scheme designed to bypass the conventional state tort system).

170. See Rechtschaffen, supra note 5, at 422-23 (indicating that Massachusetts and Maryland are among a select group of states that have enacted or attempted to enact expansive legislation).

171. See infra Part III.B.1.b (advocating alterations to the Massachusetts and Maryland acts to achieve the legislatures' purpose).

172. See Bush, supra note 3, at 657 (describing the emulative model status of Massachusetts's lead poisoning prevention system); see also Rechtschaffen, supra note 5, at 423 (highlighting various provisions of the MLPPCA).

173. See supra notes 92-98 and accompanying text (discussing the lead poisoning prevention requirements of the MLPPCA).


176. See id. § 6-815; Schukoske, supra note 174, at 37 (noting the requirements of property owners and indicating that tenants assume an important role in Maryland's system by acting as indicators of potential owner violations).

177. But cf. Schukoske, supra note 174, at 38 (noting the untested efficacy of the risk
Massachusetts designed its program to be "self-enforcing," encouraging owners to comply with the regulations through various incentives.\textsuperscript{178} The MLPPCA includes benefits such as loan programs to assist with funding abatement projects, tax credits for abatement, and reduced liability for statutory compliance.\textsuperscript{179} Similarly, Maryland provides the qualified offer incentive, which serves to limit potential damages for owners in compliance with the regulations.\textsuperscript{180} This emphasis on owner action, supported by broad-based programs and compliance incentives, provides Massachusetts and Maryland with the tools to eliminate lead poisoning.

\textbf{b. Failures of the Programs}

While the comprehensive nature of the Massachusetts and Maryland programs takes an active role in reducing the dangers of lead-based paint, both programs have shortcomings hindering complete effectiveness.\textsuperscript{181} For example, in Maryland, only rental housing built prior to 1950 falls within the scope of its law.\textsuperscript{182} This limitation excludes both owner-occupied homes and all homes built between 1950 and 1978, houses that are considered high-risk and must be included to achieve an effective prevention program.\textsuperscript{183} Moreover, in contrast to the federal approach where no abatement is required, Massachusetts requires full abatement or containment.\textsuperscript{184} While this requirement results in lead-safe housing, owners may incur additional costs reducible by more efficient methods that still adequately ensure safety.\textsuperscript{185}

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\textsuperscript{178} See 1991 Hearings - Pollack Testimony, supra note 159, at 251. But see Tiller, supra note 125, at 274 (arguing that greater funding is needed in Massachusetts to ensure consistent and increased compliance).
\textsuperscript{179} See Bush, supra note 3, at 658-59 (highlighting the compliance incentives presently available under the MLPPCA).
\textsuperscript{180} See MD. CODE ANN., ENVIR. §§ 6-826 to -42 (explaining statutory procedure and effect of the Maryland qualified offer).
\textsuperscript{181} See Rechtschaffen, supra note 5, at 424-26 (explaining the modifications necessary to improve both the Massachusetts and Maryland programs).
\textsuperscript{182} See MD. CODE ANN., ENVIR. § 6-803 (1996); see also id. § 6-801(b) (defining "affected property").
\textsuperscript{183} See Rechtschaffen, supra note 5, at 426 (verifying that lead risks still exist in statutorily exempt dwellings); Schukoske, supra note 174, at 31 (finding that nearly 350,000 rental units were built in Maryland between 1950 and 1979 and many of them may contain lead-based paint).
\textsuperscript{184} See MASS. GEN. LAWS ANN. ch. 111, § 197 (West 1996); see also Anderson, supra note 148, at 209-10 (arguing that high costs require complete abatement to be an ultimate goal, rather than an immediate one, especially when "strict enforcement of full abatement" might cause owners to abandon lower value property units).
\textsuperscript{185} See GUIDELINES FOR EVALUATION, supra note 1, at xxii-xxiii (describing permissible methods of control under Title X).
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Furthermore, the Massachusetts compliance incentive of reduction in owner/landlord liability is of debatable value because of the potential harm that children still face.\footnote{186} For those owners not in compliance with the MLPPCA, strict liability attaches.\footnote{187} However, strict liability theory is disagreeable to property owners and may cause a disincentive for housing market investment.\footnote{188} Similarly, the qualified offer that limits liability in Maryland is controversial because it appears to favor owners' property concerns over children's health.\footnote{189} Recoverable damages may prove insignificant when compared to the expenses and lost wages that a poisoned child will experience during a lifetime.\footnote{190}

Various other legislative provisions in both states raise a number of issues. The MLPPCA is applicable only to property where children under the age of six reside.\footnote{191} As a result, this provision may prompt lessors to discriminate against families with small children due to the imposition of additional requirements, an effect already seen in Massachusetts.\footnote{192} The

\footnote{186. See Tiller, supra note 125, at 272-73 (condemning reduced liability as contrary to the purpose of lead poisoning laws).}

\footnote{187. See MASS. GEN. LAWS ANN. ch. 111, §§ 197(b), (c); Bencosme v. Kokoras, 507 N.E.2d 748, 749-50 (Mass. 1987) (holding that proving knowledge of negligence is not necessary for a § 197 violation); see also supra note 121 and accompanying text (discussing strict liability in lead-based paint cases).}

\footnote{188. See Rechtschaffen, supra note 5, at 425 (discussing the unhappiness with the application of a strict liability system).}

\footnote{189. See id. at 427 (challenging the Maryland LPPPA's qualified offer provision because of the conflict it creates between property and children).}

\footnote{190. See MD. CODE ANN., ENVIR. § 6-840 (1996) (indicating that the recoverable amount under the Maryland LPPPA is only $17,500); see also Rechtschaffen, supra note 5, at 426 & n.250 (supporting those who believe the qualified offer is not an adequate remedy for poisoned children); Schukoske, supra note 174, at 24 n.9 (indicating the controversy surrounding the qualified offer).}

\footnote{191. See MASS. GEN. LAWS ANN. ch. 111, § 197(a) (West 1996).}

\footnote{192. See Tina Cassidy, New Lead Paint Law Slow to Create Impact, BOSTON GLOBE, Oct. 7, 1995, at 29 (reporting discrimination against a Massachusetts family seeking housing, and the prevalence of such discrimination by Massachusetts landlords reluctant to delead their buildings); see also MASS. TASK FORCE REPORT, supra note 87, at 20-21 (recognizing the potential rental discrimination in Massachusetts and advocating prosecution of high profile lead-based paint discrimination cases); 36 HOWARD J. ALPERIN & ROLAND F. CHASE, MASSACHUSETTS PRACTICE § 531, at 368 (West 1979 & Supp. 1997) (noting that refusals to rent or evictions of families with a child under six violates Massachusetts consumer protection laws); Rechtschaffen, supra note 5, at 425 (disagreeing with the age mechanism that triggers MLPPCA applicability and noting that it has resulted in discrimination in Massachusetts).}

The Fair Housing Act (FHA) prohibits familial status discrimination in the sale or rental of housing. See 42 U.S.C. § 3604 (1994). Familial status encompasses minors under the age of eighteen who reside with a parent, legal guardian, or designee of the parent. See 42 U.S.C. § 3602(k)(1)-(2); see also Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 250 (9th Cir. 1997) (stating that valid FHA claims require that the claimant is within the pro-
Maryland LPPPA does not mandate a post-treatment testing procedure which could protect vulnerable tenants from harmful lead dust that may remain after abatement procedures occur. Because the success rate of the risk reduction program in Maryland has not yet been determined, mandatory post-testing must be required.

2. Intermediate States: Working Toward a Comprehensive Program

The states comprising this moderate category also have enacted statutes that have both beneficial and detrimental consequences. The inclusion of day care centers under applicable state laws extends lead prevention effectiveness, because many children spend a significant amount of time in day care where they may be exposed to lead hazards. Similarly, statutory provisions requiring proof that a child has been tested increase the likelihood that lead poisoning will be detected earlier, thus enabling affected children to receive treatment.

In contrast, some state programs cause severe problems. The lack of financial assistance to owners for abatement procedures can have devastating effects on low-income neighborhoods. Without assistance, many

193. See Schukoske, supra note 174, at 41 (highlighting studies showing endurance of potentially dangerous amounts of lead dust after removal attempts); PUTTING THE PIECES TOGETHER, supra note 2, at 76-78 (enunciating the importance of proper dust-testing procedure for residential buildings); supra note 139 and accompanying text (describing the Minnesota and Vermont provisions' post-abatement testing).

194. See Rechtschaffen, supra note 5, at 425 (asserting that this lack of treatment constitutes a "central flaw" in the Maryland LPPPA).

195. See id. at 421-22 (surveying different state statutory systems).

196. See Gwen Carleton, State Checkup Didn't Uncover Day Care Lead, CAPITAL TIMES (Wis.), Aug. 20, 1997, at 2A, available in 1997 WL 12258568 (reporting lead-based paint discovered at a Wisconsin day care center); supra note 141 and accompanying text (listing the states that made a legislative decision to include schools and day care centers).


198. See Jacobs, supra note 115, at 5 (indicating difficulties of requiring low-income area abatement and suggesting government funding to overcome them); Schukoske, supra note 83, at 529 (noting landlord arguments that abandoning property will only exacerbate
owners choose to abandon their property rather than assume large debts for a building that produces little income. The vast majority of states lack the interagency involvement of the Massachusetts and Maryland systems. This network allows various public officials to work together to remedy a lead poisoning situation. Without this close connection, most states likely will have difficulty achieving Massachusetts' success in reducing the levels of poisoning.

Ohio and Missouri's legislative efforts are illustrative of how intermediate states begin program development. The Ohio provisions, passed in 1994, provided guidance for licensing and training of lead workers, ordered the director of public health to formulate a prevention program and created a legislative committee to investigate lead related issues. The Ohio legislation, however, did not include the original bill's provisions regarding property inspection, blood screening for children, tax credits, or prevention of discrimination. Missouri's legislature passed a

the low-income housing shortage); see also MASS. TASK FORCE REPORT, supra note 87, at 44 (recognizing that many property owners are financially unable to borrow the requisite amount of money for lead-based paint abatement).

199. See Rechtschaffen, supra note 5, at 424 & n.236 (noting Connecticut abandonments in comparison to other states). Connecticut has experienced difficulties as owners of low-income properties have chosen or been forced to abandon their buildings rather than make abatement expenditures exceeding the buildings' aggregate worth. See id.; see also Tom Condon, Lead Program May Spark Loss of Housing Stock, HARTFORD COURANT, Feb. 22, 1996, at A3; Tom Puleo and Liz Halloran, City Takes Legal Steps Against Landlords, HARTFORD COURANT, Feb. 21, 1996, at A1 (indicating that sending landlords to court will likely result in abandonment). But cf. MASS. REGS. CODE tit. 760, § 14.05(4) (1997) (mandating that at least half of the available funds for the Massachusetts loan program be allocated to those in high-risk locations).

200. See COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 5-2, 5-5 (contrasting the lack of agency cooperation in most states with the Massachusetts and Maryland cooperative schemes).

201. See id. at 5-5 (arguing that interagency involvement facilitates effectiveness of the laws); PREVENTING LEAD POISONING IN YOUNG CHILDREN, supra note 1, at 4 (delineating the essential interaction between public agencies, such as housing and economic development, and private groups, such as physicians and homeowners, to develop a meaningful program).

202. See COMPREHENSIVE AND WORKABLE PLAN, supra note 4, at 5-5 (noting the successful integration of public and private individuals in Maryland and Massachusetts); see also Foreman, supra note 87, at B5 (highlighting the success of Massachusetts' lead poisoning program).

203. See Barragate, supra note 169, at 550 (urging legislative action in response to judicial failure to solve lead poisoning problems in Ohio); infra notes 206-08 (discussing Missouri's legislation).

204. See Barragate, supra note 169, at 550-52 (describing Ohio's lead program features).

205. See id. (contending that Ohio's legislation is only a temporary measure and requires further development).
bill in 1993 that created the first state-wide uniform lead program. This program also created a reporting system, a legislative commission, licensing and training requirements, and mandatory abatement procedures. The plan as implemented, however, does not focus the necessary attention on the problem and has experienced administrative difficulties.

The federal and state programs each have significant potential to eliminate lead poisoning in young children. Although these provisions have not succeeded individually, combined federal and local governmental efforts should allow the best aspects of each program to complement one another. The federal government can provide leadership by setting clear prevention standards for all owners. State and local governments should accept the day-to-day role of testing and enforcement because those responsible for enforcement will be closest to the violations.

IV. COMBINING FEDERAL AND STATE GOVERNMENT MEASURES WITH CITIZEN ACTION TO ENSURE SUCCESS

Developing a successful relationship between all government levels and private individuals is the key to eliminating lead poisoning. This interaction demands time and resources that must be devoted to lead poisoning if the legislative intent is to be accomplished.

206. See Meyer, supra note 6, at 24 (indicating that only three Missouri counties had lead programs prior to the adoption of the 1993 legislation).

207. See id. at 23-24 (describing the positive features of the Missouri program).

208. See id. at 25 (expressing concern about the lack of focus on the various types of lead exposure as well as the delays in implementation).

209. See generally Rechtschaffen, supra note 5, at 427-44 (explaining a recent comprehensive California proposal incorporating state and federal program elements such as disclosure, insurance, reduced liability, and financing).

210. See PUTTING THE PIECES TOGETHER, supra note 2, at 16 (arguing for the importance of federal-state interactivity).

211. See id. (indicating the imperative need for the federal government's leadership).

212. See id. (describing the potential interaction between the differing government levels); Bowie, supra note 169, at 223 (supporting involvement of local health agencies, the Department of Human Services, and the courts in enforcing lead poisoning prevention laws).

213. See NATURE & EXTENT OF LEAD POISONING, supra note 11, at XI-5 to -6 (encouraging an "integrated and coordinated" effort that combines all government levels to combat lead poisoning); PUTTING THE PIECES TOGETHER, supra note 2, at 16; see also Ernest F. Imhoff, Anti-lead Poisoning Group and Police to Join Efforts, BALTIMORE SUN, Jan. 21, 1998, at 3B (reporting on a Maryland educational lead poisoning coalition between police and a local group).

214. See PUTTING THE PIECES TOGETHER, supra note 2, at 16 (highlighting potential
A. Necessary Modifications For Effective Enforcement

One of the most problematic issues surrounding lead-based paint hazards is the high cost of removal or containment. To encourage lead-safe housing, the federal and state governments should establish funding for these procedures. The distribution of funds could occur on an individual basis or through community and non-profit groups as it is in Massachusetts. Following the Massachusetts example, property owners or authorized organizations could apply for low-interest loans specifically designed for the elimination of lead-based paint hazards. To maintain an affordable housing stock, a portion of these funds should be grants rather than loans. Without this essential financial assistance, officials attempting to enforce the law will likely face obstacles such as abandoned buildings or insolvent owners unable to pay for repairs and fines.

roles of private individuals and groups within the Title X scheme); see also 1991 Hearings – Pollack Testimony, supra note 159, at 250-51 (discussing the “infrastructure building” that may develop under effective lead poisoning prevention laws); Kris Meek, Prevention Through Partnership Program, THE LEAD POST, Fall/Winter 1997, at 4 (describing the Norfolk, Virginia, community-government partnership developed to respond to lead poisoning issues).

215. See supra note 115 (stating HUD’s estimated costs for containment and abatement).

216. See Schukoske, supra note 83, at 562 (arguing that congressional funding through an import tax on lead could fund testing, training of workers, abatement, tenant relocation, and further research of effective removal methods); Diane Cabo Freniere, Comment, Private Causes of Action Against Manufacturers of Lead-Based Paint: A Response to the Lead Paint Manufacturers’ Attempt to Limit Their Liability by Seeking Abrogation of Parental Immunity, 18 B.C. ENVTL. AFF. L. REV. 381, 420-21 (1991) (advocating development of a fund similar to Superfund specifically for lead-based paint removal in residential buildings).


218. See MASS. GEN. LAWS ANN. ch. 111, § 197E; MASS. REGS. CODE tit. 760, § 14.05(2) (1997) (indicating that the Massachusetts loan program provides funding to owners rehabilitating housing for low and moderate income persons); see also Jennifer Babson, Funding for Lead Abatement Runs Dry, BOSTON GLOBE, Jan. 24, 1998, at E1 (detailing how the Massachusetts financing program spent its $4.5 million loan budget with six months remaining in the fiscal year).

219. See Rechtschaffen, supra note 5, at 441 & n.347 (opining that although federal funding could potentially subsidize slumlords, the overall social benefit outweighs this possible detriment); see also Schukoske, supra note 83, at 562 (stating that Congress should distribute “lead tax” funds as grants to states, cities, and urban counties).

220. See PUTTING THE PIECES TOGETHER, supra note 2, at 96 (illustrating how state and local governments could provide assistance to financially distressed owners while still enforcing the law, thus avoiding abandonment of property); Schukoske, supra note 83, at 529 (asserting that ineffective enforcement occurs because agencies are cognizant of abatement costs and fear that owners will abandon property due to the expense); supra
Mortgage requirements are another financial modification that would increase compliance.\footnote{199} The Federal National Mortgage Association (Fannie Mae) is a government chartered corporation which is the nation's largest investor in home mortgages.\footnote{221} Fannie Mae mandates that lead-based paint hazards in multi-family dwellings are remedied before it will purchase the mortgage and also requires environmental disclosure prior to its purchase of a single family home mortgage.\footnote{223} Because Fannie Mae maintains a central position in the U.S. mortgage system, it plays an integral role in developing mortgage standards.\footnote{224} The mortgage industry should follow Fannie Mae's example and predicate home financing upon both remedial measures and full disclosure.\footnote{225}

The federal government can supervise lead-based paint poisoning prevention by setting forth clear national standards for safety and control levels.\footnote{226} Fortunately, the Centers for Disease Control and Prevention (CDC) already determines the blood lead level that is "cause for concern."\footnote{227} With standards already in place for inspection and abatement in federally assisted housing,\footnote{228} Congress should amend Title X to make the LPPPA and Title X regulations dealing with publicly supported housing universally applicable to private housing.\footnote{229} A national liability standard would clarify the duties required of owners and landlords, easing the difficulties in obtaining lead poisoning claims insurance.\footnote{230}

\footnote{199} and accompanying text (describing Connecticut's abandonment problems).

\footnote{221} See Rechtschaffen, supra note 5, at 402-03 (indicating that a change in mortgage underwriting likely would play a role in shifting market pressures).


\footnote{223} See Schukoske, supra note 83, at 551-52 (detailing the preliminary procedures required before Fannie Mae will acquire the mortgage of a home containing lead-based paint).

\footnote{224} See id. at 551.

\footnote{225} See PUTTING THE PIECES TOGETHER, supra note 2, at 100-02.

\footnote{226} Cf. Tiller, supra note 125, at 267 (characterizing the federal government's Title X role as managerial).

\footnote{227} See PREVENTING LEAD POISONING IN YOUNG CHILDREN, supra note 1, at 1-2 (recommending the lowering of the blood-lead toxicity level from 25 µg/dL to 10 µg/dL).

\footnote{228} See supra notes 157-59 and accompanying text (discussing these federal housing standards).

\footnote{229} See Schukoske, supra note 83, at 561-62 (suggesting a Title X amendment setting one uniform national standard for lead levels which will ensure equal protection from lead hazards).

\footnote{230} See Anderson, supra note 148, at 215 (highlighting key insurance and lead-based paint issues); Andrew D. Irwin, Yearning to Breathe Free: HUD's Insurance Coverage Regulations for Lead-Based Paint Abatement, 1 ENVTL. L.AW. 875, 883-89 (1995) (describing the rule mandating insurance for housing authorities abating lead-based paint).

Presently, there is conflict about whether pollutant exclusion clauses in standard liability
To ensure compliance with lead poisoning laws, non-compliance with Title X should render sales and rental contracts invalid and unenforceable. A purchaser or lessee presently can recover only monetary damages for Title X violations through a standard civil suit. Congress' intent not to disrupt real estate practices prevented the creation of a separate action under section 1018 of Title X. Despite this congressional decision, the possibility of an invalid contract would financially motivate sellers and lessors to comply with the Title X requirements.

B. Successful Enforcement of the Law

Because the federal government cannot assume the sole burden of en-

policies encompass lead-based paint. Some cases hold that lead-based paint is a pollutant within the clause, thus excluding poisoning from coverage. See United States Liab. Ins. Co. v. Bourbeau, 49 F.3d 786, 787 (1st Cir. 1995) (determining that lead falls within the scope of the "Absolute Pollution Exclusion" clause); Kaytes v. Scottsdale Ins. Co., Civ. A. No. 97-3225, 1997 WL 763022 at *2 (E.D. Pa. Dec. 9, 1997) (finding that lead qualifies as a pollutant under the insurance policy at issue); Shalimar Contractors v. American States Ins. Co., 975 F. Supp. 1450, 1458 (M.D. Ala. 1997) (concluding that the pollution exclusion clause prohibits recovery because lead-based paint is a pollutant); St. Leger v. American Fire & Cas. Ins. Co., 870 F. Supp. 641, 643 (E.D. Pa. 1994) (holding that although contrary cases exist, lead falls within pollution exclusion clause terms), aff'd, 61 F.3d 896 (3d Cir. 1995). Other cases require insurance companies to indemnify owners under their policies when faced with a lead poisoning suit. Cf. Sullins v. Allstate Ins. Co., 667 A.2d 617, 620 (Md. 1995) (noting that two differing interpretations arising from the terms "pollutant" and "contaminants" were both reasonable, but because of the lack of evidence, the exclusion clause was not construed to apply to lead-based paint); Atlantic Mut. Ins. Co. v. McFadden, 595 N.E.2d 762, 764 (Mass. 1992) (deciding that the insurance policy language did not exclude lead-based paint); Generali-U.S. Branch v. Caribe Realty Corp., 612 N.Y.S.2d 296, 298-99 (N.Y. Sup. Ct. 1994) (providing background information on the issue of lead inclusion in pollution exclusion clauses).

Massachusetts has attempted to clarify this confusion by compromising with the insurance industry. See MASS. TASK FORCE REPORT, supra note 87, at 51. This compromise allows insurers to exclude lead-based paint from property coverage as long as coverage can be purchased at an additional charge. See id. at 51-52 (noting that although costs of policies excluding lead-based paint have decreased, coverage for lead-based paint claims has become "relatively expensive").


233. See id. (indicating that traditional state misrepresentation or fraud claims survive absent a separate cause of action).

234. See James, supra note 231, at 90 (noting that voidability would have a significant impact on real estate brokers who stand to lose a commission if a sale was voided).
forcing environmental laws, the Title X citizen suit provision must be fully utilized.\(^{235}\) The environmental citizen suit provides private parties the opportunity to force others to comply with the law when the government fails to do so.\(^{236}\) For example, when overloaded agencies are unable to inspect and ensure the absence of lead hazards, a citizen could enforce the applicable laws through a private suit.\(^{237}\) Because governmental authorities may choose not to prosecute a lead paint violation due to budgetary or time constraints, the citizen suit offers a strong alternative that effectively achieves compliance without overburdening the government.\(^{238}\)

On the state and local levels, housing code modifications should include lead-based paint provisions.\(^{239}\) The presence of lead-based paint hazards would thus trigger a violation of the housing code, rendering the home or apartment uninhabitable.\(^{240}\) Housing code standards would then include lead-based paint hazards, simplifying the process of enforcement.\(^{241}\) Local agencies responsible for housing inspection could enforce

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\(^{235}\) See Rechtschaffen, supra note 5, at 440-41 (detailing inclusion of citizen enforcement suits in state programs).


\(^{237}\) See Rechtschaffen, supra note 5, at 440-41 (emphasizing that private enforcement plays a vital role in achieving lead-based paint law compliance).


\(^{239}\) See Rechtschaffen, supra note 5, at 439-40 (describing the recently proposed California approach); see also PUTTING THE PIECES TOGETHER, supra note 2, at 93 (anticipating housing and health code modifications when states adopt the suggested Title X benchmark standards).

\(^{240}\) See Rechtschaffen, supra note 5, at 439-40 (asserting that such dwellings would be rendered unfit under state housing laws, the warranty of habitability, and nuisance theory); see also MASS. REGS. CODE tit. 105, § 460.610 (1995) (listing lead-based paint violations under MASS. GEN. LAWS ANN. ch. 111, §§ 196 & 197 as violations of the State Sanitary Code).

\(^{241}\) See Rechtschaffen, supra note 5, at 440 (contending that agency changes would
these ordinances in the ordinary course of business and thus complement federal or state agency action. Additionally, inspection data should be included with title materials kept at the local level, thereby allowing greater accessibility and disclosure for those interested in specific property.

Recent revisions to earlier CDC guidelines have refocused prevention efforts from the federal to a local level. These recommendations encourage individual pediatricians, HMOs, and health agencies to help eliminate lead poisoning. This goal would be accomplished through greater lead-based paint education, environmental investigation and surveillance, and enforcement of housing codes. This dedication of resources will provide a comprehensive commitment to the elimination of lead poisoning.

V. CONCLUSION

During the past twenty-five years, Congress and state legislatures have enacted laws designed to reduce and eventually eliminate childhood lead poisoning. Although statistics indicate a decline in the numbers of poisoned children, current laws remain insufficient. The federal government and the states must establish programs emulating and improving upon those in Massachusetts and Maryland. Communities and individuals need increased involvement to educate people about the dangers of lead-based paint. With this strong joint effort, childhood lead poisoning can be eradicated within the next twenty-five years.

allow lead-based paint inclusion in routine practices); see also MASS. REGS. CODE tit. 105, § 460.700(a) (placing the responsibility of residential inspection for lead-based paint on local enforcement officials). But see Schukoske, supra note 83, at 529 (characterizing the housing code approach to lead-based paint violations as largely ineffective due to overburdened agencies practicing delay rather than enforcement).

242. See PUTTING THE PIECES TOGETHER, supra note 2, at 90 (providing an explanation of the effective local enforcement of lead-based paint provisions through inspections, monitoring of lead inspectors and workers, and community organization involvement); see also MOVING TOWARD A LEAD-SAFE AMERICA, supra note 2, at 9 (documenting the continuing debate over the inclusion of Task Force proposals in state and local housing codes).

243. See James, supra note 231, at 90 (advocating local recordkeeping to accommodate public access to environmental information).

244. See Brit Harvey, New Lead Screening Guidelines From the Centers for Disease Control and Prevention: How Will They Affect Pediatricians?, 100 PEDIATRICS 384, 384-85 (1997). This redirection targets low income children and those residing in older housing stock. See id.

245. See id. at 387.

246. See id. at 387-88; see also MASS. TASK FORCE REPORT, supra note 87, at 14-15 (recommending increased amounts of educational materials and greater involvement of pediatricians).