

## MEMORANDUM OF UNDERSTANDING

This agreement, effective as of the latter date executed by the parties hereto, is entered into by and between the United States Department of Housing and Urban Development ("HUD") Office of Healthy Homes and Lead Hazard Control ("OHHLHC"), having an address located at 451 7<sup>th</sup> Street, SW, Washington, DC 20410, and the New York City Department of Health and Mental Hygiene ("NYCDOHMH"), having an address located at 125 Worth Street, New York, New York 10013.

**WHEREAS**, regulations adopted as the Federal Lead Disclosure Rule (24 CFR Part 35, Subpart A) in accordance with Section 1018 of Title X (42 U.S.C § 4852d) (the "Rule") require that sellers and lessors of pre-1978 housing provide each prospective buyer and lessee information with respect to the presence and knowledge of lead-based paint and/or lead-based paint hazards before the buyer or lessee is obligated under any contract to buy or lease such housing; and

**WHEREAS**, HUD is authorized by Title X to conduct lead poisoning prevention activities, to address the public health problems associated with children's lead poisoning and to coordinate such activities and enforce the Rule; and

**WHEREAS**, reports of childhood lead poisoning and other records maintained by the NYCDOHMH Lead Poisoning Prevention Program ("LPPP") are confidential pursuant to Article 11 of the New York City Health Code ("Health Code") and NYCDOHMH may not disclose any information contained in such records which identifies, may identify, or may lead to the identification of any child, or provides an address or apartment number of any child who is the subject of such records (Identifying Information), without the written consent of "the person to whom such report relates or their legally authorized representative" but may furnish "appropriate information ... to an agency approved by the Department for prevention, ... or ... when necessary for the protection of health" provided that the "person, institution or agency to whom such information is furnished or to whom access to records has been given, shall not divulge any part thereof ..."; and

**WHEREAS**, OHHLHC has requested, and NYCDOHMH has determined that it is necessary, for protection of children's health, and prevention of lead poisoning, to provide OHHLHC with certain information regarding addresses where the LPPP has conducted environmental inspections and has identified lead based paint hazards pursuant to Health Code §173.13(d) in apartments where children with environmental intervention blood lead levels (EIBLL) reside or spend at least 5 hours per week or through primary prevention investigations, and both parties agree that sharing this information will further OHHLHC's and NYCDOHMH's mutual goal of reducing lead exposure.

**NOW, THEREFORE, the HUD OHHLHC and NYCDOHMH set forth their mutual understanding as follows:**

1. NYCDOHMH will initially provide OHHLHC with a list of property addresses, without apartment numbers or other information identifying a child or family occupying apartment units ("Identifying Information"), that were determined to have lead-based paint hazards by NYCDOHMH in the course of an environmental investigation in the primary or supplemental address of a lead poisoned child or during a primary prevention investigation.
2. This list will include properties at which lead-based paint hazards were identified between 1/1/2000 and 12/31/2006 and will include the total number of XRF readings collected in the unit(s) at such addresses, and the number of positive ( $\geq 1.0$  mcg/cm<sup>2</sup>) XRF readings.
3. OHHLHC will match the LPPP address list to a commercial database of properties to determine if there are additional properties under the same ownership, and calculate or estimate the number of residential units in such owned multiple dwellings (buildings with three or more units). OHHLHC plans to focus its enforcement efforts on entities owning larger numbers of units that are better able to address lead-based paint hazards in such buildings.
4. After such entities are identified, NYCDOHMH will provide OHHLHC with the apartment number(s) where lead hazard(s) were identified, copies of orders issued to owners of such properties, and other relevant documents required by OHHLHC for the purpose of discharging its responsibilities under the Rule.
5. The NYCDOHMH LPPP and the HUD OHHLHC will designate individuals to serve as liaisons for the purpose of exchanging information required by this agreement.
6. OHHLHC will not identify addresses as having a lead poisoned child in New York City in its announcements or press releases regarding its enforcement activities. OHHLHC may use the owner/agent name and property address of a property covered by a Settlement Agreement or court order in announcements or press releases. All other public statements or disclosures related to this MOU are prohibited unless the parties consult in advance on the form, timing, and contents of any such publicity, announcement, or disclosure.
7. OHHLHC will use the information provided by the LPPP only for the purpose of discharging its responsibilities under the Rule; and will disclose such information only to appropriate OHHLHC program staff and attorneys employed by HUD and notify all such persons that further disclosure of identifying information is prohibited.
8. All exchanges of information that include property addresses will be provided in electronic form and transmitted using mutually acceptable encryption methods.

9. OHHLHC agrees that, in accordance with Health Code §11.07 (c), it will keep confidential all Identifying Information provided by NYCDOHMH and not further disclose to any other person or entity such Identifying Information, unless compelled by applicable law to disclose such Identifying Information. OHHLHC further agrees that it will notify the NYCDOHMH Office of General Counsel in writing, citing this agreement, upon receipt of any request seeking or document demanding disclosure of Identifying Information. Identifying Information will be safeguarded as required by the Privacy Act, 5 U.S.C. § 552a and withheld under the provisions of the Freedom of Information Act 5 U.S.C. § 552 (b)(6). Notice shall be given not later than five days prior to the date on which disclosure is required by a subpoena, court order or other document, and shall state whether OHHLHC will disclose the requested Identifying Information and shall attach a copy of the document requesting Identifying Information. If a subpoena, court order or other document requests disclosure to be made within five days or less after its receipt by OHHLHC, then OHHLHC shall provide the NYCDOHMH with such notice as far in advance of the disclosure date as possible, but in no circumstance shall OHHLHC make any disclosure without prior notice to the NYCDOHMH. OHHLHC acknowledges that the NYCDOHMH may elect to seek a court order prohibiting the disclosure of Identifying Information when it deems it appropriate to do so, and consents to the NYCDOHMH's intervention in any proceeding, including, but not limited to any judicial proceeding, that seeks the disclosure of Identifying Information.
10. This Memorandum of Understanding shall remain in force unless terminated upon fifteen (15) days written notice by either party. Notices shall be addressed to the undersigned at the addresses below.

**EXPENSES OF EACH PARTY:** Each party will bear its own expenses in connection with the preparation, negotiation, and execution of this Memorandum of Understanding and neither party shall be liable to the other party for such expenses.

**NON-BINDING OBLIGATION:** This Memorandum of Understanding does not obligate funds, personnel, services, or other resources on any party. Furthermore, this Memorandum of Understanding does not give a third party any benefit, legal or equitable right, remedy, or claim under the MOU.

**EFFECTIVE DATE:** This MOU shall be effective on the date of the last signature hereto.

WHEREFORE, the undersigned agree to be bound by the above terms and conditions.

BY: US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Dated: 5 July 11

  
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Jon L. Gant, Director  
Office of Healthy Homes and Lead Hazard Control  
451 7<sup>th</sup> Street, SW, Washington, DC 20410

BY: NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Dated: 7/21/11

  
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Thomas Farley, M.D., M.P.H.  
Commissioner  
New York City Department of Health  
and Mental Hygiene  
125 Worth Street, New York NY 10013