

## Lead Based Paint Requirements under the CDBG & HOME Program

The table below provides information in regards to **Lead-Based Paint** Requirements under CDBG and HOME.

### Overview

HUD introduced lead based paint regulations (24 CFR Part 35) that became effective 9/15/00 for most agencies. The purpose of the regulations is to ensure that housing activities receiving federal assistance and federally-owned housing do not pose lead-based paint hazards to young children and other at-risk populations.

State Law may be more stringent than HUD’s regulations. In that case, subrecipients must comply with the rules that offer occupants the most protection.

There are exceptions to this rule as shown in the table below.

Property Exceptions to Lead Based Paint Rules
<ul style="list-style-type: none"> <li>• Properties built after January 1, 1978.</li> </ul>
<ul style="list-style-type: none"> <li>• Emergency work that is done to save the occupants or property from imminent danger (subsequent work is covered).</li> </ul>
<ul style="list-style-type: none"> <li>• Existence of lead based paint is unlikely – lead based paint banned earlier than 1978 in the state, property already tested or treated.</li> </ul>
<ul style="list-style-type: none"> <li>• Human threat unlikely – unoccupied units to be demolished, not used as residence, rehab will not disturb paint.</li> </ul>
<ul style="list-style-type: none"> <li>• Child occupancy unlikely – zero bedroom units, elderly-only or special, single housing.</li> </ul>

There are four approaches to address Lead Based Paint Hazards as described below:

Approach	Description
Approach 1 – Do No Harm	<ul style="list-style-type: none"> <li>• This approach is intended to allow low-cost repairs and other work to proceed without costly lead-based paint requirements, and perform the rehabilitation in a way that does not create lead hazards. Clearance is limited to the “worksite”, not the entire unit.</li> </ul>
Approach 2 – Identify & Stabilize Deteriorating Paint	<ul style="list-style-type: none"> <li>• This approach provides assurances that lead-based paint (if present) is stable and the unit is “lead safe”. Clearance is conducted for the entire unit; however, it does prevent the reappearance of lead-based paint hazards. On-going maintenance is required.</li> </ul>
Approach 3 – Identify and Control Lead Hazards	<ul style="list-style-type: none"> <li>• This approach provides assurances that lead-based paint hazards have been eliminated from the unit, but if interim controls are used to control the hazards, on-going maintenance is required because treatment is not permanent.</li> </ul>
Approach 4 – Identify and Abate Lead Hazards	<ul style="list-style-type: none"> <li>• This approach removes and permanently eliminates lead-based paint hazards.</li> </ul>

The table below provides an overview of common definitions in lead hazards in rehab projects.

Common Definitions in Lead Hazard Control Work in Rehab Projects	
<b>Lead Hazard Evaluation</b>	<ul style="list-style-type: none"> <li>A risk assessment, paint testing or a combination of these to determine the presence of lead based paint hazards or lead based paint.</li> </ul>
<b>Lead Hazard Reduction</b>	<ul style="list-style-type: none"> <li>Activities designed to reduce or eliminate exposure to lead based paint hazards through methods including interim controls, standards treatments, or abatement.</li> </ul>
<b>Clearance</b>	<ul style="list-style-type: none"> <li>An activity conducted following lead-hazard reduction activities to determine that they are complete.</li> </ul>

There are four approaches in dealing with rehab projects.

1. Notification Requirements,
2. Lead Hazard Evaluation,
3. Reduction of Lead Hazards, and
4. Clearance

Approaches (4) in Lead Hazard Control Work in Rehab Projects	
<b>Notification</b>	<ul style="list-style-type: none"> <li>Every owner occupant and all contractors must receive the EPA pamphlet “Protect Your Family from Lead in Your Home” before starting work. This is not a new requirement. <b>Note: Make sure to document that the owner or occupant actually received the pamphlet. A form requiring signature is the best approach.</b></li> <li>Buyers and renters must receive a disclosure from the current owner/manager that states if there is or is not knowledge of lead-based paint in the unit. This is not a new requirement.</li> <li>It is recommended that to notify occupants of the results of the evaluation of lead hazards and notifying them what was done to contain them.</li> </ul>
<b>Evaluation</b>	<ul style="list-style-type: none"> <li>The method to be used depends on the level of rehabilitation assistance. Methods include paint testing of surfaces – such as done by an XRF machine or laboratory sampling of paint chips – and conducting a risk assessment.</li> <li>An option is to presume lead-based paint is present and proceed with the rehabilitation – using safe work practices and clearance – without further evaluation.</li> <li>If federal funds are used for activities other than rehabilitation – down payment assistance, for example – visual assessment to identify defective paint is required.</li> </ul>
<b>Lead Hazard Reduction</b>	<ul style="list-style-type: none"> <li>The level of reduction activities also depends on the level of assistance. These include:                         <ol style="list-style-type: none"> <li><b>1. Stabilization of Defective Paint.</b> This involves correcting the problem that led to the deterioration of paint, using safe work practices while scraping the old paint, and repainting.</li> <li><b>2. Interim Controls and Standard Treatments.</b> This includes addressing friction and impact surfaces, creating smooth and cleanable surfaces (such as on floors), encapsulation, removing or covering lead based paint components, and paint stabilization.</li> <li><b>3. Abatement.</b> This involves removing lead based paint hazards, often through paint and component removal, and enclosure.</li> <li><b>4. Safe Work Practices (SWP).</b> SWP must be used on all lead based paint surfaces. They are required on interior surfaces larger than 2 feet and on exterior surfaces larger than 20 feet.</li> <li><b>5. Clearance.</b> Clearance must be performed by a certified professional to check whether rehabilitated units are safe for occupancy.</li> </ol> </li> </ul>

## Calculating the Level of Rehabilitative Assistance

The lead hazard evaluation and reduction activities for rehabilitation projects depend on the level of assistance received by the project.

This level is determined by taking the lower of:

- Per unit rehabilitation hard costs which include only hard costs and exclude the costs of work undertaken solely to control lead based paint hazards, or
- Per unit Federal assistance which includes all Federal funds provided to the project, including program income. In units, where there is a combination of Federal and non-federal funds, subtract out the non-Federal share.

### **Example:**

*A family is receiving a CDBG loan of \$25,000 to rehabilitate their home. \$5,000 of the costs are “soft” costs. The level of assistance is \$20,000 because this (the hard costs) is the lower figure. The agency would have to perform a risk assessment and reduce lead paint hazards by interim controls, using safe work practices and clearance.*

## Property Inspection for Lead Based Hazards

The walk through inspection by the rehabilitation specialist is a good opportunity to begin to identify potential hazards.

### **Examples of items to look for include:**

- Interior and exterior surfaces with deteriorating paint;
- All chewable surfaces within reach of small children, such as window sills, banisters, and chair railings;
- Friction and impact surfaces, such as, doors, windows, and floors;
- Areas of bare soil at the exterior of the building, especially those under deteriorated paint surfaces; and
- Causes of lead hazards, such as water damage due to leakage pipes or a leaking roof.

Based on the walk through inspection, staff can prepare a cost estimate to do the rehab work. This amount will be used in determining the type of lead hazard evaluation and reduction required.

- Rehabilitation managers have the option to forego the evaluation and presume there is lead-based paint and/or lead-based paint hazards.
- Work up to and including \$5,000 requires paint testing of the surfaces that will be disturbed during rehab (unless the decision is made to presume lead paint and proceed with work using Safe Work Practices).
- Work over \$5,000 requires a risk assessment of the entire unit and paint testing of surfaces to be disturbed during rehabilitation. Evaluation must be done by certified professionals as described below.

### **Paint Testing Inspector:**

- Must be done by a certified paint inspector who has successfully completed an EPA or State-accredited training program; and
- He/she she must pass the EPA certification examination; he/she must apply and be certified by the state.

### **Risk Assessors:**

- Must successfully complete an EPA or State-accredited training program, and
- Pass the EPA certification exam, and
- Apply for and be certified by the State.
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Depending on the level of lead hazards, temporary relocation of occupants is required. This means that owners and tenants of properties undergoing lead hazard reduction should not be exposed to lead dust and its hazards. Temporary relocation is one way to protect occupants; however, HUD does not require this in all cases as shown below.

Circumstances When Occupant Relocation Is Not Required
<ul style="list-style-type: none"> <li>• Treatment will not disturb lead based paint or lead contaminated dust.</li> <li>• Treatment of the interior will be completed within one period of eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards.</li> <li>• Only the building’s exterior will be treated. The windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward, and a lead free entry is provided.</li> <li>• Treatment will be completed within five calendar days, the work area is sealed; at the end of each day the area within ten feet of the containment area is cleared of debris; at the end of each day occupants have safe access to sleeping areas, a bathroom, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.</li> <li>• The owner occupant is over 62, no younger persons will be visiting during rehabilitation work, and the owner being fully informed of the risks waives the right to temporary relocation.</li> </ul>

**Note:** *Tenants in buildings undergoing rehabilitation are protected by the Uniform Relocation Act (URA) and, if the terms and conditions of the temporary relocation are not “reasonable”, they can claim benefits as a displaced person.*

**Other conditions to consider:**

- Owner occupants who voluntarily apply for rehabilitation funds do not have the URA protections.
- While the agency is responsible for compliance with Safe Work Practices, the temporary relocation policies covering owner occupants are more discretionary.
- The unit selected for temporary relocation should be lead safe, but beyond that, the agency has the choice to pay or not pay for out-of-pocket expenses.

**Additional lead based hazards requirements to be considered with each rehab project:**

Be mindful that each unit constructed prior to 1978 must be evaluated for applicability with the Lead Safe Housing Rule (LSHR). The rule is codified at 24 CFR Part 35.

A **Lead Safe Housing Requirements Screening Worksheet** is required to be filled out for each project identified in an effort to conclude that the residence is either exempt or not exempt from the requirements of 24 CFR Part 35.

A **Lead Safe Housing Requirements Worksheet** is provided on the following two pages. This worksheet must be filled out completely and must accompany all rehab projects file for each resident.

## LEAD SAFE HOUSING REQUIREMENTS SCREENING WORKSHEET

**This worksheet should be placed in the project file for any residential property that is assisted with Federal funds. Parts 1 and 2 should be completed for all projects. Parts 3 and 4 should be completed for rehabilitation projects.**

Property Owner and Address: \_\_\_\_\_

### Part 1: Exemptions from All Requirements of 24 CFR Part 35

*If the answer to any of the following questions is yes, the property is exempt from the requirements of 24CFR Part 35. The regulatory citation of each exemption is cited as additional guidance.*

- ❖ Was the property constructed after January 1, 1978? [35.115(a)(1)]  YES  NO
- ❖ Is this a zero-bedroom unit? (e.g. SRO, efficiency) [35.115(a)(2)]  YES  NO
- ❖ Is this dedicated elderly <sup>1</sup> housing? (i.e. over age 62) [35.115(a)(3)]  YES  NO
- ❖ Is this housing dedicated for the disabled <sup>2</sup>? [35.115(a)(3)]  YES  NO
- ❖ Has a paint inspection conducted in accordance with 35.1320(a) established that the property is free of lead-based paint? [35.115(a)(4)]  YES  NO
  - The date of the original paint inspection was \_\_\_\_\_. An optional paint inspection conducted on \_\_\_\_\_ confirmed this prior finding.
- ❖ Has all lead-based paint in the property been identified and removed, and has clearance been achieved as cited below? [35.115(a)(5)]  YES  NO
  - Clearance was achieved prior to September 15, 2000, and the work was done in accordance with 40CFR Part 745.227(b).  YES  NO
  - Clearance was achieved after September 15, 2000, and the work was done in accordance with 24CFR Part 35.1320, 1325 and 1340.  YES  NO
- ❖ Will a currently vacant unit remain vacant until it is demolished? [35.115(a)(6)]  YES  NO
- ❖ Is the property used for non-residential purposes? <sup>3</sup> [35.115(a)(7)]  YES  NO
- ❖ Will any rehab **exclude** disturbing painted surfaces? [35.115(a)(8)]  YES  NO
- ❖ Are emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or, to protect the property from further structural damage? (e.g. after natural disaster or fire) [35.115(a)(9)]  YES  NO
- ❖ Will the unit be occupied for less than 100 days under emergency leasing assistance to an eligible household? <sup>4</sup> [35.115(a)(11)]  YES  NO

Part 2: Limited Exemptions from Specific Hazard Reduction Requirements

*The HUD Final Rule allows for limited exemptions from specific requirements due to the characteristics of the rehabilitation work, the structure or the occupants. If the answer to any of the following questions is yes, the grantee and/or occupant may waive certain requirements as described below.*

- ❖ Is the amount of painted surface that is being disturbed below “de minimis” levels, as defined below? If so, safe work practices and clearance are not required in that work area.
  - Less than 20 square feet on an exterior surface [35.1350(d)(1)]  YES  NO
  - Less than 2 square feet in any single interior room [35.1350(d)(2)]  YES  NO
  - Less than 10% of surface area of an interior/exterior component [35.1350(d)(3)]  YES  NO
  
- ❖ Is the unit occupied by an elderly person(s)? If so, relocation of the elderly occupant(s) is not required if complete disclosure of the nature of the work is provided and informed consent is obtained prior to rehabilitation.<sup>5</sup>  YES  NO
  
- ❖ Is a unit that is subject to abatement requirements listed or eligible for listing on the National Register of Historic Places, or does it contribute to a National Register Historic District?  YES  NO

If so, the State Historic Preservation Office may request that interim controls be implemented rather than abatement. On-going maintenance and re-evaluation is required. [35.115(13)]

*I have evaluated the site and property, the work specifications, and interviewed the occupants. In my professional opinion, this unit qualifies for the indicated exemption(s).*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

<sup>1</sup> Defined as retirement communities or similar types of housing reserved for households composed of one or more persons over age 62, or other age if recognized by a specific Federal housing assistance program. However, if a child under age 6 resides or is expected to reside in such a unit, the unit is not exempt.

<sup>2</sup> The housing must be a residential property designated exclusively for persons with disabilities, defined as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded by others as having such an impairment. However, if a child under age 6 resides or is expected to reside in such a unit, the unit is not exempt.

<sup>3</sup> Except that spaces such as entryways, hallways, stairways, etc. serving both residential and non-residential uses in a mixed-use property are not exempt.

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<sup>4</sup> When a household is provided short-term emergency leasing assistance and will occupy a unit for less than 100 days, the unit is exempt from lead paint regulations. This emergency leasing exemption is attached to the unit, not the family, and is a one-time exemption. After being assisted for a total of 100 consecutive days, the unit becomes subject to regular Subpart K requirements. Multiple families cannot be cycled through the same unit at intervals of less than 100 days under this exemption.

<sup>5</sup> HUD Interpretive Guidance, April 16, 2001, question # J-24.