

Lead-Based Paint Provisions for Major CPD Programs

- A. **Applicable Statute.** For all the requirements identified below, except disclosure, the applicable statute is Section 1012 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act is informally known as Title X ("ten") because it is Title X of the Housing and Community Development Act of 1992. (Section 1013, which is sometimes mentioned in discussions of HUD's lead regulations, covers disposition of HUD-owned properties.)

The applicable statute for the disclosure requirement is the Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

Note: Throughout this document, section references in 24 CFR Part 35 are indicated by the prefixed symbol "§."

B. **Disclosure to Buyers and Lessees.**

Programs: All programs that are the seller or lessor of pre-1978 residential housing units.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1018 (HUD-assisted properties).

Regulations: Lead Disclosure Rule (24 CFR Part 35, Subpart A); CPD regulations (24 CFR 91.227(b)(7), 92.355(c)(3)(iv), 92.508(a)(7)(vi), 511.15, 570.461, 570.487(c), 570.608, 574.635, 576.57(c), 582.305(a), 583.330(d), 585.502, etc.)

Notes: CPD programs incorporated The Lead Disclosure Rule (24 CFR 35, Subpart A) through the conforming regulations listed above for CDBG, HOME, Rental Rehabilitation Grant Program, HOPWA, Shelter Plus Care, Emergency Shelter Grants, Supportive Housing, and Youthbuild.

The program being monitored must ensure that when the program buys, sells, leases or offers for lease pre-1978 property: 1) all available information known to the lessor or seller about lead-based paint and lead-based paint hazards at the property is disclosed; 2) the Federal lead information pamphlet and the lead warning statement are provided to the buyer or lessor; and, 3) when the program is the seller, it is required to provide prospective buyers an opportunity (10 days or as otherwise negotiated) to obtain a lead-based paint evaluation (inspection or risk assessment) of the property. The Lead Safe Housing Rule requires that occupants receive the Federal lead information pamphlet (§ 35.910, 35.1010 and 35.1210) unless the designated party can document the pamphlet had already been provided in accordance with the disclosure or the EPA Pre-Renovation Education Rule requirement.

C. **Notices to Residents.**

Programs: All programs providing housing assistance to pre-1978 residential housing units.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, Notice of evaluation and hazard reduction activities (§35.125).

Notes: The program being monitored must ensure that occupants of housing participating in the program receive all required notification about lead-based paint evaluation and hazard reduction activities, and that the notices be readily available to occupants.

There is an exception for minimal ("de minimis") amounts of deteriorated paint or of paint being disturbed by lead hazard control work (e.g., during rehabilitation or maintenance) specified by the Rule [§35.1350(d)]. For de minimis amounts, notice to residents, lead safe work practices and a clearance examination after the hazard reduction work are not required. The de minimis amounts are for painted surfaces that total up to:

20 square feet on exterior surfaces;
2 square feet in any one interior room or space; or
10 percent of the total surface area on an interior or exterior type of component with a small surface area, such as windowsills, baseboards, and trim. (Note: This amount should not be interpreted as applying to 0 percent of the total exterior surface area of the dwelling unit.)

D. Visual Assessment of Paint Condition.

Programs: CPD-funded Acquisition, Leasing, Support Services and Operations; Tenant-Based Rental Assistance

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Acquisition, Leasing, Support Services and Operations: §35.1015.
Tenant-Based Rental Assistance (TBRA): §35.1215, 35.1355(a)(2). Note: Subpart M of the Lead Safe Housing Rule, Tenant-Based Rental Assistance, applies only to units occupied, or expected to be occupied, by a child under age six. For tenant-based rental assistance provided under the HOME program, visual assessment shall be conducted as part of the initial and periodic inspection under §92.209(i) of the HOME program regulation.

Notes: The program must ensure that units are visually assessed for paint condition. The visual assessment must include the interior, exterior and common areas of the property. Homebuyer assistance involving properties that were constructed prior to 1978 are subject to this requirement. In properties receiving tenant-based rental assistance, the visual assessment is performed during the initial and periodic physical inspection (§35.1355(a)(2)) and the results of the visual assessments are noted on the

HUD initial and periodic inspection form (see previous paragraph.) If areas of deteriorated paint are identified, they are considered violations of the housing quality standards. These HQS violations must be addressed and cleared according to programmatic requirements.

Individuals performing visual assessments must be trained in a classroom as a certified lead-based paint inspector or risk assessor, in a visual assessment short course, or by taking and passing the HUD on-line visual assessment module posted at: www.hud.gov/offices/lead/training/training_curricula.cfm.

All affected programs must present evidence that appropriately trained individuals are performing visual assessments.

E. Paint Testing or Presumption of Lead-Based Paint; Risk Assessment or Presumption of Lead-Based Paint Hazards.

Programs: CDBG, HOME, Youthbuild, SHP, any other CPD program performing residential rehabilitation of pre-1978 housing units.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, Subpart J, Rehabilitation: §35.930; Standard treatments option: §35.120(a); Paint testing option, §35.120(d).

Notes: All painted surfaces to be disturbed during rehabilitation must be tested for lead content, regardless of the amount of funding provided (§35.930(a)), except as discussed below. The remaining requirements are grouped into three “tiers” based on the amount of rehabilitation assistance provided per unit. The stringency of the lead requirements increases with the average amount of federal rehabilitation assistance per unit. An option exists for the program participant to skip the paint testing and presume the paint is lead-based paint (§35.120(d)).

A lead risk assessment is required for CPD-funded rehabilitation projects exceeding \$5,000 average federal rehabilitation assistance per unit (§35.930), except as discussed below. This includes the residential buildings, soil, garages, fences and other structures to which a child may have access. Restricting resident access does not substitute for performing risk assessments of portions of the property. Lead risk assessments must be performed by EPA- or State-certified risk assessors, and reports must be generated which meet EPA’s requirements under 40 CFR Part 745.227(d) or the corresponding State regulation. (This is required by §35.1320(b), which is cited by §35.930(c)(2) for assistance over \$5,000 and up to \$25,000 per unit, and by §35.930(d)(2) for assistance over \$25,000 per unit.) An option exists for the program participant to skip the risk assessment and presume that lead-based paint hazards are present throughout the property (§35.120(a)).

Note that HUD does not require CPD program participants to perform the following lead-based paint activities: lead-based paint inspections, combination inspections/risk assessments, responses to lead-poisoned children (except for tenant-based rental assistance). If a program participant produces evidence that these activities were performed, it may indicate that program staff have misunderstood or misapplied the actual lead-based requirements or that it is performing unnecessary lead activities. Alternatively, if the program participant provides evidence that the lead-based paint inspection or, combination inspections/risk assessments were part of a documented program for identifying properties or portions of properties that may be exempt from some or all Lead Safe Housing Rule requirements, and that it was monitoring the increased lead evaluation costs against the decreased lead hazard control costs, it may be performing in an appropriate, or even exemplary manner. Reviewers are also cautioned that State lead regulations may require these lead activities. Reviewers must be familiar with and assess the program's lead requirements to make these types of determinations.

Also Item K, Ongoing Lead-Based Paint Maintenance, for an explanation of paint testing in this context.

F. Lead Hazard Reduction.

Programs: CDBG and HOME homebuyer programs (downpayment assistance, closing cost assistance, loan guarantee, PMI assistance, subsidized interest rates, finance acquisition); CDBG, HOME, HOPWA, SHP, S+C, ESG programs (acquisition, leasing of residential property, support services or funds for operations such as Special Needs programs); All CPD-funded rehabilitation programs; HOME-funded tenant-based rental assistance.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Acquisition, Leasing, Support Services and Operations: §35.1015;
Rehabilitation: §§35.930;
Tenant-Based Rental Assistance: §35.1215.

Notes: As stated in subsection D, above, the lead hazard control requirements for rehabilitation depend on the amount of federal rehabilitation assistance provided per unit. The three-tier structure is based on the level of assistance, so program participants should present evidence to support correct calculations of this number. Reviewers should spot-check calculations of the level of assistance to ensure the program participant is performing these calculations correctly. Reviewing this item will also rule out a pattern of under-estimating the value of work to be performed to ensure lesser requirements. (See the Rule's Interpretive Guidance, June 21, 2005, at www.hud.gov/offices/lead/leadsaferule/index.cfm, item J3.)

Federally funded rehabilitation assistance of pre-1978 units up to \$5,000 per unit requires that program participants repair paint that has been disturbed. If the assistance is greater than \$5,000 per unit, the entire property is evaluated by a risk assessment. If the assistance is greater than \$5,000 and not more than \$25,000 per unit, all lead hazards are addressed by interim controls using lead safe work practices. Above this amount, abatement (permanent elimination) of all lead hazards identified by the risk assessment is required. Lead hazard reduction must be performed in a manner consistent with the findings in the risk assessment report (§35.1320).

On projects exceeding the \$25,000 per unit threshold, HUD does not require that all lead-based paint and lead-based paint hazards must be removed from the property. At this level of assistance, the regulation requires only that all identified lead hazards must be abated on the property. Until a risk assessment report provides the list of LBP hazards on the property, the decision not to fund to a specific level is premature. For example, a property may only contain lead-based paint on its exterior doors and abatement (replacement) of the doors can be performed in a very cost-effective manner. Withholding rehabilitation assistance because of the abatement may not be programmatically justified, or even legal, in all cases. (See Fair Housing Issue discussion in Section 24-11, below.)

CPD program participants make choices about how to run their program.

- For example, OHHLHC understands that in some cases, units may require extensive abatement activities, and rehabilitation of that specific unit may not be cost-effective for the program or owner. The program participant may occasionally wish to refer the owner to other, less restrictive, sources of rehabilitation assistance. However, if a program participant has a blanket practice or policy not to provide rehabilitation assistance at the \$25,000 or above per unit level for the sole purpose of avoiding compliance with the lead-based paint requirements, the reviewer should investigate how this policy was developed and discuss the merits of this practice.
- A reviewer may also investigate why a program participant has repeatedly phased work to create two or more projects with lesser lead-based paint requirements.

G. Lead Safe Work Practices.

Programs: All CPD-funded programs in pre-1978 housing; TBRA-assisted units applicable only to units occupied, or expected to be occupied, by a child under age six.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: General requirements, §35.1350

Rehabilitation: §§35.930, 35.935

Acquisition, Leasing, Support Services, or Operation: §35.1015

Tenant-Based Rental Assistance: §35. 215(b)

Notes: Trained (or certified) workers (§35.1330) using lead safe work practices must perform all construction work (above minimal amounts of paint disturbance) where lead-based paint is known or presumed present (§35.1350). Program participants' requirements that workers use lead safe work practices should be documented in contracts, work write-ups, site visit reports and/or a contractor certification that safe work practices were used. The regulation also prohibits certain work practices on known or presumed LBP, such as dry sanding or dry scraping unless required for electrical safety, or machine sanding, grinding, abrasive blasting or sandblasting without a high-efficiency particulate air (HEPA) local exhaust control (§35.140).

H. Volunteer Labor. For programs using volunteer labor to conduct paint repair or interim controls on a CPD-funded project, the volunteers must use lead safe work practices. However, a HUD-approved interim controls training program is not required for volunteers. HUD has produced a short educational video on lead safety for rehabilitation volunteers titled, "Five Keys to Lead Safety: Volunteers Opening Doors," which is available from the EPA/HUD/CDC National Lead Information Center at 1-800-424-LEAD.

I. Qualified Interim Control Workers.

Programs: All CPD programs performing rehabilitation, repair, renovation, or maintenance in pre-1978 housing units, or disturbing LBP.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, §1330.

Notes: The Rule specifies the qualifications of workers who perform interim controls, which include paint stabilization, rehabilitation, ongoing LBP maintenance and the use of safe work practices [§35.1330(a)(4)]. Qualifications also apply to workers performing standard treatments, which is a specific set of treatments in a unit designed to treat all possible hazards.

When a presumption is made that all paint is LBP and all possible LBP hazards exist, no risk assessment is required such that no specific hazards are identified for treatment. Therefore, standard treatments are often performed in lieu of interim controls when LBP and LBP hazards are presumed. Standard treatments are generally equivalent to interim controls from the standpoint of worker qualification, use of safe work practices and clearance. The Lead Safe Housing Rule requires that lead abatement shall be performed in accordance with EPA requirements at 40 CFR 745.227(e). This regulation includes a provision that only certified abatement workers, certified supervisors and certified firms may perform lead abatement (§35.1325; see Item H, Certified Persons, below.)

When the Lead Safe Housing Rule became final in 2000, some housing agencies expressed a lack of capacity of trained and certified workers. Lack of capacity or training providers is not an acceptable reason for failing to train or certify workers. On the other hand, if a program participant is only required to perform paint repair or interim controls which are low-risk lead tasks, a decision to use abatement workers will result in increased costs and waste of HUD resources. Unless a State requires abatement personnel for these tasks, lead-trained (not certified) individuals should perform all CPD-funded activities that disturb LBP. Many rehabilitation contractors have been successfully cross-trained in lead safe work practices to reduce the number of contractors needed for a project.

Programs must ensure that appropriately trained or qualified workers perform all CPD-funded work. Project files should reflect worker training and/or qualifications as well (in rehabilitation contracts, contractor certifications, or other appropriate documentation).

J. Certified Persons.

Programs: All CPD programs performing risk assessments, abatement, or clearance examinations after paint stabilization, interim controls or abatement in pre-1978 target housing units.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, certification requirements:

Lead-based paint inspections: §35.1320(a)

Risk assessments: §35.1320(b)(1)

Abatement: §35.1325

Clearance examinations: §35.1340(a) and (b)

Notes: The Rule references the EPA lead training and certification regulation (40 CFR 745) which requires that persons conducting lead-based paint inspections, risk assessments, lead abatement, and clearance examinations after abatement be certified by the EPA or, if EPA has authorized a State or Tribe to do so, by the State or Tribe's lead certification program. A certified abatement supervisor must supervise abatement workers, unless the workers are themselves certified supervisors. In addition, for States where EPA operates the certification program, the firm employing the abatement workers and supervisors must itself be certified. This is almost always the case as well for States or Tribes that operate certification programs, although some States may have different names and descriptions for their lead disciplines.

The Rule also requires that only a certified lead-based paint inspector or certified risk assessor conduct clearance examinations after rehabilitation or interim control work above minimal ("de minimis") amounts. (There is an exception to this, regarding sampling technicians, which is discussed in subsection J, Clearance.)

Program must ensure that certified persons working for certified firms perform all CPD-funded activities that require lead certification. Project files should reflect certifications as well (in rehabilitation contracts, contractor certifications, or other appropriate documentation).

K. Occupant Protection.

Program: All CPD programs performing construction in pre-1978 housing units, or disturbing LBP.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, Occupant protection and worksite preparation, §35.1345

Notes: The program being monitored must ensure that occupants of housing participating in the program are adequately protected from the hazards of lead-based paint during lead hazard reduction activities, such as rehabilitation and ongoing maintenance covered by the Lead Safe Housing Rule. Occupant protection requires restricting occupants' access to the worksite and requires temporary relocation to a unit free of lead hazards except for the following cases: 1) treatment will not disturb LBP; 2) only the exterior of the dwelling is treated, and windows, doors, ventilation intakes and other openings are sealed during work; 3) treatment of the interior will be completed within one 8-hour work period; 4) treatment of the interior will be completed within 5 calendar days, the worksite is adequately contained, and occupants have safe access to kitchen, bathroom and sleeping areas; 5) unit is secured, occupants' belongings are protected from contamination, and warning signs are posted. Piling belongings in the center of the room and covering with plastic sheeting is not allowable. Some programs have no relocation funds, but in order to work in specific units, these programs sometimes suggest to resident families that they stay with relatives or make other arrangements for temporary housing during lead hazard control work.

Section 35.1345 outlines the requirements for protecting occupants and their belongings. Programs must determine when relocation is required and to relocate people appropriately to lead safe units. The occupant protection section does not exempt the elderly from this relocation requirement. However, CPD has adopted a policy that elderly residents need not be relocated if they sign an elderly relocation waiver form (see Compliance Toolkit for sample form.)

Signs must be posted to warn workers of lead hazards in accordance with the OSHA lead in construction standard (29 CFR 1926.62(m)), as required by §35.1345(b)(2). This signage requirement should appear in construction contracts for work in pre-1978 housing units.

Project files should include documentation of relocation (e.g., an occupant agreement, identification of the relocation unit, dates relocated and returned to unit) as well as the protection of the occupants' belongings (e.g., in the rehabilitation contract, the owner's agreement, or other appropriate document).

Program participants must provide evidence to the reviewer that families whose units are being treated are temporarily relocated, when required, or the families and their belongings are protected when relocation is not required.

L. Clearance.

Program: CPD-funded Rehabilitation; Acquisition, Leasing, Support Services or Operation; TBRA.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: Lead Safe Housing Rule, General requirements, §35.1340; CPD-funded Rehabilitation (§35.930); Acquisition, Leasing, Support Services or Operation (§35.1015); TBRA [35.1215(b)].

Notes: When rehabilitation, interim control, ongoing maintenance, or abatement work is done on surface areas above minimal ("de minimis") amounts, and the surfaces are known or presumed to have lead-based paint, clearance is required after the work. General requirements for clearance can be found at 24 CFR §35.1340. The clearance report is an important document. All clearance reports must meet the requirements of §35.1340(2)(c), and must be available to program staff and occupants. For Subpart J (rehabilitation), the program participant routinely receives the clearance reports. For Subpart K (acquisition, etc.), clearance after paint stabilization is usually completed before occupancy, but, if it occurs during occupancy, paint stabilization and clearance must be conducted immediately after receipt of housing assistance. In either case, whether the program or new owner performs clearance, a report must be available for program staff's review. For Subpart M (TBRA), the owner or program must provide a copy of the clearance report if the reviewer requests it.

Qualifications of Clearance Examiner: Most States require that inspectors or risk assessors perform all clearance exams, whether for abatement or non-abatement projects. On non-abatement projects, some States allow sampling technicians to perform clearance examinations. HUD allows clearance of a non-abatement project by a State licensed sampling technician; or a sampling technician trained in the EPA sampling technician course or a similar course, who is supervised by a certified inspector or risk assessor [§35.1340(b)(1)(iii) and (iv)].

Programs must ensure that clearance is routinely performed and passed. Project files must include clearance reports. Reviewers should spot-check files for evidence that the individuals performing clearances are qualified.

M. Ongoing Lead-Based Paint Maintenance.

Programs: CPD-funded programs where the owner has an ongoing relationship with the Department, such as HOME-funded rehabilitation or HOME-funded (TBRA).

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: General Requirements: §35.1355
HOME: §35.935
TBRA: §35.1220.

Notes: For HOME Rental properties, ongoing LBP maintenance is required after rehabilitation, because there is an ongoing relationship with the owner. In such instances, program staff should be able to describe how they ensure that ongoing maintenance using lead-safe work practices occurs and is documented (§35.1355).

Ongoing LBP maintenance requires that a visual assessment be performed at turnover and every twelve months; all deteriorated paint be stabilized, bare soil treated and any failed lead treatments repaired; occupants of each dwelling unit be asked in writing to report deteriorated paint and, if applicable, the failure of encapsulation or enclosure [§35.1355(a)(7)], and the owner (or other designated party) respond to such reports within 30 days. Clearance testing is required at the conclusion of all repairs, abatement or interim controls (§35.1355(a)(6)) above the minimal ("de minimis") amounts.

An important requirement of this ongoing maintenance section is that lead safety procedures be incorporated into a building owner's regular maintenance practices. Program participants should provide evidence to the reviewer that the program requires owners to incorporate lead measures into their regular maintenance procedures. Owners should provide lead safety training for maintenance workers, post warning signs as needed, and routinely perform clearance testing following all but minimal maintenance activities that disturb lead-based paint.

Also, §92.504 requires that housing must meet the program standards in both §92.251 and Part 35.

As part of ongoing LBP maintenance, owners may elect to test areas of paint to be disturbed during maintenance. If a painted area to be disturbed is tested and proven not to be LBP, the owner need not perform ongoing LBP maintenance on that surface.

N. Environmental Intervention Blood Lead Levels.

Program: HOME-funded TBRA.

Statute: Residential Lead-Based Paint Hazard Reduction Act, Section 1012 (HUD-assisted properties).

Regulation: TBRA §35.1225

Notes: For all HUD TBRA programs, when a child under age 6 with an “environmental intervention blood lead level,” or EIBLL, is identified, the steps outlined at 24 CFR 35.1225 are required. An EIBLL is at least 20 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) for a single test, or 15-19 $\mu\text{g}/\text{dL}$ in two tests taken at least 3 months apart. The environmental intervention steps required of the designated party include:

- (a) Risk Assessment. Completing a risk assessment of the child's dwelling unit and the common areas servicing the unit within 15 days, and immediately providing the risk assessment report to the owner (unless a public health department or the designated party has already conducted a risk assessment since the child's most recent blood sampling).
- (b) Verification. After receiving information from a source other than a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit may have an EIBLL, immediately verifying the information with a public health department or other medical health care provider.
- (c) Hazard reduction. Within 30 days after receiving the EIBLL risk assessment report, completing interim control or abatement of identified lead-based paint hazards. Failing to do this puts the dwelling unit in violation of Housing Quality Standards (HQS).
- (d) Notice of evaluation and hazard reduction. Notifying building residents of any evaluation or hazard reduction activities in their units or common areas servicing their units.
- (e) Reporting. Reporting the name and address of a child identified as having an EIBLL to the public health department within 5 working days of being so notified by any other medical health care professional.
- (f) Data collection and record keeping. At least quarterly, asking local public health department(s) for the names and/or addresses of children under age 6 with EIBLLs; reporting an updated list of the addresses of units receiving TBRA to each pertinent health department; and matching names and addresses of EIBLL children with the names and addresses of families receiving TBRA, unless the public health department does this. Carrying out the environmental intervention if a match occurs.

The program must ensure that these environmental intervention requirements are met.