



**Homes and
Community Renewal**

CDBG Orientation Webinar Series

Lead Based Paint Requirements for CDBG Housing Activities

February 12, 2020

Welcome to the final webinar in OCR's CDBG Orientation Series. Today's webinar is on the requirements for lead based paint in housing activities.



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The Orientation Webinar Series

1. Getting Started (Completed January 15, 2020)
2. Environmental Review (Completed January 22, 2020)
3. Program Administration – (Completed February 5, 2020)
4. Financial Management – (Completed January 29, 2020)
5. Lead-Based Paint – Today, this is the final webinar in the series

This is the fourth in a series of five webinars designed to provide an overview for new CDBG grantees.

- Four webinars – Getting Started, Environmental Review, Administrative Requirements, & Financial Management – have already been conducted
- Webinar 5 on Lead-Based Paint compliance is today

The webinar series is designed for local government recipients and their participating subrecipients and consultants to help establish systems for management of the grant and to ensure compliance. Collectively, the webinars will identify the key start up and administrative issues, and provide guidance on resources and documentation.

While this has been designed for new grant recipients, existing grant recipients will also gain insights into management issues that may help improve compliance with existing grants.

Topics

- Regulatory background & the HUD Lead Safe Housing Rule
- Seven Steps to Lead Based Paint (LBP) Compliance

Post your questions at any time during the presentation.



To cover the federal lead paint requirements in less than an hour is challenging, but we will try to do so by quickly examining the regulatory background that applies to CDBG, focusing primarily on the HUD Lead Safe Housing Rule.

Then we will spend the bulk of our time laying out Seven Steps to LBP Compliance, in the hope that this will help you structure your housing activities to comply with LBP rules.

We will plan to allow time for questions at the end of the presentation, which you may post at any time during the delivery, and OCR staff are monitoring the questions you post so that we can respond at the end of the presentation.

Rules Related to LBP

HUD	<ul style="list-style-type: none"> • Lead Safe Housing Rule • HUD-assisted housing, including CDBG & HOME • 24 CFR Part 35
EPA	<ul style="list-style-type: none"> • Renovation, Repair & Painting Rule • All renovations; certified firms & renovators • 40 CFR Part 745, Subpart E
NYS	<ul style="list-style-type: none"> • Lead Poisoning Prevention • Screening children; environmental investigation/intervention • Department of Health; Title X Part 67
NYC	<ul style="list-style-type: none"> • Lead Poisoning prevention • Landlord requirements pre-1960 housing(+ pre-1978) • NYC DOHM, Local Law 1 of 2004


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To start to provide the regulatory framework, let me remind you that there are multiple rules related to lead based paint.

I will be spending most of my time discussing the HUD Lead Safe Housing Rule. The rule is located at 24 CFR Part 35. This rule applies to all HUD-assisted housing, including housing assisted with CDBG funds. While it covers all types of HUD assistance, we will be targeting primarily the two parts of the rule that pertain to CDBG activities – acquisition assistance and rehabilitation.

Rehabilitation is also impacted by an EPA rule known as the Renovation, Repair and Painting Rule. It is located at 40 CFR Part 745, Subpart E. While it applies to all renovation work in this country, including CDBG assisted renovation, its requirements are not as strict as the HUD rule, and we will only focus on the requirement for certified firms and supervisors referred to as “Renovators.”

In New York State, the Department of Health is charged with lead poisoning prevention, which focuses on the screening of young children, and in such cases where elevated blood lead levels are detected, conducting investigations into the child’s home and environment, and specifying interventions to reduce the exposure to lead. I will not be addressing Title X, Part 67 regulations today, but be aware that the Department of Health can inspect your

housing and mandate certain interventions to protect children – regardless of what you have or haven't done with CDBG funds.

Finally, while we are today addressing the State CDBG program, which only funds non-entitlement areas, you may hear people refer to New York City's lead law – Local Law 1 of 2004. The requirements of the City's law are slightly different from HUD requirements, but you do not need to apply any of that to your program.

The HUD Rule: 24 CFR Part 35

Pre-1978 residential structures

- With some exemptions

When Federal housing assistance (CDBG & HOME)

- Rehabilitation: Rule Subpart J (35.900)
- Acquisition only (e.g., DPA): Subpart K (35.1000)

Whether or not children are present

- Additional requirements if children < 6 or EBL



Then, let's start with a closer examination of the HUD Lead Safe Housing Rule.

All NYS CDBG-funded housing rehabilitation and home ownership projects must adhere to the Residential Lead-Based Paint Hazard Reduction Act of 1992 (24 CFR Part 35), and the implementing regulations at 24 CFR Part 35.

The HUD Lead-Safe Housing rule applies to pre-1978 residential structures when Federal housing assistance (including CDBG and HOME) is provided. Different subsections apply to different types of housing assistance. The most common HOME and CDBG funded activities are:

- Rehab – found in the Rule in Subpart J (35.900)
- Acquisition (e.g., downpayment assistance) – found in the Rule in Subpart K (35.1000)

The rule applies when HUD assistance is provided, whether or not children are present, although there are some additional requirements if children are present that are under the age of 6 or have Elevated Blood Lead Levels (EBLLs).

There are many other Subparts of the Rule – addressing public housing, project and tenant based rental assistance, FHA insurance, and so on. The requirements for these other types

of assistance are different. Please do not confuse the procedures. To be clear, if you are only providing acquisition assistance to a homebuyer, then the Acquisition procedures in Subpart K apply. If you are assisting housing that will include rehabilitation – whether it is homeowner rehab, rental rehab, or homebuyer acquisition with rehab – the Rehabilitation procedures in Subpart J apply.

As we go through the steps to achieve compliance, I will distinguish the requirements pertaining to each of these two activity types.

Exemptions from Part 35

- Post-1977 housing (placed in service 1/1/78)
- Zero-bedroom units
- Housing exclusively for elderly/disabled (unless child < 6)
- Certified LBP free or LBP removed
- Unoccupied pending demo
- Nonresidential part of property
- Rehabilitation or maintenance that won't disturb painted surfaces
- Emergency action - "imminent danger to human ...safety, or to protect property from further structural damage"



As I stated in the previous slide, the Rule applies generally to housing that was placed in service before January 1, 1978. However, there are a few exceptions. HUD's LBP requirements do not apply to the following (see 24 CFR 35.115):

- Dwellings initially placed in service on or after January 1st, 1978.
- Housing exclusively for the elderly or person with disabilities, unless a child under age six resides (100 days or longer) or is expected to reside there.
- Zero bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks.
- Housing found by certified inspection to be free of LBP.
- Housing in which all LBP has been properly identified, removed, and cleared (does not apply where enclosure or encapsulation has been used).
- Unoccupied housing that will remain vacant until it is demolished to the foundation.
- Non-residential property: Property or part of a property that will not be used for human residential habitation. Not exempt are common use areas, such as entryways, hallways, corridors, passageways, stairways or building exterior in a mixed-use building.
- Rehabilitation that does not disturb a painted surface.
- Emergency repair action needed to address imminent danger to human life,

health or safety, or protect property from further structural damage.

If a housing unit meets one of these exemptions, the Rule does not apply to that project (except for the universal disclosure requirements.)

Let me emphasize that point – if the type of housing you are assisting falls into one of these exempt categories, you do not have to comply with the requirements that I am about to discuss, other than Step 3 disclosure to buyers or tenants. But make sure you can document how the property is exempt. The mistake of “exempting” a property that is not exempt is extremely serious.

EPA Renovation, Repair & Painting Rule

40 CFR Part 745

Target housing – built pre-1978, except:

- Elderly/disabled units (no child < 6);
- 0 BR units;
- or previously certified LBP free

Renovation – Modification of structure/ portion disturbing LBP, unless abatement; not minor repairs/maintenance

Work done by EPA licensed firm & trained Renovator

**RRP compliance is not sufficient to meet HUD Part 35:
follow HUD rules using EPA Renovator**



While we are going to spend most of our time on the HUD requirements, I should give you a little background on the EPA **Renovation, Repair and Painting (RRP) Rule**. The Rule became effective in 2010, and applies to renovation, repair and painting projects that disturb LBP in homes, child care facilities, and schools built before 1978, regardless of the source of funding. That includes housing that you are assisting with CDBG funds.

However, before I go on, let me stress that compliance with the EPA RRP Rule does not meet all of the requirements of the HUD rule, is not sufficient to meet CDBG requirements, and is not to be considered an alternative compliance standard.

In the EPA rule, “Target housing” is any structure undergoing renovation that was built prior to the 1978 ban on lead paint – whether or not it was federally assisted. That could include the home in which you currently reside.

“Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless abatement. It does not include minor repairs or maintenance. Essentially, it is the same as what the HUD programs consider rehabilitation.

The rule also applies to “child occupied facilities” constructed prior to 1978, such as day care centers, preschools and kindergarten classrooms, if the presence of children exceeds daily, weekly and annual thresholds.

EPA requires that firms performing any renovation, repair, and painting projects in target housing be licensed by EPA and that they use certified “Renovators” who are trained by EPA-approved training providers to follow lead-safe work practices.

HUD funded residential projects – including either CDBG or HOME funding – must follow both HUD and EPA rules. When both rules apply, the general approach is to comply with the more restrictive. In general, the HUD rule is more restrictive & prescriptive, notably in the following requirements:

- Testing requirements are more extensive, including the requirement for risk assessments in many rehabilitation activities;
- Occupant protections are more extensive;
- Abatement can be required in certain situations; and
- Clearance protocols are more demanding.

As a simplified statement, the bottom line for CDBG and HOME activities is that the local administrators should follow the HUD rule, but use an EPA Renovator for all rehabilitation or renovation activities when standard treatments or interim controls are permitted. The details of the combined requirements will be covered in the next topic of this presentation.



The rules can be pretty detailed and somewhat confounding. As a way of helping local administrators to consolidate the requirements into a few key tasks, we will cover the requirements in seven steps that are universal to all activities, although what happens at each step might vary based on the classification of the activity. Those seven steps are:

1. Compliance Plan & Certification – a pre-implementation step required by OCR for you to plan and assure compliance with LBP requirements before you implement the activity;
2. Evaluation – which means using various required methods to determine if LBP or LBP hazards are present;
3. Disclosure – what needs to be disclosed to owners and occupants;
4. Work Standards – the occupant protections and the required (and prohibited) work methods that are to be used, depending on the classification of the project;
5. Clearance – what steps are needed to verify and document that the LBP hazard has been addressed and the lead dust has been removed; and
6. Records – the documentation that needs to be collected and retained as evidence of compliance;
7. Ongoing Maintenance – what a property owner should do to maintain the paint, if not all LBP is removed.

These steps will be discussed in order. You will see a timeline of the seven steps noting when we move to the next step.

Step 1. Compliance Plan & Certification

Prior to implementing activity, submit:

- Lead Based Paint Compliance Plan &
- Lead Based Paint Compliance Plan Certification
 - Form 5-1: Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation
 - Form 5-2: Homeownership/Acquisition Assistance Only (No rehabilitation)



OCR requires Recipients of any CDBG housing assistance to submit a Lead Based Paint Compliance Plan and a Lead Based Paint Compliance Plan Certification to assure compliance with all applicable lead based paint regulations. The Plan and Certifications must be submitted prior to undertaking any housing activity that is subject to lead based paint compliance.

Along with the Plan, OCR requires one of two Certification Forms:

- Form 5-1 CDBG LBP Compliance Plan Certification Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation
- Form 5-2 CDBG LBP Compliance Plan Certification Homeownership/Acquisition Assistance, with no rehabilitation of any form

Forms are available on the OCR website.

Compliance Plan

OCR doesn't specify format, but should address how to:

- Determine whether the rule applies (or is exempt)
- Evaluate the property for LBP hazards
- Provide required notices to owners/occupants
- Incorporate LBP hazard controls into the scope
- Contract for services with qualified firms
- Supervise the work & clearance
- Document compliance

Attach the required certification form



OCR doesn't specify format, but the plan should address how you will:

- Determine whether the rule applies (or the property qualifies for one of the exemptions, which you should document)
- Evaluate the property for LBP hazards, such as paint testing or risk assessments
- Provide required notices to owners/occupants
- Incorporate LBP hazard controls into the scope of work
- Contract for services with qualified firms
- Supervise the work & clearance
- Document LBP compliance

You must attach the required certification form – Form 5-1 or 5-2. Some Recipients find that structuring the Plan along the topics in the Certification form is most efficient.

Step 2. Evaluation

Activity	Requirement	Done by
CDBG & HOME funded acquisition	Visual assessment	HUD visual assessment *
CDBG & HOME funded rehab \$0 - \$25,000	Risk assessment	EPA risk assessor

* <http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>

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The second step is to determine whether LBP or LBP hazards are present.

By the way, let me explain that a lead paint “hazard” includes any surface that can or will produce lead dust or chips. That includes:

- any chipping, peeling, cracking or chalking paint,
- any friction or impact surface with LBP paint, or
- any LBP surface that will be “disturbed” during rehabilitation.

There are a variety of “evaluation” methods that are used. It depends on the type and classification of the activity.

1. For acquisition only activities (e.g., homebuyer assistance without rehab), a visual assessment must determine if painted surfaces are deteriorated (chipping, peeling, cracking or chalking) and need repair. It must be done and documented by a person that has either has EPA training or has taken the visual assessment online course available on the HUD web site. The link is noted at the bottom of the screen: <http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>.
2. For all rehab activities, OCR requires a full unit risk assessment must be conducted by an EPA-certified risk assessor.

Federal Rehabilitation Assistance (FRA)

Federal Rehabilitation Assistance (Form 5-9) is the lesser of:

Per-unit Federal (HUD/RD) assistance

- Exclude non-Federal & Federal non-housing funds (e.g., Weatherization)

Per-unit hard cost of rehabilitation

- Exclude added costs of LBP compliance (e.g., evaluation, clearance)



As I mentioned on the previous slide, the type of evaluation – and also the subsequent hazard control work – differs depending on the amount of federal assistance to the rehabilitation. In essence, the greater the rehabilitation assistance, the greater the work required.

The Rule classifies the rehab project based on the “Federal Rehabilitation Assistance” amount, which is the lower of two calculations:

- The total federal housing assistance per assisted unit; and
- The rehabilitation cost per assisted unit.

HUD and RD funds are Federal assistance. The following are not Federal housing assistance: Low-Income Housing Tax Credits; FHA mortgage insurance; Department of Energy’s Weatherization Program (separate guidance issued); and Fannie Mae, Freddie Mac and Federal Home Loan Bank programs.

Rehabilitation hard costs are actual costs, regardless of source of funds, associated with physical renovation of a unit. The following are not hard costs: acquisition, project soft costs, administrative costs, relocation, environmental review, and lead hazard evaluation and reduction costs.

We recommend that you use Form 5-9 in the Manual and available on the website, labeled the “Dual Threshold Approach for Calculating Level of Rehabilitation Assistance”. It will help you to document the determination, and is critical compliance documentation for the project.

Risk Assessment

EPA-certified risk assessor

- <https://cfpub.epa.gov/flpp/pub/index.cfm?do=main.firmSearchAbatement>

Protocols:

- Test defective, disturbed by rehab (based on preliminary scope), friction & impact surfaces
- Unit/common areas/lot for LBP hazards
- Surfaces must be tested with XRF & lab-tested samples (RRP test kits not acceptable)
- Lead dust sampling following HUD protocol
- Soils

Risk assessor must issue report that is shared with owner



Risk assessments are required by OCR for all rehabilitation assistance from \$0 - \$25,000. The assessment must be conducted by an EPA certified risk assessor, listed at the web link in the slide: <https://cfpub.epa.gov/flpp/pub/index.cfm?do=main.firmSearchAbatement>

Risk assessments include:

- Testing of certain surfaces for lead, dust wipes (sent to the lab) to identify the presence of lead dust, and soil samples in key areas of the lot.
- The entire unit and common areas need to be examined. Not all surfaces need to be tested – only “defective” surfaces (chipping, peeling, cracking, or chalking), surfaces to be disturbed by the rehabilitation, and all friction & impact surfaces (e.g., windows, doors, cabinets).
- The surfaces must be tested with XRF or lab-tested paint samples. EPA test kits are not acceptable under the HUD rule, as they are not accurate enough to confirm the presence of lead at the levels defined in the rule to be considered LBP.
- The risk assessment protocols also require lead dust sampling throughout the unit following HUD protocol. These wipes must be sent to a lab for analysis of the dust.
- And finally, the risk assessment must also examine the soils in the egress areas, the drip lines and the play areas.

The timing of the risk assessment is critical. It needs to be based on preliminary work scope because the risk assessor needs to know what surfaces are going to be disturbed by the work, and the results will affect the final scope and designated work methods.

The risk assessor must issue a report that is shared with owner.

Step 3. Notices

Three levels of disclosure:

- Seller/Landlord disclosure to buyer/tenant
 - Protect Your Family from Lead & disclosure form
- Renovator disclosure to owner
 - Renovate Right
- Administrator disclosure to owner and occupants within 15 days of evaluation and clearances

The third step to lead compliance is disclosure. There are three levels of disclosure that local administrators must be aware of:

- Universal Seller/Landlord disclosure to buyer/tenant – Required for all pre-1978 housing units in this country, the seller or landlord must give to the prospective buyer or tenant (1) the HUD/EPA “Protect Your Family from Lead” pamphlet and (2) a disclosure form of known LBP or LBP hazards. Unless the local administrator is selling or leasing property, this does not apply to the local administrator, but the administrator should verify that the required disclosures have occurred.
- Renovator disclosure to owner – When covered renovation is being done, the Renovator must give the “Renovate Right” pamphlet to the owner. While this is the responsibility of the Renovator, the administrator as a lender should make certain that the disclosure has occurred (and request evidence that the pamphlet has been received.)
- Administrator disclosure to owner – The HUD rule requires disclosure of two things: (1) the results of any evaluation (i.e., testing or risk assessment) and (2) clearances. HUD requires the notices be sent to occupants within 15 days after lead hazard evaluation and control activities in their unit (and common areas, if applicable).

Step 4. Work Standards

Protect occupants & belongings

- Relocation may be required; URA applies

Safe work practices, unless de minimis levels

- Prepare & contain the worksites (immediate area(s) of hazard reduction work)
- Use acceptable methods
- Clean the worksite

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The fourth step is the methods and procedures for conducting the scope of work.

When work is being conducted under this rule, the occupant and the environment must be protected from lead-contaminated or lead-containing materials during hazard reduction activities. Occupants must be protected by ensuring that occupants are not permitted to enter the worksite during hazard reduction until the hazard reduction work is cleared; occupants’ belongings are relocated or sealed; and occupants are temporarily relocated (unless 35.1340(a) is met).

The worksite for lead hazard reduction activities must be prepared to prevent the release of leaded dust and debris. Workers use containment and practices to minimize the spread of leaded dust and debris. Warning signs are required at each worksite. See 35.1345(b).

The firm must use safe work practices defined in 35.1350, and may not use prohibited methods on surfaces known or suspected to contain LBP.

Safe work practices aren’t required if painted areas affected fall within the HUD **de minimis** levels (not EPA levels). These are: 20 sq. ft.(2 sq. meters) on exterior surfaces; 2 sq. ft. (0.2 sq. meters) 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 (e.g., window sills.)

The worksite must be cleaned by proper methods.

Hazard Control Methods & Firms



Activity	Work practices	Who can do it?
Acquisition	Safe work practices & paint stabilization (deteriorated paint)	Renovator or worker(s) with interim controls training
Rehab	FRA \$0 - \$25,000: Interim controls (all LBPH) FRA > \$25,000: Abate interior hazards; interim controls for exterior hazards	EPA Renovator EPA abatement firm



In addition to fundamental “Safe Work Practices”, the rule specifies what work methods can be used to address hazards and what firms and workers can do hazard control work.

For acquisition only activities (such as homebuyer assistance without rehab), the rule requires only that deteriorated paint be addressed following the standard safe work practice known as “paint stabilization”.

For rehabilitation, the work required depends upon the level of Federal Rehabilitation Assistance (FRA), as previously defined:

- 1) FRA up to \$25,000 per unit: Identify all lead hazards at the affected units and common areas servicing those units by performing a lead-based paint risk assessment (presumption is not permitted). Address all identified hazards using interim controls.
- 2) FRA greater than \$25,000 per unit: Identify all lead hazards at the property by performing a risk assessment and then abate all the interior hazards. (Exterior hazards may still be addressed using interim control methods.) This approach requires certified abatement contractors perform the abatement aspects of the job.

If the rehabilitation project is an interim control project (and not an abatement project), the work must be done by an EPA licensed firm and a certified Renovator onsite while hazard control activities are occurring.

The HUD rule also permits interim controls to be done by workers trained in Safe Work Practices or under the supervision of a certified abatement supervisor. However, the EPA Renovator requirement now is understood to cover the HUD requirement.

However, if abatement is required, which occurs when the Federal Rehabilitation Assistance amount is over \$25,000, the abatement activities must be done by an EPA-certified abatement firm.

The list of EPA licensed renovator and abatement firms is at the link noted previously in the slide on risk assessors: http://cfpub.epa.gov/flpp/searchrrp_firm.htm

1. Plan & Certification 2. Evaluation 3. Notices 4. Work Standards **5. Clearance** 6. Records 7. Ongoing Maintenance

Step 5. Clearance

Clearance required

- All rehab: full unit clearance

HUD requires clearance by EPA-certified professional

- EPA Renovator cleaning verification method not permitted
- As soon as possible after hazard reduction activities (including cleaning) are complete

Clearance involves:

- Visual Assessment
- Dust samples (lab analysis)
- Report




Step 5 is “clearance”, or the inspection of the work to ensure that the work was done and all debris and dust properly removed. This is an absolutely essential step – not just for compliance, but also for protection of the family, and ultimately protection of your program from liability for improperly done rehabilitation or painting work.

For acquisition only, clearance is only required if there are painted surface repairs done as part of the acquisition, and clearance needs to be only of the work sites, not the entire unit.

The EPA Rule allows cleaning verification by the renovator without sampling and laboratory analysis of the dust, but the HUD Rule requires clearance examination by a qualified party independent of the renovator instead of the certified renovator’s cleaning verification procedure. Therefore, in a HUD-funded job, the EPA method is not permitted, and clearance must be done by an EPA-certified inspector, risk assessor, or clearance technician.

Clearance is best done as soon as possible after hazard reduction activities (including

cleaning) are complete (allowing a few hours for the dust to settle).

A clearance examination involves a visual assessment, dust, and soil testing to determine if the unit is safe for occupancy. Lab-tested dust samples must be taken. The clearance examiner must prepare a clearance report in accordance with (24 CFR Part 35.1340) if lead hazard reduction activities other than abatement are performed. (Abatement activities are subject to EPA requirements, not HUD requirements.)



Step 6. Records

Maintain records of:

- Evaluation
- Disclosure
- Procurement and supervision
- Clearance
- Other evidence LBP Compliance Plan was followed

LBP Rule requires records at least 3 years from grant closeout

- However, program & state requirements are longer, and records to respond to lawsuits should be kept much longer



The sixth step is recordkeeping.

You have heard us say several times throughout this series: “If it isn’t documented, it didn’t happen.” The recordkeeping imperative for lead paint is even more compelling than mere regulatory compliance: the documentation of assessments, work standards and clearance are essential to defending the work of the Recipient in the unfortunate event that one of the clients later presents with elevated blood lead levels.

The administrator must ensure that there are adequate records to prove compliance with the requirements.

Key documents would include copies of the evaluation, disclosure, procurement, clearance, and other evidence of Lead Based Paint Compliance Plan followed.

The rule requires documents to be maintained for 3 years from grant closeout. (CDBG and HOME separately have program recordkeeping requirements that run for 4 and 5 years, and state record requirements can run 7 years.) However, records that will be needed to respond to lawsuits that may arise in the future should be kept indefinitely.



Step 7. Ongoing Maintenance

Occupant disclosure

Ongoing paint maintenance is required for properties with ongoing property standards (e.g., HOME rental, Section 8, LIHTC)

- Recommended for all others

Maintenance of painted surfaces – owners should:

- Visual assessment for deteriorated paint, failed controls
- Paint stabilization, painters training in Safe Work Practices

Field Guide: <https://www.hud.gov/offices/lead/training/LBPguide.pdf>



The final step is ongoing maintenance.

First, every owner of a pre-1978 property must disclose the knowledge of LBP to tenants or buyers of the property. Any testing or risk assessment conducted as part of the CDBG funded effort becomes part of future disclosure.

If a property has ongoing federal property standards – including HOME rental projects, Section 8 & LIHTC – then ongoing maintenance of painted surfaces is a requirement. It is recommended for all others.

If ongoing maintenance of painted surfaces is required, owners should:

- Conduct an annual visual assessment for deteriorated paint, failed controls
- If painted surfaces are to be disturbed, paint stabilization methods should be followed by painters trained in Safe Work Practices. Clearance is also required by the regulation for those properties subject to ongoing maintenance requirements.

Even if ongoing maintenance is not mandated for CDBG, recipients are encouraged to remind owners that LBP remains in the unit, and will become a hazard if not properly maintained. Advise owners that such practices will protect the occupants and help them avoid future liability. Recipients might also consider providing the Field guide for painting,

maintenance and renovation work, an easy read for property owners on safe work practices.



So I have taken you through seven steps that, if followed, should enable you to reach full compliance with lead paint regulations.

1. Compliance Plan & Certification
2. Evaluation – visual assessment for deteriorated paint for acquisition only; risk assessments for all rehab activities
3. Disclosure – what needs to be disclosed to owners and occupants;
4. Work Standards – occupant protections and the use of Renovators or abatement firms depending on the FRA;
5. Clearance – documenting that the unit or work space has been cleaned of lead dust; and
6. Records – the documentation that you need to have as evidence of compliance;
7. Ongoing maintenance – whether or not a requirement, certainly a strongly recommended best practice.

If you follow these seven steps, you should be in compliance.

Resources

- Grant Administration Manual
 - <https://hcr.ny.gov/community-development-block-grant>
 - Chapter 5, Eligible Activities
 - Chapter 6, Construction Requirements
 - Exhibit 6-6 Lead Based Paint Summary Notices
 - Exhibit 6-7 Dual Threshold Approach for Calculating Level of Rehabilitation Assistance
 - Exhibit 6-8 Implementing the Lead Based Paint Rule
 - Exhibit 6-9 Lead Based Paint References and Resources
 - OCR CDBG Forms
 - 5-1 CDBG LBP Compliance Plan Certification (Rehabilitation)
 - 5-2 CDBG LBP Compliance Plan Certification (No rehabilitation)
 - 5-9 Calculating the Level of Federal Rehabilitation Assistance
- Federal disclosure forms:
 - <https://www.epa.gov/lead/real-estate-disclosure>



As I conclude the presentation and we get ready for your questions, let me direct you to some of the key resources that I mentioned in this presentation.

Form 5-1: CDBG LBP Compliance Plan Certification – Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation

Form 5-1
CDBG LBP Compliance Plan Certification – Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation

Recipient Name _____	CDBG Project # _____
Certifications of Compliance	
1. Exemption If a property meets an exemption in 24 CFR 35.1115, the grantee will certify and document the exemption and maintain evidence of the exemption within each project file.	<input type="checkbox"/>
If exempt, no certification below apply to the property.	
2. Preliminary Work Scope The grantee will develop a preliminary scope of work and cost estimates for purposes of the Federal Rehabilitation Assistance calculation and will provide the scope of work to the risk assessor prior to completing a risk assessment, (if required).	<input type="checkbox"/>
3. Federal Rehabilitation Assistance (FRA) calculation The grantee will complete and document the per assisted unit Federal Rehabilitation Assistance calculation (GAM Exhibit 5-4) following the guidance in GAM Section 1.7.F. prior to executing contracts. A completed Exhibit 5-9 will be retained with each project file.	<input type="checkbox"/>
4. Notices The grantee will provide the following notices to each owner and occupant: a. EPA Renovate Right – prior to work. b. Protect Your Family From Lead in Your Home – prior to work. c. If inspection or risk assessment is conducted Summary Notice (GAM Exhibit 5-8). d. If clearance is done) Notice of Completion (GAM Exhibit 5-8). e. Evidence of receipt of each of the above items will be retained with each project file.	<input type="checkbox"/>
5. Evaluation The grantee will conduct and document for each housing rehabilitation project, one of the following: a. If the FRA calculation is less than or equal to \$5,000 per assisted unit, any painted surface to be disturbed will be tested for lead by an EPA-certified inspector or risk assessor per 24 CFR 35.1320(a) or, with the OCR prior concurrence, presumed to have lead. b. If the FRA calculation is above \$5,000 per assisted unit, an EPA-certified risk assessor will be retained to conduct a risk assessment per 24 CFR 35.1320(b).	<input type="checkbox"/>
6. Contractor The grantee will hire EPA-certified Renovators under 40 CFR 745.226 for rehabilitation work in non-exempt properties. a. If abatement is required (the Federal Rehabilitation Assistance calculation exceeds \$25,000), an EPA abatement firm will be contracted to perform all abatement activities. b. Evidence of EPA certification for each contractor will be retained with each project file.	<input type="checkbox"/>
7. Occupant protection The grantee will ensure that the occupants and occupant belongings will be protected during any hazard control work per the requirements of 24 CFR 35.1450), including restricted access, protection of belongings, and temporary relocation if needed.	<input type="checkbox"/>
8. Clearance The grantee will require clearance by an EPA certified professional for all hazard control work in compliance with 24 CFR 35.1340, unless the total painted surface disturbed by rehabilitation is less than the de minimis levels of 24 CFR 35.1350(a), as follows: a. If the Federal Rehabilitation Assistance calculation does not exceed \$5,000, clearance of hazard workites. b. If the Federal Rehabilitation Assistance calculation exceeds \$5,000, clearance of the unit/property.	<input type="checkbox"/>

Form 5-1 (2019)



On the screen is an example of CDBG’s Form 5-1. Form 5-1’s certify the steps that the CDBG recipient will follow in complying with lead regulations. This form should be submitted for any projects that involve housing rehabilitation work and should be submitted with the recipient’s signed Grant Agreement.

Form 5-2: CDBG LBP Compliance Plan Certification – Homeownership/Acquisition Assistance Only (No rehabilitation)

Form 5-2
CDBG LBP Compliance Plan Certification – Homeownership/Acquisition Assistance Only (No rehabilitation)

Recipient Name _____	CDBG Project # _____
Certifications of Compliance	
1. Exemption If a property meets an exemption in 24 CFR 35.115, the grantee will certify and document the exemption. If exempt, no certifications below apply to the property.	<input type="checkbox"/>
2. Visual Assessment The grantee will conduct a visual assessment by a person who has completed the HUD visual assessment online training (http://www.hud.gov/cdbg/lead/training/visualassessment309101.cfm).	<input type="checkbox"/>
3. Notices The grantee will require that the following notices be provided to the buyer prior to or at closing: a. Protect Your Family From Lead b. Seller Disclosure of LBP & LBP Hazards	<input type="checkbox"/>
4. Painted surface repair If the visual assessment indicates deteriorated or deteriorating painted surfaces requiring repair, the grantee will require that surfaces be repaired following paint stabilization requirements in 24 CFR 35.1330(b) including: a. Repair will be conducted by a person or firm with interim control training under 24 CFR 35.1330 or EPA Renovator certification under 40 CFR 745.236. b. Safe work practices under 24 CFR 35.1330 will be followed, including occupant protections, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1330(d). c. Worksite clearance will be conducted by an EPA-certified professional under 24 CFR 35.1340, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1330(d).	<input type="checkbox"/>
5. Ongoing Maintenance (rental only) If the acquired property is a rental property subject to use restrictions, the grantee will require the owner to follow the ongoing maintenance requirements of 24 CFR 35.1355(f) for a period of five years after completion of the unit.	<input type="checkbox"/>
6. Records The grantee will maintain records that fully document compliance with all requirements in this certification for a period of five years from the date the project is closed out with the OCR.	<input type="checkbox"/>

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Form 5-2 (2/2016)



Similar to the Form 5-1, the Form 5-2 also certifies the steps that the CDBG recipient will follow in complying with lead regulations, this time in relation to Homeownership/Acquisition project. As with the Form 5-1, Form 5-2 should be submitted with the recipient’s signed Grant Agreement.

Form 5-9: Calculating the Level of Federal Rehabilitation Assistance

FORM 5-9
CALCULATING THE LEVEL OF FEDERAL REHABILITATION ASSISTANCE

Total Number of Units in Building:		
Project Street Address:	Project:	Average Per Assisted Unit
Step 1. Federal Housing Assistance		
CDBG Funds		
SECTION Funds		
Other HUD Funds (see below)		
Other Federal Housing Assistance (see below)		
Average Federal Housing Assistance (per assisted unit)		
Step 2. Hard Cost of Rehabilitation		
Total estimated Rehabilitation Hard Costs		
Exclude Costs of CDBG-funded contract work (attach list of items)		
Average Hard Cost of Rehabilitation (per assisted unit)		
Step 3. Federal Rehabilitation Assistance (per assisted unit)		
Select the level of units to be rehabilitated (per assisted unit) and check applicable category below.		
If less than or equal to \$5,000 per unit:		
• Unit must be to be demolished		<input type="checkbox"/>
• Follow Safe Work Practices on structural surfaces		<input type="checkbox"/>
• Check & Close (mandatory) work only with life-saved steel joists		<input type="checkbox"/>
If above \$5,000 but less than \$15,000 per assisted unit:		
• Conduct job measurement of work		<input type="checkbox"/>
• Follow 15,150 interim controls for all hazards		<input type="checkbox"/>
• Check & Close (mandatory)		<input type="checkbox"/>
If more than \$15,000 per assisted unit:		
• Conduct job measurement of structural steel & concrete areas		<input type="checkbox"/>
• Allow interior hazards (gas leaks controls permitted for services)		<input type="checkbox"/>
• Check & Close (mandatory)		<input type="checkbox"/>
Prepared by:		
Signature:		
Date:		
CDBG Project #:		

Form 5-9 (8/2016)



In order to assist CDBG recipients in correctly following the lead regulations, OCR provides the following form, Form 5-9, on the CDBG Forms page. Form 5-9 assists CDBG grantees in calculating the level of federal assistance used in housing rehabilitation projects. One of these forms should be filled out for every housing unit that received any Federally funded rehabilitation assistance.

ANY
QUESTIONS
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Homes and
Community Renewal

Questions

Post your questions now in the Question box

Questions after this webinar:

- Email to ocrinfo@nyshcr.org or
- Contact your Community or Economic Developer at 518-474-2057

Please visit the OCR website at:

<https://hcr.ny.gov/community-development-block-grant>

