CDBG Orientation Webinar Series

Lead Based Paint Requirements for CDBG Housing Activities

February 15, 2022
The Orientation Webinar Series

1. Getting Started – January 11, 2022 (Completed)
2. Environmental Review – January 18, 2022 (Completed)
4. Program Administration – February 8, 2022 (Completed)
5. Lead-Based Paint Compliance – Today, this is the final webinar in the series

These are all available on the CDBG website.
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.
Rules Related to LBP

**HUD**
- Lead Safe Housing Rule
- HUD-assisted housing, including CDBG & HOME
- 24 CFR Part 35

**EPA**
- Renovation, Repair & Painting Rule
- All renovations; certified firms & renovators
- 40 CFR Part 745, Subpart E

**NYS**
- Lead Poisoning Prevention
- Screening children; environmental investigation/intervention
- Department of Health; Title X Part 67

**NYC**
- Lead Poisoning prevention
- Landlord requirements pre-1960 housing(+ pre-1978)
- NYC DOHM, Local Law 1 of 2004
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 EBLL
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”
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**
7 Steps to Lead Compliance

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Requirement</th>
<th>Done by</th>
</tr>
</thead>
<tbody>
<tr>
<td>CDBG &amp; HOME funded acquisition</td>
<td>Visual assessment</td>
<td>HUD visual assessment *</td>
</tr>
<tr>
<td>CDBG &amp; HOME funded rehab</td>
<td>Risk assessment</td>
<td>EPA risk assessor</td>
</tr>
<tr>
<td>$0 - $25,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* [http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm](http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm)
Federal Rehabilitation Assistance (FRA)

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

<table>
<thead>
<tr>
<th>Per-unit Federal (HUD/RD) assistance</th>
<th>Per-unit hard cost of rehabilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Exclude non-Federal &amp; Federal non-housing funds (e.g., Weatherization)</td>
<td>• Exclude added costs of LBP compliance (e.g., evaluation, clearance)</td>
</tr>
</tbody>
</table>
Risk Assessment

EPA-certified risk assessor


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
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**
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
## Hazard Control Methods & Firms

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

7 Steps to Lead Compliance

1. Plan & Certification
2. Evaluation
3. Notices
4. Work Standards
5. Clearance
6. Records
7. Ongoing Maintenance
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
Form 5-1: CDBG LBP Compliance Plan Certification – Rehabilitation or Homeownership/Acquisition Assistance with Rehabilitation

<table>
<thead>
<tr>
<th>Recipient Name</th>
<th>CDBG Project #</th>
</tr>
</thead>
</table>

**Certification of Compliance**

1. **Exemption**
   - If a property meets an exemption in 24 CFR 31.115, the grantee will certify and document the exemption and maintain evidence of the exemption within each project file.

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 a risk assessment (if required).

3. **Federal Rehabilitation Assistance (FRA) calculation**
   - The grantee will complete and document the per-assigned unit Federal Rehabilitation Assistance calculation (GAM Exhibit 140) following the guidance in GAM Section 140 prior to executing contracts. A completed Exhibit 140 will be retained with each project file.

4. **Notices**
   - The grantee will provide the following notices to each owner and occupant:
     a. EPA Renovator 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 54)
     d. (If clearance is done) Notice of Completion (GAM, Exhibit 54)
     e. Evidence of receipt of each of the above items will be retained with each project file.

5. **Eviction**
   - 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 OCHCI 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(a).

6. **Contractor**
   - The grantee will hire EPA-certified contractors under 40 CFR 785.326 for rehabilitation work on non-exempt properties.
     a. If asbestos is required (the Federal Rehabilitation Assistance calculation exceeds $25,000), an EPA asbestos firm will be contracted to perform all asbestos activities.
     b. Evidence of EPA certification for each contractor will be retained with each project file.

7. **Occupied Protection**
   - The grantee will ensure the occupants and occupants' belongings will be protected during any hazardous work per the requirements of 24 CFR 35.1314(a), including restricted access, protection of belongings, and temporary relocation if needed.

8. **Clean-up**
   - The grantee will require clean-up by an EPA-certified professional for all hazardous work in compliance with 24 CFR 35.1314, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1314(a), as follows:
     a. If the Federal Rehabilitation Assistance calculation does not exceed $5,000, ignorance of painted work.
     b. If the Federal Rehabilitation Assistance calculation exceeds $5,000, clean-up of the unit property.

**Certification of Compliance**

[Signature]

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

<table>
<thead>
<tr>
<th>Recipient Name</th>
<th>CDBG Project #</th>
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<tbody>
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</table>

**Certifications of Compliance**

1. **Irregularity**
   - If a property meets an exception in 24 CFR 35.115, the grantee will certify and document the exception. If exempt, no certifications below apply to the property.

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/offices/hudlenders/visualassessment/10101.html).

3. **Notice**
   - The grantee will require the following notices to be provided to the buyer prior to or at closing:
     - a. Protect Your Family From Lead
     - b. Seller Disclosure of LBP & LBP Hazards

4. **Painted Surface Repair**
   - If the visual assessment indicates a damaged or deteriorating painted surfaces requiring repair, the grantee will require that surfaces be repaired following paint contamination requirements in 24 CFR 35.1330(b) including:
     - a. Repair will be conducted by a person or firm with training and experience in 24 CFR 35.1330 and EPA certification under 40 CFR 745.206.
     - b. Safe work practices under 24 CFR 35.1330 will be followed, including occupant protection, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(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 35.1350(d).

5. **Ongoing Maintenance (rental only)**
   - If the acquired property is a rental property subject to restrictions, the grantee will require the owner to follow the ongoing maintenance requirements of 24 CFR 35.1355(b) for a period of five years after completion of the unit.

6. **Record**
   - 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.
Form 5-9: Calculating the Level of Federal Rehabilitation Assistance

#### FORM 5-9
CALCULATING THE LEVEL OF FEDERAL REHABILITATION ASSISTANCE

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Project</th>
<th>Average Per Assisted Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Federal Housing Assistance</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>CDBG Funds</td>
<td></td>
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<tr>
<td></td>
<td>Section 18 Funds</td>
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<tr>
<td></td>
<td>Other HUD Funds (as below)</td>
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<tr>
<td></td>
<td>Other Federal Housing Assistance (as below)</td>
<td></td>
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<tr>
<td>2</td>
<td>Total Rehabilitation Costs</td>
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</tr>
<tr>
<td>3</td>
<td>Federal Rehabilitation Assistance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Please note:**
- Select the type of gas or oil in $1,000 per unit.
- Test surfaces to be tested.
- Follow Safe Work Practices on decorated surfaces.
- Class & clean premises, paint walls with oil-based dust-resistant coatings.
- Conduct risk assessment of walls.
- Follow 31-14c guidelines for all hazards.
- Class & clean walls.
- Conduct risk assessment of assisted unit & common areas.
- Clean & clear walls.

Prepared by:
Signature
Date
CDBG Project #:
THANKS FOR WATCHING MY PRESENTATION

ANY QUESTIONS?
Questions

Post your questions now in the Question box

Questions after this webinar:
• Email to ocrinfo@hcr.ny.gov
• Contact your Community or Economic Developer at 518-474-2057

Please visit the OCR website at:
Community Development Block Grant | Homes and Community Renewal (ny.gov)