



**Homes and
Community Renewal**

CDBG Orientation Webinar Series

Lead Based Paint Requirements for CDBG Activities

January 11, 2023



The Orientation Webinar Series

1. Getting Started – November 29, 2022 (Completed)
2. Environmental Review – December 6, 2022 (Completed)
3. Financial Management – December 13, 2022 (Completed)
4. Program Administration – December 20, 2022 (Completed)
5. Lead-Based Paint Compliance– Today, this is the final webinar in the series

These are all available on the [CDBG website](#).

Grant Agreement Reminder

- Must execute within 45 days of OCR issuing grant agreement
- Must be signed by the Chief Elected Official (CEO)
- Any Applicable Schedule A Condition(s) must be met to the satisfaction of the OCR

For projects awarded through the 2022 Funding Round:

Grant Agreements were sent electronically on November 22, 2022, and are due back by
Thursday, January 12, 2023

If this date cannot be met, contact your
Community or Economic Developer

Environmental Review Record Reminder

Submit Environmental Review Record (ERR) and Request for Release of Funds (RROF) within 90 days of OCR issuing the Grant Agreement

**The Final ERR and RROF for all projects must be submitted by
January 27, 2023**

**If you cannot meet this deadline,
contact your Community/Economic Developer**

Topics

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



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

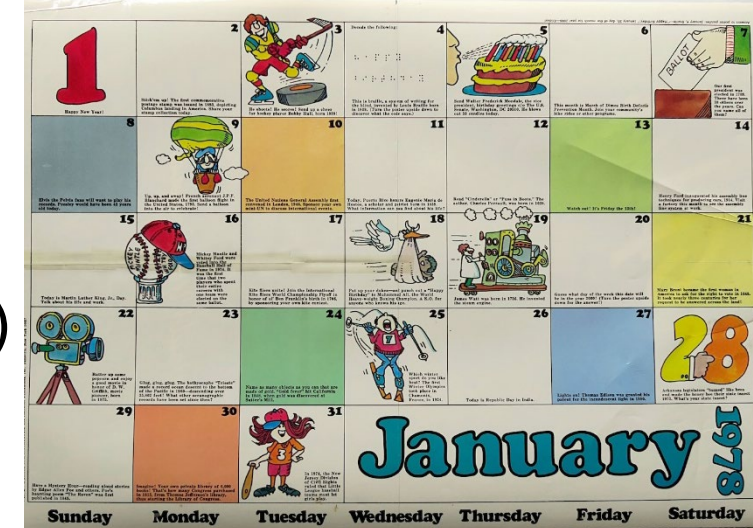
- Additional requirements if children < 6 or EBLL



1978

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



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

1. Plan & Certification

2. Evaluation

3. Notices

4. Work Standards

5. Clearance

6. Records

7. Ongoing Maintenance

Step 2. Evaluation

IDENTIFYING LEAD PAINT:

WHAT DOES LEAD PAINT LOOK LIKE?



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>

Federal Rehabilitation Assistance (FRA)

Federal Rehabilitation Assistance 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)

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

1. Plan & Certification

2. Evaluation

3. Notices

4. Work Standards

5. Clearance

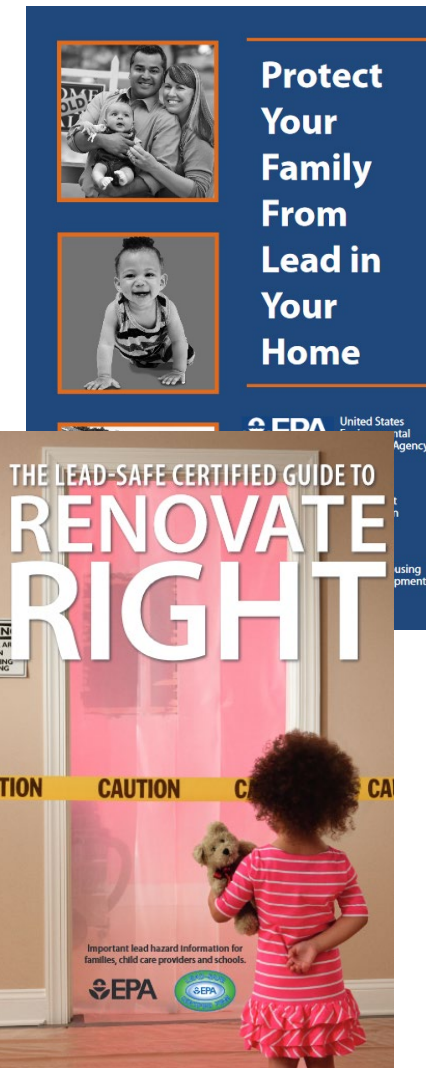
6. Records

7. Ongoing Maintenance

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



1. Plan & Certification

2. Evaluation

3. Notices

4. Work Standards

5. Clearance

6. Records

7. Ongoing Maintenance

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

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

The list of EPA licensed renovator and abatement firms is at the link:
http://cfpub.epa.gov/flpp/searchrrp_firm.htm



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

1. Plan & Certification

2. Evaluation

3. Notices

4. Work Standards

5. Clearance

6. Records

7. Ongoing Maintenance

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>

7 Steps to Lead Compliance



1. Plan & Certification



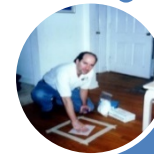
2. Evaluation



3. Notices



4. Work Standards



5. Clearance



6. Records



7. Ongoing Maintenance



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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

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 35.115, the grantee will certify and document the exemption and maintain evidence of the exemption within each project file. <p style="text-align: center;"><u>If exempt, no certifications below apply to the property.</u></p>	<input type="checkbox"/>
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 5-9) following the guidance in GAM Section V.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 35.1345(a), 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 surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(d), as follows: a. If the Federal Rehabilitation Assistance calculation does not exceed \$5,000, clearance of hazard worksites. b. If the Federal Rehabilitation Assistance calculation exceeds \$5,000, clearance of the unit/property.	<input type="checkbox"/>



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/offices/lead/training/visualassessment/h00101.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 745.226. b. Safe work practices under 24 CFR 35.1350 will be followed, including occupant protections, unless the total painted surfaces disturbed by rehabilitation are less than the de minimis levels of 24 CFR 35.1350(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).	<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(a) 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"/>

1 Form 5-2 (5/2014)

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		
HOME Funds		
Other HUD Funds (list below):		
Other Federal Housing Assistance (list below):		
Average Federal Housing Assistance (per assisted unit)		
Step 2. Hard Cost of Rehabilitation		
Total estimated Rehabilitation Hard Costs		
Exclude: Costs of LBP hazard control work (attach list of items)		
Average Hard Cost of Rehabilitation (per assisted unit)		
Step 3. Federal Rehabilitation Assistance (per assisted unit)		
Select the lesser of Steps 1 & 2 calculations (per assisted unit) and check applicable category below		
If less than or equal to \$5,000 per unit: <ul style="list-style-type: none"> • Test surfaces to be disturbed • Follow Safe Work Practices on disturbed surfaces • Clean & clear immediate work site with lab-tested dust wipes 	<input type="checkbox"/>	
If above \$5,000 but less than \$25,000 per assisted unit: <ul style="list-style-type: none"> • Conduct risk assessment of unit • Follow 35.1340 interim controls for all hazards • Clean & clear entire unit 	<input type="checkbox"/>	
If more than \$25,000 per assisted unit: <ul style="list-style-type: none"> • Conduct risk assessment of assisted unit & common areas • Abate interior hazards (interim controls permitted for exterior) • Clean & clear entire unit 	<input type="checkbox"/>	
Prepared by:		
Signature:		
Date:		
CDBG Project #:		

Form 5-9 (6/2014)

Question and Answer



After this Webinar

If you have any further questions following the conclusion of this webinar, submit your questions to ocrinfo@hcr.ny.gov or contact the Office of Community Renewal at 518-474-2057

Please visit the OCR website at [Community Development Block Grant | Homes and Community Renewal \(ny.gov\)](https://www.ny.gov/community-development-block-grant-homes-and-community-renewal)