

National Community Development Association
LEAD-BASED PAINT FINAL RULE
QUESTIONS AND ANSWERS
MARCH 9, 2000

NCDA, along with the National Association of Housing and Redevelopment Officials and the Council of State Community Development Agencies, met with HUD officials on March 9th regarding questions and comments received from members on HUD's Lead-Based Paint final rule. The following Q & A provides you with a list of the questions received from members and the answers provided by HUD. NCDA, NAHRO, and COSCDA will continue to meet with HUD on a regular basis to communicate questions/concerns received from members on the Lead-Based Paint final rule. NCDA is also in the process of drafting a letter to the Hill on specific issues regarding the rule. Please forward all questions/concerns to Vicki Watson at 202-887-5532 or by e-mail at vicki@ncdaonline.org

Questions and Answers:

(1) How do clearance testers receive training? Since this is a new category does EPA offer training?

EPA is developing a training course for clearance technicians that should be available in the spring or summer of this year. At that time, training providers that are accredited for training in lead-based paint inspection and risk assessment may teach the course.

After successfully completing the course, an uncertified but trained individual could then seek employment with a certified inspector or risk assessor who would approve and sign his or her clearance examination reports. However, it is not clear whether certified inspectors and risk assessors will employ clearance technicians, partly because although a report prepared by an uncertified clearance technician and signed by a certified inspector or risk assessor would be acceptable to HUD, it is not clear whether EPA and EPA-authorized State and tribal programs will find such reports acceptable under their regulations.

With regard to certification of clearance technicians, it is not clear at this time whether EPA and States and tribes will engage in such certifications, and if so, when. Although HUD would accept technician clearances any where regardless of the State of certification, individual States may not recognize clearances performed by technicians certified in another State.

(2) Are FHA-insured single family mortgages covered by the rule?

The regulation does not change existing requirements for FHA single-family mortgage insurance. Those requirements, which are at 24 CFR 200.800-810, call for treatment of defective paint before endorsement of FHA insurance. These existing requirements will continue to apply to properties covered by an application for mortgage insurance under sections 203(b) and 203(f), as well as other single family mortgage insurance programs. However, single family properties that are sold by HUD with mortgage insurance are covered by subpart F of the new regulation.

- (3) **Do we assess and clear all pre-1978 homes or only those with children under the age of 6? What about homes being purchased by single individuals and persons over 60 years of age?**

Except for the standard exemption in section 35.115, all pre-1978 homes are covered by the rule, except that for tenant-based rental assistance only homes occupied by families with children less than 6 years of age are covered.

- (4) **What happens if there are not sufficient Sec. 8 administrative fees to pay for the assessments and clearance tests?**

Visual assessments are part of the HQS inspection now. No change in that. Risk assessments are only required if there is a child with an environmental intervention blood lead level. That should be infrequent, if the HQS inspectors are doing a good job. PHAs do not have to pay for clearance examinations. However, they may want to get clearance examiners on retainer at a good price to facilitate clearance, but charge the owners.

- (5) **For the Section 8 program, on annual reviews, if Lead-Based Paint is found on a wipe test and the owner refused to abate, do we force the tenant to move and at what point do we abate the rent to the owner or terminate the contract?**

The only wipe tests required by the final rule are at clearance. The final rule does not include the proposed rule requirements for wipe tests in pre-1950 units. However, noncompliance with the LBP final rule is noncompliance with HQS, so the administrative measures taken are the same as for any HQS noncompliance.

- (6) **What non-housing CDBG programs are affected by the rule?**

CDBG non-housing activities are not affected by the rule

- (7) **The rule says that Emergency Shelter Grants program funds are covered if ESG funds are used to provide assistance of 100 days duration or longer. Does that mean operating assistance to a shelter of more than 100 days or to an individual homeless person? Do these only apply to shelters who take in children?**

The exception for emergency rental assistance and foreclosure prevention assistance at section 35.115(a)(11) applies to the dwelling unit, not the family. Although HUD has not made an official determination on this, it is possible that most emergency shelters will be exempt, because they appear to fall under the definition of zero-bedroom dwellings, which are exempt under the Title X statute. A zero-bedroom dwelling is defined in section 35.110 as “any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings.” The term “single room occupancy housing” is defined as “housing consisting of zero-bedroom dwelling units that may contain food preparation or

sanitary facilities or both.

(8) Can Section 8 property owners be assessed the costs of clearance testing?

Section 8 property owners can be *asked* to pay for the cost, but are not required by the regulation to be assessed the cost.

(9) Can CDBG pay for all Lead-Based Paint assessment, clearance and testing for CDBG, HOME, ESG and Section 8?

The use of CDBG funds for lead-based paint hazard evaluation and reduction is an eligible rehabilitation activity under 570.202(f), without regard to whether the structure is also assisted under another program.

(10) Does the rule apply to CDBG public services activities, such as assisted child care, in which the parent selects the child care provider. The provider may be a registered family home which may be pre-1978. Do we inspect? Who pays?

CDBG non-housing activities are not covered by the rule

(11) What about assistance provided to volunteer groups who work on homes (i.e., Christmas in April). If CDBG funds are provided, is this covered by the rule?

The answer depends upon how the assistance will be used. If CDBG funds are only used to pay for the cost of a volunteer coordinator or the operating costs for the volunteer group, the final rule would not apply. However, if CDBG funds are used to pay for materials to be used in the homes the group is rehabilitating, such use of CDBG funds would be covered by the rule.

If CDBG funds are used for “hard costs,” such as labor and materials, not soft costs, such as coordination of volunteers, the regulation applies. If the hard costs of CDBG rehabilitation assistance are no more than \$5,000, safe work practices and clearance are required, but the workers do not have to be formally trained in accordance with section 35.1330(a)(4). HUD recommends that designated parties (i.e., grantees, participating jurisdictions, subrecipients) arrange for homeowners and volunteers to take a brief course on safe work practices for renovation. Adaptations can be made from the approved courses that are listed in section 35.1330(a)(4), or a course can be adapted from the booklet, “Lead Paint Safety: A Field Guide for Painting, Maintenance, and Renovation Work,” copies of which can be obtained from the National Lead Information Center at 1-800-424-LEAD. The objectives of such brief training should be to acquaint people with the following topics: (1) why one should be concerned about using lead-based paint hazards; (2) how to work and prepare surfaces for repainting without using the prohibited practices of paint removal; (3) how to score painted surfaces to reduce dust generation during demolition; (4) how to protect occupants, their belongings, the worksite, and the rest of the home from lead contamination by using polyvinyl sheeting or other floor coverings; (5) how to clean up after the work in order to achieve clearance; and (6) the importance of achieving clearance.

With regard to clearance, HUD suggests that designated parties arrange for persons who are certified to perform clearance examinations to be available for clearance of participating homes, with the cost being paid by the program. There are several ways this could work. For example, owners or volunteers might be provided with a list of clearance examiners and would arrange for the clearance examination. Owners then might present the clearance examiner's bill to the designated party, along with a copy of the clearance report showing that the worksite passed clearance, and the designated party would then pay the clearance examiner. The designated party would retain the clearance report.

- (12) We have heard from our inspectors who attended the class that the minimum clearance level required on wipe tests are very low and below the level currently considered safe by EPA. That with such a low clearance threshold, few, if any, of our units will have a chance of passing.**

The dust standards for floors and interior window sills are based on a pooled analysis of all available epidemiological studies that have examined the relationship between dust-lead and blood-lead levels. The results are described in the preamble to the rule beginning on page 50180 of volume 64 of the Federal Register (September 15, 1999). They are similar to those proposed by EPA in the proposed rule implementing section 403 of the Toxic Substances Control Act. HUD has found that most homes have dust-lead levels below the standards for floors and interior window sills, even homes built before 1960. The clearance levels for troughs has not been changed. Troughs often have higher levels but can usually be brought below the clearance standard with cleaning.

If a surface is cracked, pitted, or porous, it may be difficult to achieve clearance. In some cases it is necessary to apply a coating or covering to the surface to make it cleanable.

- (13) Will HUD provide training beyond the Round II training?**

HUD understands that Rounds I and II only begin to address the need for training among CPD grantees, state recipients, subrecipients, etc. HUD hopes to add the Lead-Based Paint training to its ongoing training series.

- (14) Does HUD have a list of certified laboratories to test the LBP?**

A list of certified laboratories can be obtained by calling the National Lead Information Center at 1-800-424-LEAD.

- (15) What funding sources can be used by communities to implement the rule?**

The rule applies to units that are receiving assistance through Federal housing programs. It is expected that the additional costs will be absorbed by these programs (CDBG, HOME, HOPWA, etc.) or the project owner, as is deemed appropriate. Grantees may also wish to consider applying for competitive Lead-Based Paint Hazard Reduction Grants to help offset the additional costs of complying with the final rule.

- (16) Are grantees required to inspect every house that is to be assisted with CDBG/HOME funds? Or is it only homes where children reside or are expected to reside?**

Grantees are required to inspect every house that is to be assisted with CDBG/HOME funds.

- (17) It will make many projects infeasible because of the cost. Does HUD want grantees to spend more on rehabilitation (because of the additional requirement of lead-based paint abatement) than the value of the house?**

These decisions remain a matter of local discretion. CPD grantees have always had the option to invest more Federal funds in a unit than that unit's market value. Many grantees choose to make uneconomic decisions (i.e., investing more money in a unit than the unit's market value) as a way of investing in their communities. Grantees need to examine their local program design to determine whether they continue to be appropriate. Grantees that make amortizing loans to low-income homeowners may need to consider granting the lead-hazard reduction portion of its investment in a unit. Grantees that simply place liens on properties to secure forgivable, deferred payment loans may need to consider whether it is appropriate to include lead hazard reduction costs in those liens.

- (18) Education of the HUD field offices is essential. How and when does HUD plan to educate the field office on this rule?**

HUD has provided slots in each delivery of its contract training for CPD field staff. While not every HUD field office will be able to attend, each office will have some trained staff. HUD is discussing the possibility of additional training for HUD staff.

- (19) What if you track in LBP from the soil and bring it into the house, where there is no LBP, but because of tracked soil, it causes the house to fail the LBP test.**

(1) Clean the interior and re-test. (2) If you know you have a soil-lead hazard on the property, the regulation may or may not require you to conduct hazard controls on the soil. It depends on which subpart and section of the rule is applicable. (3) It is a good idea to place mats at the entrances and clean the mats frequently, especially if the soil-lead hazard or exterior dust-lead hazard is part of the environment of the neighborhood and can't be controlled within the property.

- (20) Is there any way to exempt elderly homeowners (i.e., in non-elderly designated housing?) Many seniors (especially frail elderly) would rather not participate in our homeowner rehab programs if they think they will have to be relocated, even temporarily, while the property is de-leaded. Relocation itself can be a serious health risk to these elderly. If the properties can't be exempted, couldn't we just require de-leading upon turnover or sale of the property as an alternative?**

The purpose of Title X of the Housing and Community Development Act and its implementing regulations is to make all units lead-safe at the time that they receive Federal rehabilitation assistance, rather than concentrating on units in which children have already been poisoned. Consequently, neither the statute nor the regulations make distinctions among units based upon

their occupancy (with the exception of units designated for use by the elderly unless a child is in residence). The objective of the statute and rule is to make units receiving Federal rehabilitation assistance for future as well as current occupants.

- (21) **What assistance is HUD proposing in its FY 2001 budget to assist local governments in putting forth this new rule? Is HUD willing to provide additional grant funds to cover the added costs of containment, clean-up, relocation and the other standard treatments?**

The President's FY 2001 budget proposal includes an additional \$100 million in CDBG funding and an additional \$50 million in HOME funds. In addition, a 50% increase in the appropriation for the Lead-Hazard Reduction Grant Program is proposed. All of these resources can be used in implementing the new rule. Although, funding under the Lead-Hazard Reduction Grant Program is competitive and grantees must apply directly for this funding.

- (22) **Is it true the following must occur in order to install a grab bar on the wall (a presumed leaded surface) in the bathroom of an elder homeowner? (1) The installation must be done and supervised by someone with specific HUD training; (2) Safe work practices must be followed; and (3) A dust wipe test must be used to ensure it is safe for the owner to re-enter the bathroom. As this will take more than 12 hours, the owner will need to be out of the house during the day while work is going on and cannot return until the next morning.**

A job of this nature would most likely fall under the *de minimus* area of disturbed paint, below which safe work practices and clearance are not required. The *de minimus* levels are as follows:

- (1) 20 square feet (2 square meters) on exterior surfaces;
- (2) 2 square feet (0.2 meters) in any one interior room or space; or
- (3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

- (23) **Several states, such as Massachusetts, have had strong lead regulations for some time. However, Oklahoma for example has only regulated lead workers since November 1996. Is HUD considering any dispensation for states without a strong lead abatement industry?**

Not at this time

- (24) **There is an apparent lack of construction companies with employees certified to do lead removal work. Can HUD provide a list of certified contractors and certified testing facilities?**

Consult the Leadlisting at 1-800-LEAD-LIST

- (25) **If Pjs have their personnel trained to do LBP inspections, risk assessments, site monitoring, clearance testing, etc., are there potential liability issues pertaining to the**

health risk to those employees? Also, if the PJ is doing the clearance testing with its own employees there is potential liability, if in the future, lead poisoning occurs in the assisted household. Should cities do the assessments, wipe tests, clearance or do we have liability issues? What is HUD's recommendation.

If the personnel follow the protocols and document their work, stating what was done and what the conclusions are, and what the limits of those conclusions are, the liability should not be of more concern than the liability that State and local governments encounter in any number of activities they conduct. The key is to do the work professionally and avoid "cutting corners."