

Transition Strategy to Implement HUD's Lead Safety Regulation

Summary

HUD has developed a transition plan to implement the new lead safety regulation which becomes effective on September 15, 2000. This transition plan will be published as a Notice in the Federal Register. The new regulation applies advances in the scientific understanding of childhood lead poisoning to the rehabilitation, treatment, and maintenance of housing receiving federal assistance under a wide array of programs. The control of lead-based paint hazards required under the new regulation requires expertise and training to be done safely and effectively. In certain areas around the country, however, the market for the services required under the rule may not yet have reached the point where the requisite expertise is reasonably available.

Recognizing that appropriate expertise is necessary for the new regulation to offer the protections it should, HUD has developed a transition plan to accomplish full implementation of the rule. The plan has a three-part strategy: First, provide a short transition period during which those geographic areas lacking capacity to comply with the rule can build that capacity and resources can be focused on housing stock with the greatest need; Second, offer training assistance to those jurisdictions that need help building their capacity; Third, help reduce the costs of complying with the rule through direct funding.

HUD will provide more than \$100 million to help communities develop the capacity to perform the testing and lead-safe work practices required by the new rule and to defray the costs of complying with the rule. HUD will also continue to work with the affected and interested parties to more precisely estimate the cost of all the lead-based paint rehabilitation work required in HUD-assisted programs throughout the country as new information becomes available.

To provide for transition, HUD will establish a transition period during which program participants in certain jurisdictions will be required to comply only with the lead-based paint regulations that were in place before September 15, 2000, under the following circumstances:

- **For jurisdictions that lack adequate capacity.** HUD will authorize a six-month transition period for program participants in jurisdictions which notify HUD, by November 15, 2000 through a Statement of Inadequate Capacity, that they lack the capacity to implement one or more provisions of the new rule.
- **Post-1960 properties** occupied by young children receiving tenant-based rental assistance will have a twelve month transition period.
- Properties receiving federal rehabilitation assistance greater than \$25,000 that are **occupied by the elderly**, where no child resides or is expected to reside, will have a twelve month transition period.

To help **build capacity** HUD will:

- **Fund nationwide training** for clearance technicians, maintenance workers, rehabilitation workers, and program staff with industry partners;
- **Create a Lead Assistance Clearinghouse (LAC)** to respond to requests for training assistance from areas which are unable to comply.

To help **reduce the costs** of complying with the rule HUD will:

- **Provide \$84 million to fund the costs of testing** including clearance testing and risk assessments in the Section 8 voucher program, clearance testing for properties receiving federal rehabilitation assistance, and inspections and risk assessments for HUD's project-based programs.

Background

Congress mandated reduction of lead-based paint hazards in federally-assisted housing in 1992. On September 15, 1999, HUD promulgated a final rule applying advances in the scientific understanding of childhood lead poisoning. The new HUD regulation significantly increases the quantity of testing and home maintenance, repair, or rehabilitation work that must be performed in a lead-safe manner. In an effort to ensure that sufficient numbers of trained persons are available in all disciplines needed to implement the rule, HUD has focused its transition strategy on the lack of trained or certified individuals to perform the work required by the rule in certain areas and the costs of complying with the rule.

Transition period

In order to assist those geographic areas where capacity is underdeveloped, HUD has created transition periods specifically targeted to those areas. This policy has the benefit of assessing local training needs to implement the rule, while still requiring implementation where capacity currently exists.

Under the transition plan, a jurisdiction (CDBG entitlement grantee or the State CDBG grantee) which provides a determination to HUD that it lacks capacity would be given six months from the effective date of the rule (September 15, 2000) to address any capacity problems in their locality. Additional time may be granted, in accordance with the Consolidated Plan schedule, at the end of six months in particular areas where the initial transition period has not yet yielded sufficient capacity. During the transition period, the lead-based paint regulations that were in place before September 15, 2000 will remain in effect.

For example, a jurisdiction that determines that the supply of trained clearance technicians is inadequate for a particular program will include this information in the statement to HUD. This will eliminate the need to comply with the clearance requirement of the new lead-based paint rule for that particular program and other affected programs as indicated in the jurisdiction's Statement of Inadequate Capacity. HUD will use this information to target appropriate compliance assistance to build capacity during the transition period.

To qualify for the transition period, a jurisdiction must submit a Statement of Inadequate Capacity (signed by the Chief Elected Official or his designee) to HUD by November 15, 2000. A copy of the statement must also be sent to the appropriate State authority. The statement must include the following:

- A statement of the lack of capacity for the particular program(s) to meet specific requirements of the rule and which portions of the rule can be met using existing capacity during the transition period;
- An analysis of actual bids submitted, if the claim of inadequate capacity is based on the lack of reasonably priced contractors in the jurisdiction;
- Steps that will be taken by the jurisdiction to address capacity;
- A statement acknowledging that the lead-based paint regulations that were in place before September 15, 2000 will remain in effect during the transition period (see attachment for sample letter)

HUD will also establish a transition period for certain properties based on the age of the property or occupancy by elderly persons as follows:

- There will be a 12-month transition period for all post-1960 properties receiving tenant-based rental assistance that are occupied by young children. During the transition period, these properties will be required to follow the current lead-based paint regulations.
- There will be a 12-month transition period for properties receiving federal rehabilitation assistance greater than \$25,000 that are occupied by the elderly (where no child resides or is expected to reside). During the transition period, these properties will be required to comply with the new rule's requirements for properties receiving federal rehabilitation assistance between \$5,000 - \$25,000.

Other Policy Clarifications

- In the case of federal rehabilitation assistance, HUD does not require that an elderly occupant be relocated, provided that informed consent is obtained from the occupant.
- Clearance and safe work practices are not required in all federally-assisted housing if the amount of deteriorated paint is less than the de minimus area specified in the regulation.

Capacity Building

To improve infrastructure and local capacity, HUD will provide technical assistance to program participants and others. HUD will target resources to those areas that have submitted a Statement of Inadequate Capacity. Significant training has already been provided and additional training is planned. A website and toll-free hotline will be established to disseminate information about training course offerings. Specifically, the following training and technical assistance activities will be supported by HUD:

- **Clearance:** To help meet the clearance requirements of the regulation, the Department will pay \$1.262 million to train 50 accredited, geographically-dispersed Training Providers and 5,000 Clearance Technicians. These trainers will receive financial incentives to encourage end-users in their states to be trained as Clearance Technicians. Clearance Technicians may include HQS inspectors and other local personnel, such as rehabilitation specialists and program staff. The course will be offered free of charge.
- **Maintenance Workers/TBRA Owners:** To ensure adequate capacity to perform safe maintenance, rehabilitation activities and interim controls required by the regulation, the Department will pay \$1.5 million to train Section 8 Tenant-Based owners, their maintenance workers and other interested parties in lead safety. This is in addition to existing training activities offered through HUD lead hazard control grantees, health departments and others. HUD will contract with national training providers to carry-out the nationwide training activity. By partnering with industry groups, HUD will make the course available to thousands during national conferences and other ongoing training opportunities. HUD will work with state and local governments to ensure that the training courses are consistent with State/local regulations.
- **Targeted Training:** In addition to the baseline training provided above, HUD will use \$10 million to establish a Lead Assistance Clearinghouse. The Clearinghouse will serve jurisdictions that lack capacity, as evidenced by their transition period Statement of Inadequate Capacity, in specific disciplines. For example, if a jurisdiction lacks clearance technicians, HUD would initiate a training course in the area to increase the number of trained technicians.

Funding Clearance Testing and Inspections

HUD will make a total of \$84 million available to defray the costs of inspections and other testing.

- HUD will dedicate \$59 million to pay for inspections and risk assessments in project-based housing, allowing HUD, for the first time, to have a complete assessment of its project-based stock. HUD's Real Estate Assessment Center (REAC) will arrange for a "bulk buy" of these inspections and assessments, which will lower the total cost of compliance by more than \$27 million in the first year alone.
- Properties receiving other types of assistance, such as CDBG/HOME, or TBRA will also be able to take advantage of REAC's low cost "bulk buy" rate when paying for their own inspections.
- HUD will make \$14 million available for clearance testing and risk assessments in units receiving tenant-based rental assistance (\$10M for clearance; \$4M for risk assessments). These funds will be made

available to PHAs through new administrative fees provided by HUD to PHAs. For each tenant-based unit clearance tested, a PHA may claim reimbursement of \$150 for the initial clearance test. For each tenant-based unit for which a risk assessment is done, a PHA may claim reimbursement of \$350. The PHA will follow regular budgeting procedures and year-end statement procedures to access these special administrative fees. A PIH notice providing detailed instructions will be issued shortly.

- HUD will also make \$11 million available for clearance testing in properties receiving federal rehabilitation assistance. HUD will reimburse entitlement grantees based on a management information system report (i.e. IDIS) or a separate report to HUD that documents the number and cost of all clearance activities paid for by the grantees. HUD has determined that this amount will be sufficient to pay for clearance testing in all these properties.

Attachment:

Statement of Inadequate Capacity