

**Responses by the
HUD Office of Healthy Homes and Lead Hazard Control
to
Questions from the National Community Development Association**

April 2001

NCDA's questions and comments are followed by HUD's responses in *italics*.

How will HUD make the reimbursements for clearance testing in CDBG and HOME rehab programs they hinted at last Fall?

HUD is making available \$11,000,000 for CDBG and HOME grantees for clearance testing. Eligible recipients are CDBG and HOME grantees that incur costs for clearance testing required by 24 CFR Part 35. Funding will be provided for the actual costs of the initial test up to \$150 per unit and will be provided through a contractor to be named.

What type of financial resources will HUD provide to grantees to implement this regulation? What training will HUD provide on this regulation? What can HUD do to facilitate and fund training for grantee staff and local contractors?

HUD has provided more than \$100 million to aid jurisdictions that have submitted a statement of inadequate capacity and a transition implementation plan. Of this funding, approximately \$59 million will provide lead-based paint inspections and risk assessments in project-based section 8 multi-family housing, and another \$10 million will be spent on providing training. HUD is currently funding the delivery of over 200 courses in 100 jurisdictions across the country (see www.leadlisting.org to register for a course near you). As of April 2001, over 10,000 rehab and maintenance workers have enrolled in these courses. In addition, HUD has also provided funding to the National Center for Lead-Safe Housing to provide even more training through State governments and other interested groups (contact Carol Kawecky at 1-410-772-2779).

Provide an overview of the waiver process and the provisions for extensions. Will another six month extension be given to grantees?

Please see the HUD Notice OHHLHC-01-02, issued March 8, 2001 (available at www.hud.gov/offices/lead) for the latest information on extensions.

HUD has yet to develop the training for those grantees that submitted a Statement of Inadequate Capacity and Transition Implementation Plan. When will this training be available? How will it be structured? Who will deliver it? With the late start in developing this training, will HUD consider an extension of the transition period?

Training is already underway. Please see www.hud.gov/offices/lead to enroll in a course near you.

Will HUD provide free training for owners/landlords doing their own maintenance work and rehabilitation/maintenance workers participating in the Section 8 program? Where will the training be held?

Yes. See www.hud.gov/offices/lead for a course near you. Within the limit of available resources HUD will continue to make training available.

Is HUD going to provide additional funding to be used specifically for LBP risk assessment and abatement activities?

These activities are eligible expenses under HUD's Lead Hazard Control Grant Program. The Notice of Funding Availability was published on Feb 26, 2001 (see www.hud.gov/offices/lead). Applications are due May 17, 2001. Congress has not appropriated any other funds specifically for risk assessment and abatement activities.

Will additional funding be made available for relocation costs associated with lead hazard control activities in tenant-based rental assistance programs?

Relocation costs are eligible expenses in tenant-based section 8 housing under HUD's Lead Hazard Control Grant program and under CDBG.

Has HUD considered increasing the threshold for emergency repair projects from the current level of \$5,000 to \$10,000? This would help grantees tremendously in terms of cost savings because the units covered would only be subject to paint repair and stabilization instead of lead hazard reduction.

HUD has not initiated rulemaking to change the \$5,000 threshold. The purpose of this under-\$5,000 category is to allow low-cost activities such as paint programs or modest repairs to proceed without having to meet the full unit-wide requirements of projects with greater Federal assistance, in order to provide flexibility. The policy for these narrowly-focused projects is that the work be done using lead-safe work practices, followed by worksite clearance. Paint repair for these projects is necessary for only those surfaces being disturbed, not for the entire unit. This is not intended as an emergency repair policy.

The emergency exemption policy is found at section 35.115 of the regulation, which allows an exemption from the regulation “for emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse).” The preamble to the rule (at 64 FR 50150) notes that “The exemption extends only to the completion of repairs necessary to respond to the emergency; after that, the requirements of the rule apply.”

How should a community get prepared for any new liability issues resulting from implementation of the new rule?

Complying with the rule will reduce liability. Liability is greatest where no action is taken to address lead hazards, or where testing is done and lead-based paint hazards are identified, but no follow-up actions in accordance with the regulation are taken.

Please describe the LBP requirements applicable to a first-time homebuyer assistance program. What advice would you give to communities for instituting these requirements?

Homebuyer assistance that does not involve rehabilitation requires visual assessment of all painted surfaces to identify deteriorated paint, paint stabilization of deteriorated paint surfaces, and a clearance examination; this is covered by subpart K of the regulation. If the property also receives rehabilitation assistance averaging \$5,000 or more per unit, then the rehabilitation subpart (subpart J) also applies.

For communities administering HOME-funded downpayment assistance programs, the only significant change resulting from the new regulation is the clearance requirement. Up-front education is the key to successfully integrating the new regulation into existing homebuyer assistance programs. Education about the hazards of lead-based paint and the lead-based paint requirements should be incorporated into homebuyer counseling curricula. If there is no formal homebuyer counseling in your community, it would be appropriate to provide this information to potential program participants at the time of application.

Why did HUD define abatement differently than EPA?

The two definitions are virtually identical. The only difference is that the HUD definition also includes abatement of lead-based paint even when paint-lead hazards are not present, in order to accommodate existing requirements in conventional family public housing undergoing modernization. For rehab programs and section 8 programs, the two definitions are identical. Please see the joint HUD/EPA letter of April 19, 2001 at www.hud.gov/offices/lead for further details.

It seems it would be a better use of resources to identify children with elevated blood levels, regardless of where they live, and correct the lead-based paint in those units, rather than rehabilitating all federally assisted housing. Any chance of the regulation being changed in this direction?

The purpose of both the statute and the regulation is to prevent childhood lead poisoning, not just respond after the damage has been done. Controlling lead hazards in the context of rehabilitation is a cost-effective way of creating lead-safe housing and thus protecting children. Most health departments already conduct blood lead testing in children. When elevated blood lead levels are found, they initiate case management procedures to ensure that those children are protected from further exposure, under guidelines established by the Centers for Disease Control and Prevention (CDC). HUD does not duplicate those procedures.

If an owner comes to us for assistance with a structure that had been totally gutted on the inside, does a risk assessment have to be completed when everything has been removed down to the studs?

Yes. If there were painted surfaces, on either the interior and/or exterior, a risk assessment needs to be performed to ensure, for example, that dust lead levels are not hazardous. In addition, exterior lead-based paint hazards may be present.

Why won't HUD limit this regulation to units where children under the age of seven reside?

Because children are permitted to live in virtually any housing. Housing where children are expressly not permitted to reside, such as housing designated exclusively for the elderly, and zero-bedroom dwellings are already exempt from the regulation.

Will HUD reimburse the training costs of cities who made the effort to be in compliance with the regulation by the September 15 deadline?

HUD has targeted its training efforts to those jurisdictions where the need is greatest.

Using the e-mail, it takes too long to get an answer or clarification on the regulation. What will HUD do to improve this process?

In addition to e-mail support, at Lead_Regulations@HUD.gov, HUD is providing two hotlines for assistance with the regulation. The first, 1-866-HUD-1012 (toll-free), provides assistance with the Transition Strategy for jurisdictions (including their transition implementation plans); the other, at 202-755-1785 ext. 104, provides assistance with general questions about the regulation. The hotlines can provide more rapid responses.

What percent of lead poisoned people live in federally funded projects and how does that percent relate to the overall CDBG allocation? Can training of workers be lessened?

The National Health and Nutrition Examination Survey, conducted by the Centers for Disease Control and Prevention, reports that older housing occupied by families with low incomes has a disproportionately high percentage of lead poisoned children. While 4.4% of all children are lead-poisoned, 16% of low-income children living in older housing are poisoned. This is the housing that is often targeted for HUD assistance. In Title X, the Congress set specific lead hazard control requirements for housing being rehabilitated with Federal assistance. With regard to training, the regulation requires that persons performing interim controls be trained in lead-safe work practices through a one-day course or be supervised by a certified lead-based paint abatement supervisor. This is far less than the three-day training required for abatement workers.

What training (specifically) are interim control workers required to have when doing the work under the supervision of a certified abatement supervisor?

The only training that interim control workers are required to have when working under the supervision of a certified abatement supervisor is the appropriate OSHA hazard communication training, which includes measures employees can take to protect themselves from lead and other workplace hazards. It is the responsibility of the certified abatement supervisor to ensure that the interim control workers have this training as well as the know-how to do interim control work safely.

Will there be additional funding for the upcoming fiscal year?

The Administration has requested an additional \$10 million for HUD's Lead Hazard Control program. The funding for the upcoming fiscal year depends on the final Congressional Appropriation.

When will the field offices be fully trained on this regulation?

HUD has conducted extensive training for field personnel and will continue to do so.

Has someone in the HUD office taken the Visual Assessment Training online? Some staff reported the lack of expertise needed to obtain the certification (i.e., the training is too easy). This sends the message to grantees that visual assessment is not that critical. You may want to re-think this Visual Assessment Training.

Yes, HUD staff have taken the training. Visual assessment to identify deteriorated paint has been a HUD requirement, without training, for many years. The purpose of the training requirement for Housing Quality Standards (HQS) inspectors and others is simply to acquaint

them with the purpose and importance of the assessment and to explain what is and is not considered “deteriorated paint.” This training effort will encourage those performing this activity to do it well and will result in more consistent assessments.

Has HUD done a survey of clearance testing costs? The limited amount they may grant for reimbursement does not cover the costs we have been quoted. Will HUD increase the cost for reimbursement in the future?

HUD has done a survey of assessment costs and believes that the \$150 per unit being provided for clearance testing is adequate. HUD will continue to monitor costs in the future.

Will HUD re-examine the thresholds (dollar limits) for requiring interim controls vs. abatement?

The dollar limits were established by Congress in the statute and can only be changed by Congress.

Our preliminary estimates indicate each rehab job will increase by 35-40% due to the regulations. Will HUD advocate for necessary increases in CDBG and other program areas to cover additional costs to comply with this regulation?

HUD data show that the incremental cost of lead hazard control in rehab jobs is far less than 35-40%. Specific costs are detailed in the Economic Analysis prepared for the regulation (available at www.hud.gov/offices/lead). HUD is conducting a further evaluation of costs.

Can CDBG and Section 8 programs require children under six years of age to be tested for lead?

For fair-housing and equal-opportunity reasons, children cannot be forced to undergo a medical test as a condition of participation in housing assistance programs. Families should be encouraged (not required) to have their children tested by medical health care providers.

Will HUD implement standardization for certifications needed under the new rule in order to eliminate certification requirements from locality to locality, state to state?

HUD is coordinating its policies with EPA, States and local jurisdictions. The basic Federal responsibility for training and certification of lead-based paint inspectors, risk assessors, and abatement supervisors and workers lies with EPA. Title X, section 404, permits EPA to authorize States which develop lead certification programs which are at least as protective as EPA’s model certification program to implement their programs. A number of states have passed laws that do not permit more stringent requirements than EPA.

If new requirements adversely affect timeliness reviews, what concessions, if any, will HUD make?

Under the CDBG timeliness regulations at 24 CFR 570.902, if the grantee has not met the 1.5 timeliness standard, the grantee does have the opportunity to demonstrate that the lack of timeliness has resulted from factors beyond the grantee's control. If the grantee, for example, has been unable to find contractors and therefore has not started several rehabilitation projects with funds already committed to those contracts, it may wish to present those facts before HUD. However, the introduction of new program requirements is not, in and of itself, a factor that contributes to timeliness. Grantees are always encouraged to reprogram funds or undertake projects with short-turnarounds to comply to ensure that CDBG funds are expended in a timely manner. Because states are subject to a timely distribution standard (rather than timely expenditure standard), HUD does not envision the new requirements having any adverse impact on the timeliness of a state awarding grants to units of local government.

Why not suspend implementation of the regulation for a year until costs for insurance, equipment and actual LBP abatement costs are known?

HUD has been funding lead hazard control in privately-owned low-income housing for nearly a decade. HUD will be conducting another study of costs to augment its cost estimates that were published in the regulation on Sept. 15, 1999. The regulation has already had a one-year phase in period and HUD has made additional provisions for those communities that have been unable to meet the one-year regulatory implementation requirements.

HUD, EPA, and states all seem to have different regulations. Are we going to see some similarity and streamlining of the regulations in the future?

HUD and EPA regulations are in fact consistent and have undergone interagency clearance before being issued. The promulgation of the Lead Safe Housing Regulation has streamlined existing regulations that were confusing and antiquated.

Are most cities doing their own risk assessments or are they contracting outside firms?

There does not appear to be a clear trend in either direction.

Has HUD undertaken additional analysis and data collection to ascertain the true cost of implementing the new regulations in the CDBG and HOME program?

Yes. As discussed above, HUD is designing a data collection effort for this purpose. It is expected that the effort will be phased in order to obtain preliminary data as soon as possible, with more substantial data available at a later date.

Is HUD considering some type of exemption for localities that have a shortage of certified contractors/workers and laboratories?

Yes. The Transition Strategy is designed for just this purpose. For comprehensive details on this program please consult the Federal Register notice on the transition assistance policy, dated September 11, 2000 (65 FR 54858-9). HUD issued Notice OHHLHC-01-02, Extensions to the Transition Assistance Period for HUD's Lead Safe Housing Regulation, on March 8, 2001, applying to those jurisdictions which continue to have inadequate capacity. These notices are available at our web site at www.hud.gov/offices/lead.

Does a HOME Homebuyer Downpayment Assistance subordinate lien (for the affordability period) constitute an “ongoing relationship” such that we would have to monitor the property annually for the homeowner to ensure that LBP hazards were not coming up?

No. See Question K9 in the Interpretive Guidance of September 21, 2000, available on the Internet at www.hud.gov/offices/lead.

Is it true that HUD does not accept XRF machine results for clearance testing? or for determining the extent of LBP hazard during a risk assessment? If we are supposed to use paint chips, how many paint chips do we have to take — for example, from a 3-bedroom, 3-bath house, and how long does it take to collect all the paint chips?

No, it is not true. Clearance testing and risk assessments for dust-lead hazards are typically conducted by taking wipe samples. If a firm hired to perform clearance sampling has obtained recognition from the EPA under its National Lead Laboratory Accreditation Program for the use of an XRF as a “mobile laboratory,” XRF results would be acceptable.

Paint chip sampling, as part of a lead-based paint inspection, should be done in accordance with chapter 7 (Inspection) of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (available from the HUD lead web site at www.hud.gov/offices/lead). Typically, the most common and economical form of conducting paint testing utilizes XRF technology. Paint chip sampling is done to confirm inconclusive XRF results or where an XRF machine cannot obtain a reading, such as on curved surfaces. If paint chip samples alone are to be used for inspection purposes, chapter 7 calls for one sample per testing combination. (Please note that HUD does not recommend the use of paint chip sampling alone, because of the destructive effect on the painted surfaces.)

Will homebuyer assistance require risk assessments and clearance tests, or just the visual assessment?

Homebuyer assistance requires just the visual assessment. See subpart K of the regulation for additional information.

Can any staff person do a visual assessment, or can it only be someone who is certified to do risk assessments and/or clearance testing?

A person performing the visual assessment must have taken and passed the visual assessment training available on the HUD lead web site at www.hud.gov/offices/lead. Risk assessment certification is not required.

Is paying for any required increases in a rehab contractor's insurance costs (due to their becoming a certified lead contractor) or an eligible project cost (if done on a prorated basis over several jobs)? or an eligible rehab administrative cost?

It is HUD's understanding that the extra "insurance" required for contractors who work with lead-based paint essentially protects the contractor if the contractor is sued for alleged contractor defects. Under the provisions of OMB Circular A-87, section 25, grantees are prohibited from purchasing insurance that covers contractor defects.

If a city wanted to do a public information/public education campaign about lead-paint and wanted to offer free risk assessments or free XRF tests, etc., to a certain number of pre-1978 homeowners, would the cost of those risk assessments/XRF tests be an eligible rehab. admin cost? Or would it have to be general admin., as a public information thing?

In general, the costs of risk assessments and XRF tests are eligible lead-hazard evaluation and reduction costs under 24 CFR 570.202(f) of the Entitlement regulations and Section 105(a)(25) of the Housing and Community Development Act for housing units that meet a national objective.