

# Lead Based Paint

# Policy and Procedures

# Manual



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## **SECTION 1-COMPLIANCE OVERVIEW**

### **1.01 Lead Based Paint Overview**

Lead is a naturally occurring element used for centuries in paint, gasoline, ceramics, metal goods, and more. It is found in all parts of our environment including dust, paint, air, soil and water.

Lead can be ingested or inhaled, and even small amounts are harmful to all body systems, especially brains and nervous systems, and especially dangerous for children whose bodies and brains are still developing. There is no safe level of lead in the blood. Both adults and children are affected by deteriorating lead-based paint in their own homes. Dry sanding and/or burning paint from hard-to-reach surfaces is particularly dangerous.

The Consumer Product Safety Commission banned the use of lead in house paint in 1978. Prior to 1978, lead-based paint was commonly used in homes; the older the home, the higher the concentration of lead in the paint. Since 1991, federal laws and regulations have been developed to protect families from lead in their homes. U.S. Department of Housing and Urban Development (HUD) is the principal source for guidance for families, owners, housing programs and workers in federally assisted housing programs and projects.

NDHFA's Planning and Housing Development Division staff works with subrecipients, grantees or applicants to ensure compliance with the requirements of this manual.

### **1.02 Disclosure Rule (24 CFR Part 35 Subpart A)**

The Lead Disclosure Rule (LDR) is the first subpart of the Lead Safe Housing Rule (LSHR). Under federal law, all residential real estate transactions involving housing built prior to 1978, both sales and rental, require owners and agents to provide key information about lead and its hazards to people buying or renting homes. Buyers and renters must receive all available information about lead paint in the property as well as the [Protect Your Family from Lead in Your Home pamphlet](#).

### **1.03 Lead Rule Applicability by Program or Project**

The LSHR is divided into subparts. The applicable subpart is based upon the activity being funded. When there are multiple activities, the most protective subpart applies. When the LSHR applies to a project, it is likely that the Environmental Protection Agency's ([EPA\) Renovation, Repair and Painting \(RRP\) Rule](#) also applies.

1. Exemptions, the LSHR does not apply if housing meets one of the following conditions:
  - a. Property constructed on or after January 1, 1978.
  - b. Zero-bedroom and Single-Room Occupancy units (does not apply if a child under six years of age resides or is expected to reside in the dwelling unit).
  - c. Housing for the elderly, or a residential property designated exclusively for persons with disabilities (does not apply if a child under six years of age resides or is expected to reside in the dwelling unit).
  - d. Properties found to be LBP free by an inspection, or where all LBP has been identified, removed and clearance achieved.
  - e. An unoccupied property that is to be demolished and remains unoccupied until demolition.

- f. Emergency repairs to protect life, health, safety or structure.
  - g. Rehabilitation that does not disturb a painted surface.
  - h. Compliance with requirements for testing and remediation may be reasonably delayed due to adverse weather conditions.
2. Subpart A: Lead Disclosure Rule
    - a. Applies to all non-exempt pre-1978 housing.
  3. Subpart B: General LBP Requirements and Definitions
    - a. Applies to all target housing that is federally owned and target housing receiving federal assistance to which LSHR subparts C, D, F-M, and R apply, except where indicated.
  4. Subpart H: Project-Based Assistance
    - a. For property owners and administrators where HUD funds are tied to a residential property with a specific location and remains with a particular location throughout the term of the assistance. Owners receive funds, often called Project-Based Rental Assistance or Project-Based Vouchers, to support the property in exchange for reduced rents for low-income tenants.
    - b. This subpart applies to the activity, not the program.
  5. Subpart J: Rehabilitation Assistance
    - a. Applies to programs that use HUD funds to rehabilitate residential properties. Rules may vary based on the levels of federal assistance per unit and hazard remediation carried out.
  6. Subpart K: Acquisition, Leasing, Support Services and Operations
    - a. Acquisition: applies to programs that provide HUD funds to help entities, usually homebuyers, acquire residences as one-time assistance without additional rehabilitation assistance.
    - b. Leasing and Operations Support: administrators of programs that provide ongoing federal assistance for residential properties, not including programs where other, more protective subparts apply.
  7. Subpart L: Public Housing
    - a. Applies to residential property assisted under the U.S. Housing Act of 1937, but not including housing assisted under Section 8 of the 1937 Act (Housing Choice Voucher program).
  8. Subpart M: Tenant Based Rental Assistance (TBRA)
    - a. Applies to programs that provide HUD funds to help low-income renters pay their rent where federal rental assistance that is tied to the tenant, with no specific location.
  9. Subpart R: Methods and Standards for LBP Evaluation and Reduction Activities.
    - a. Subpart R provides standards and methods for evaluation and hazard reduction activities required in LSHR subparts B, C, D, and F-M.

## **SECTION 2-PROGRAM REQUIREMENTS**

### **2.01 Subpart J: Rehabilitation Assistance**

Subpart J applies to programs that use HUD funds to rehabilitate residential properties. Rules may vary based on the levels of federal assistance per unit and hazard remediation carried out.

Please utilize the following flowcharts to help guide you through the compliance process:

- [Flowchart of Rehab Process from Application to Assistance Threshold.](#)
- [Flowchart of Rehab with Assistance Up to and Including \\$5,000.](#)
- [Flowchart of Rehab with Assistance Over \\$5,000 and Up to and Including \\$25,000.](#)
- [Flowchart of Rehab with Assistance Over \\$25,000.](#)

Major steps in rehabilitation include:

1. Check for exemptions for the property.
  - a. Subrecipient must complete [LSHR Screening on Exemption or Limited Exemption.](#)
  - b. This determines if all assisted units are partially or fully exempt. Complete and retain in records.
  - c. Unless the unit is exempt, residents (owners and tenants) of all housing units receiving rehabilitation assistance must receive pamphlets and information discussing LBP and the potential hazards. The following pamphlets must be utilized:
    - i. [Protect Your Family from Lead in Your Home](#)  
Ensures tenants/owners are aware of lead safety. The owner or tenant who signs the lease/rental agreement should receive this pamphlet and be retained with a signed copy of the disclosure form with the tenant/homeowner file (property owner or subrecipient keeps original).
    - ii. [Renovate Right: Important Lead Hazard Information](#)  
Provides information about legal requirements for safe lead practices for homeowners, tenants, childcare providers, and parents during renovation activities. Must be provided to tenant/owner.
    - iii. [LSHR RRP Handout](#)  
Does not need to be provided to tenant/homeowner but should be reviewed by the subrecipient or the entity responsible for the LBP assessment.
2. Subrecipient must determine the scope of the rehabilitation project without Lead Hazard Control.
3. Subrecipient must determine the level of evaluation and control required **prior to NDHFA financial award** and report to NDHFA Program Administrator.
  - a. For each rehab project, program staff must determine the type of hazard evaluation and hazard reduction work that must be carried out, based on a regulatory formula that determines the per unit amount of federal assistance. Must complete [Certification of Required Level of Lead Paint Hazard Control in Rehabilitation Using Federal Funds.](#)

4. Subrecipient must carry out required level of evaluation **before construction commences.**
  - a. Property receiving less than or equal to \$5,000/unit in federal rehabilitation assistance shall evaluate based on identification of paint to be disturbed.
    - i. If areas of paint to be disturbed are less than the LSHR de minimis, that must be documented on the LSHR Screening on Exemption or Limited Exemption, but no further LSHR requirements pertain to this work.
  - b. Property receiving more than \$5,000 but less than or equal to \$25,000/unit in federal rehabilitation assistance shall be evaluated based on presumption or risk assessment.
    - i. If any amount of paint will be disturbed, this level of federal assistance requires that LBP hazards be rigorously evaluated and addressed. Grantees must either:
      1. Presume all painted surfaces constitute lead hazards, provide Notice of Presumption and treat all areas with Standard Treatments.
      2. Conduct a Risk Assessment (and testing of surfaces to be disturbed) and treat hazards with Interim Controls or Hazard Abatement.
    - ii. The following attachments provide guidance and should be reviewed:
      1. [Guidance on Presuming or Evaluating](#).
      2. [Lead Hazard Reduction Methods](#).
      3. [Guidelines on Risk Assessments](#).
    - iii. One of the following notices must be provided to the occupants:
      1. [Lead Hazard Presumption Notice](#).
      2. [Lead Hazard Evaluation Notice](#).
    - iv. Firms, supervisors and workers performing lead safe work must be certified for using lead safe work or RRP practices. Proof of certification must be provided to the subrecipient or developer.
  - c. Property receiving more than \$25,000/unit federal rehabilitation assistance will be evaluated based on presumption or risk assessment.
    - i. If any amount of paint will be disturbed, this level of federal assistance requires that LBP hazards be rigorously evaluated and addressed. Grantees must either:
      1. Presume all painted surfaces constitute lead hazards, provide Notice of Presumption and treat all areas with Standard Treatments.
      2. Conduct a Risk Assessment (and testing of surfaces to be disturbed) and treat hazards with Interim Controls or Hazard Abatement.
    - ii. If any paint will be disturbed as part of the rehabilitation, this level of federal assistance requires that lead-based paint hazards be **abated**. Hazard abatement must be carried out on the interior of the home; interim controls are acceptable on the exterior if rehabilitation will not disturb exterior painted surfaces or if the property is determined eligible or listed on the National Register of Historic Places.

- iii. For guidance, utilize [Guidance on Presuming or Evaluating, Lead Hazard Reduction Methods](#), and [Guidelines on Risk Assessments](#).
- iv. One of the following notices must be provided to the occupants:
  - 1. [Lead Hazard Presumption Notice](#).
  - 2. [Lead Hazard Evaluation Notice](#).
- v. Firms, supervisors and workers performing abatement work must be certified for abatement or RRP practices. Proof of certification must be provided to the subrecipient or developer.
- d. Ongoing Maintenance
  - i. If a rehabbed unit or property has an ongoing relationship with the program, such as a project-based rental subsidy or HOME and HTF-assisted rental housing during an affordability period, then ongoing maintenance will be required and must be overseen by the Subrecipient. Units must have Visual Assessments annually and have deteriorated paint stabilized. Owners must have and implement an ongoing lead paint maintenance plan. Written notice asking residents to report any deteriorated paint and any failure of encapsulation or enclosure must be implemented and documented.
    - 1. [Log of Visual Assessment and Resolution Report](#).
    - 2. [Sample Certification for Ongoing Monitoring and Maintenance](#).
- e. Repair, Interim Controls and/or Hazardous Abatement Work.
  - i. For all work that disturbs paint above the HUD LSHR de minimis level, the work must meet certain HUD and EPA requirements, including paint testing or the presumption of lead. If lead is present or presumed, then lead safe work practices and worker/occupant protection procedures must be implemented and documented by the Subrecipient. View the [Hazard Reduction Module](#) for more information on these procedures.
  - ii. The LSHR Screening on Exemption or Limited Exemption determines if there is a one-time small repair exemption for some requirements.
- f. Update Disclosure.
  - i. Property owners or managers must provide disclosure forms pertaining to the lead history of a property to any subsequent tenants or owners if lead hazard activities were undertaken. While this information is required, it is important to note that if any changes in property condition, maintenance or new lead hazard reduction activities have taken place, lead disclosures will need to be updated.
    - 1. [Sample Disclosure Form for Rental](#).
    - 2. [Sample Disclosure Form for Sales](#).
- g. Records Retention.
  - i. Subrecipients and participating owners must compile records during the process of rehabilitating owner-occupied homes, preparing units to rent, leasing the units, maintaining them, and responding to any report of a child with an elevated blood lead level (EBLL). They ensure that all records pertaining to LBP in all pre-1978 units are securely stored and available for inspection and disclosure. Property owners and managers need to double check documentation to ensure the supporting documentation clearly establishes that all work was done in accordance

with the LSHR and [HUD Guidelines](#). Records must be retained for at least three years past the end of any assistance contract, or longer according to the specific rules of the funding program.

5. Complete rehab and hazard control.

a. Relocation Requirements.

- i. Subrecipients must ensure that residents are kept out of the work area during lead hazard reduction work and cannot return to the work area until it has passed clearance.
  - ii. If the residents cannot enter important parts of their home (e.g., bathrooms, kitchens) for more than a day, they need to be relocated.
  - iii. For owner-occupied rehabilitation, the cost of any required relocation will NOT be covered by NDHFA or the Subrecipient. It is the owner's responsibility to seek the appropriate accommodation for the duration of the lead hazard reduction work.
  - iv. Relocation is NOT required when:
    1. Work will not disturb lead-based paint, dust lead hazards, or soil lead hazards.
    2. Work on the interior of the unit will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health, or environmental hazards.
    3. Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the worksite are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided.
    4. Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the containment area is cleared of debris and cleaned; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.
    5. The occupants are 62 years of age or older and have been provided complete disclosure of the nature of the work and informed consent of the elderly occupant(s) is obtained before commencement of the work.
  - v. If the Uniform Relocation Act (URA) is triggered, refer to [NDHFA's URA Policy Guide](#).
    1. The URA is triggered if **tenants** will be temporarily relocated as a result of a federally funded project.
    2. Tenants are covered by URA because they are not considered to be voluntary participants as a homeowner would in most cases be voluntarily signing up for the assistance.
    3. Work in **owner-occupied housing** does not trigger the URA.
- b. Clearance and occupant/owner notification must be completed by the Subrecipient prior to any move-ins if relocation was required.

## **2.02 Subpart K: Acquisition**

Acquisition applies to any use of federal funds in support of the acquisition of residential property. When grantees or agencies provide assistance, which may include but is not limited to down payment assistance, closing cost assistance, loan guarantees, PMI assistance, below market interest rates, or simply finance acquisition for eligible homebuyers to purchase a residential property, Subpart K: Acquisition will apply. Records must be created and maintained to document compliance. The [Homebuyer Program Lead Compliance Document Checklist](#) reviews which documents should be in each homebuyer file. Remember to always check for exemptions by completing the [Lead Safe Housing Requirements Screening on Exemption or Limited Exemption](#). This must be completed by the Subrecipient or property manager and retained in the project file.

If the assisted project includes acquisition and rehabilitation over \$5,000, then the project must be screened for applicability of Subpart J: Rehabilitation.

Subpart K Implementation:

1. Unless a unit is exempt, all buyers must receive a pamphlet, a disclosure form, and the seller must disclose all known information about LBP, LBP hazards and mitigation steps. This process should be overseen by the Subrecipient.
  - a. Provide buyer the [Protect Your Family from Lead in Your Home Pamphlet](#).
  - b. Provide buyer with disclosure form, [Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards \(Spanish version of form\)](#).
2. A buyer has the option to test the unit for LBP and cancel a purchase contract if LBP hazards are present. The seller must provide full disclosure of the property's lead history and ensuring that safe work practices and clearance is achieved if any repair or renovations are conducted as a condition of sale.
  - a. [Guidance on the Homebuyers Option to Test](#) explains a homebuyer's right to conduct a lead hazard evaluation.
  - b. [Sample Letter to Lenders, Realtors and Title Companies](#) is a sample of a letter to send regarding lead safety standards.
  - c. [Sample Seller Certification Form](#) certifies that all deteriorated paint was identified and stabilized using sage work practices.
3. Initial Visual Assessment: all units must be free of deteriorated paint at purchase or before occupancy or immediately upon being assisted. A Visual Assessment is an inspection by a trained inspector to identify deteriorated paint, paint chips, dust and other debris. This step shall be enforced by the Subrecipient.
  - a. The [Log of Visual Assessment and Resolution Report](#) records when the inspector, trained in Visual Assessment techniques, performed the Visual Assessment and documents the location, how much (area) deteriorated paint was found, and owner's responsibility to treat and clear the hazards.
  - b. If the owner decides to use the option to test, and the program, rather than the buyer, manages the evaluation for the presence of LBP or LBP hazards, then the owner must receive a Notice of Lead Hazard Evaluation, even if the test results include negative findings.

4. Repair Work.
  - a. For all work that disturbs paint above the HUD LSHR de minimis level, the work must meet certain HUD and EPA requirements, including optional paint testing or the presumption of lead of identified deteriorated paint. If lead is present or presumed, then lead safe work practices and worker/occupant protection procedures must be implemented by the Subrecipient and documented.
  - b. De Minimis: to be exempt from safe work practices, the area of deteriorated paint in an interior room cannot exceed a total of two square feet or 10 percent of a component with a small surface area, such as interior windowsills, baseboards and trim. In other words, both thresholds apply at all times. For example, living room baseboards with three square feet of deteriorated paint cannot be exempted on the grounds that the three-square feet constitutes less than ten percent of the component. Similarly, deteriorated paint of an area of less than two square feet is not considered below the de minimis level if the area exceeds 10 percent of a small component, such as a windowsill.
5. Keep Records.
  - a. Grantees/Subrecipients must ensure they and participating owners compile records during the process of preparing units for sale. They ensure that all records pertaining to LBP in all pre-1978 units are securely stored and available for inspection and disclosure. Grantees need to double check documentation from sellers to ensure the supporting documentation clearly establishes that all work was done in accordance with LSHR and the [HUD Guidelines](#). Records must be retained for at least three years past the end of any assistance contract, or longer according to the specific rules of the funding program.

## 2.03 Hazard Reduction

If LBP is identified or presumed then all other safe work practices, clearances and notices must be completed by Subrecipients. If testing is performed, but no lead hazards are identified and no lead paint will be disturbed, the occupant must receive the Renovate Right pamphlet and the Notice for Lead Hazard Evaluation, but no further steps are required for this particular work. This does not exempt the unit from LSHR unless the full exemption conditions are met for the relevant activity.

1. [Lead Hazard Reduction Methods](#): provides explanations of the different methods of lead hazard reduction.
2. [Lead Hazard Presumption Notice](#): provides a notice template for when lead-based paint is presumed rather than evaluated.
3. [Pre-construction Conference Checklist](#): reviews steps for conducting a pre-construction conference for rehabilitation work.
4. [Post-Work Checklist for Lead Hazard Reduction Activities](#): reviews steps to complete work for lead hazard reduction activities.
5. [Guidance on Relocation](#): includes guidance to evaluate when a tenant relocation is needed during lead hazard reduction activities.
6. [Abatement Report Review Worksheet](#): documents that clearance was achieved and the abatement report is complete following an abatement job.
7. [Clearance Report Review Worksheet](#): documents that clearance was achieved and the clearance report is complete following interim controls or standard treatments.

8. [Sample Clearance Report](#): provides a sample clearance report from a small rehabilitation job.
9. [Sample Notice of Lead Hazard Reduction](#): notifies residents when lead hazard reduction is complete.