
Special Attention of:
All Homeownership Center Directors
All REO Directors
All Real Estate Owned Branch
Chiefs
All Management and Marketing
Contractors

Notice H 01-01 (HUD)

Issued: 01/02/2001

Expires: 01/31/2002

Cross References: Housing Notice 00-20

Subject: Modifications of Terminology and Procedures for Elimination of Lead-Based Paint Hazards in HUD-Owned FHA-Insured Single Family Properties Built Before 1978.

This Notice implements the requirements and terminology established by the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of the Housing and Community Development Act of 1992) and new lead-based paint regulations (the Lead Safe Housing Rule) at 24 CFR Part 35, Subpart F. The regulations establish procedures to eliminate as far as practicable lead-based paint hazards on single family properties built prior to 1978 and sold with FHA-insured mortgages (including 203(b) and 203(k) loans), effective September 15, 2000.

A. Applicability

The new regulation applies to HUD-owned single family properties that have been built before 1978 and are sold with FHA-insured mortgages. Properties sold without FHA mortgage insurance are no longer subject to these requirements, but such properties **are still subject to the lead-based paint disclosure requirements of 24 CFR Part 35, Subpart A and Housing Notice 96-78.**

B. Definitions

The following definitions are used throughout this Notice. They are provided to avoid confusion where definitions are new or have changed as a result of the new regulation.

HSIP Distribution: W-3-1, W-2 (OGC) (H) (Z), W-3 (A) (H) (ZAOO), W-4 (H), R-1, R-2, R-3, R-3-1 (H) (RC), R-3-2, R-3-3, R-6, R-6-1, R-6-2, R-7, R-7-1, R-7-2, R-8, R-8-1

Certified: Licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR Part 745, subparts L or Q.

Clearance: An examination conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no settled dust-lead hazards exist in the dwelling unit or worksite. The clearance examination process includes a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Clearance examinations must be performed in accordance with 24 CFR 35.1340, which states that clearance must be performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance or rehabilitation, unless the work performed is below the de minimis levels specified at 24 CFR 35.1350(d).

Persons conducting clearance examinations must meet the qualifications set forth in 24 CFR 35.1340(b)(1). The following personnel are qualified to conduct clearance examinations:

1. A certified risk assessor.
2. A certified lead-based paint inspector.
3. A technician licensed or certified by EPA or a State or Indian tribe to perform clearance examinations.
4. An uncertified person who has successfully completed a training course for clearance technicians that is developed or accepted by the Environmental Protection Agency (EPA) or a State or Indian Tribe and that is given by a training provider accredited by EPA or a State or Indian tribe, provided a certified risk assessor or a certified lead-based paint inspector approves the work of the clearance technician and signs the report of the clearance examination.
5. Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.

Deteriorated Paint: Replaces the term "Defective Paint". Any interior or exterior paint or other coating that is peeling, chipping, flaking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise

damaged or separated from the substrate.

Lead-Based Paint: Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Paint Stabilization: Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Persons performing paint stabilization must be trained or supervised in accordance with the requirements at 24 CFR 35.1330(a)(4), which states that a person performing interim controls must be trained in accordance with 29 CFR 1926.59, which is a training requirement of the Occupational Safety and Health Administration, and such persons must either be supervised by an individual certified as a lead-based paint abatement supervisor, or have successfully completed one of the following courses:

1. A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225
2. A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225
3. The lead-based paint abatement Maintenance Training Program, "Work Smart, Work Wet, and Work Clean to Work Lead-Safe," prepared by the National Environmental Training Association for EPA and HUD.
4. "The Remodeler's and Renovator's lead-based training program," prepared by HUD, based on a course developed by the National Association of the Remodeling Industry.
5. Any other course approved by HUD for this purpose. A list of approved courses can be downloaded from <http://www.hud.gov/lea>.

Paint Testing: The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Prohibited Methods of Paint Removal: Prohibited methods of paint removal include the following:

1. Open flame burning or torching.
2. Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
3. Abrasive blasting or sandblasting without HEPA local exhaust control.
4. Heat guns operating above 1100 degrees Fahrenheit or heat guns or other means which char the paint.
5. Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1 foot (0.3 meter) of electrical outlets, or when treating defective paint spots totaling no more than 2 square feet (0.2 square meter) in any one interior room or space, or totaling no more than 20 square feet (2 square meters) on exterior surfaces.
6. Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance under the regulations of the Consumer Product Safety Commission.

Residential Property: A dwelling unit, including common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

Safe Work Practices: Safe work practices require that:

1. Prohibited methods of paint removal shall not be used.
2. Occupants and their belongings shall be protected.
3. After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.
4. Safe work practices are not required, and clearance examinations and clearance reports are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:
 - a) 20 square feet (2 square meters) on exterior surfaces;
 - b) 2 square feet (0.2 square meters) in any one interior room or space; or

- c) 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.

Substrate: The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

C. Required Lead-Based Paint Procedures for HUD Real Estate Owned Single Family Properties.

1. Identification of Properties Subject To Lead-Based Paint Procedures

Within 15 days of acquisition of a new HUD property, the management and marketing (M&M) contractor will identify properties constructed prior to 1978 and make a determination regarding potential insurability of those properties.

2. Properties Built Prior to 1978 and Sold Without FHA-Insured Mortgages

Properties constructed prior to 1978 that will be sold without FHA-insured mortgages will not be subject to the new criteria cited in 24 CFR Part 35 Subpart F, which establishes procedures to eliminate as far as practicable lead-based paint hazards in HUD-Owned single family properties that have been built prior to 1978 and are sold with mortgages insured under a program administered by HUD.

Properties that will be sold without FHA-insured mortgages include properties offered only to non-profit organizations, government housing agencies, and other Community Advancement Program participants to include Asset Control Areas (ACAs). It further includes properties that the Department intends to demolish, or that are in such deteriorated condition that they are offered for cash only with no provision for use of 203(k) Rehabilitation financing. Officer Next Door/Teacher Next Door properties are subject to 24 CFR Part 35 Subpart F, unless those properties, based on their physical condition, are not eligible for FHA insurance.

Properties sold without FHA-insured mortgages are still subject to the lead-based paint disclosure requirements at 24 CFR 35, Subpart A, and Notice 96-78, renewed as Notice 00-20, which states that the Seller shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or

inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

3. Required Lead-Based Paint Procedures for HUD Real Estate Owned Single Family Properties Built Prior to 1978 and Sold with FHA-Insured Mortgages.

The following lead-based paint procedures will apply to all properties that are offered for sale as insurable(IN), insurable with conditions(IC), or insurable with escrow(IE):

- a. Prior to listing of the property for sale, the management and marketing contractor will conduct a visual assessment of all painted surfaces of the residential property to determine and identify areas of deteriorated paint as defined in the management and marketing contract in Exhibit 15, paragraph 15-3 and the certification of inspection for deteriorated paint surfaces. Deterioration limited to hairline cracks, small nicks, scratches or nail holes is not considered deteriorated paint. Special training or certification is not required under 24 CFR 35 Subpart F to perform visual inspections, however, at a minimum, inspectors should complete a visual assessment web-based tutorial at <http://www.hud.gov/lea>.
- b. Conduct paint testing by a certified lead-based paint inspector or risk assessor of those areas that have been identified as deteriorated paint. If the management and marketing contractor determines that it is more cost effective to presume the presence of lead-based paint rather than conducting a paint test, the contractor may forego paint testing.
- c. Paint stabilization and clearance will not be required for those surfaces that are found by the paint testing not to be lead-based paint.
- d. Prior to listing the property for sale, paint stabilization will be performed by the management and marketing contractor on the deteriorated paint surfaces found by the paint testing to be lead-based paint or presumed to be lead-based paint. Safe work practices apply.
- e. If paint stabilization is conducted, the management and marketing contractor will conduct a clearance examination prior to closing of escrow on properties that are sold with FHA-insured 203(b) mortgages. Clearance examinations shall include a visual assessment, dust sampling, submission of samples for

analysis for lead, interpretation of sampling results, and preparation of a report. A copy of the clearance report will be provided to the purchaser at close of escrow. If a property fails a clearance examination, the property shall be recleaned and a new clearance examination conducted at the expense of the management and marketing contractor(or its construction subcontractor). The cost of the clearance examination, not to exceed \$150 per property, shall be treated as a pass-through expense. Safe work practices apply.

- f. Properties originally listed as insurable(IN), insurable with conditions(IC), or insurable with escrow(IE), and subsequently sold through the 203(k) loan program will not be required to provide a clearance report, or a clearance examination prior to close of escrow. The purchase contract shall contain a provision requiring the clearance exam and certification to be included in the work write-up and conducted prior to release of the final construction disbursement. The cost of the clearance exam, not to exceed \$150 per property shall appear as a credit on the HUD-1 closing statement and shall be deposited in the 203(k) repair escrow account. If a property fails a clearance examination, the property shall be recleaned and a new clearance examination conducted at the expense of the purchaser.
- g. Properties originally listed as uninsurable and subsequently sold through the 203(k) loan program are subject to the provisions of CFR Part 35, Subpart F. The purchase contract shall contain a provision requiring the actions described in 15-3, 15-4, 15-5 and 15-6 herein be included in the 203(k) work write-up and completed prior to occupancy and prior to release of the final construction disbursement. The cost of meeting the requirements of CFR Part 35, Subpart F shall be the responsibility of the purchaser.

A list of sampling technicians qualified under the new lead-based paint regulations to perform clearance examinations, and of lead-based paint inspectors and risk assessors certified by EPA or a State or Indian tribe, who can perform clearance examinations, can be found at: <http://www.leadlisting.org>. This voluntary Lead Listing can also be accessed from <http://www.hud.gov/lea>. Please direct any questions to the Office of Single Family Asset Management at (202) 708-1672.

William C. Apgar

Assistant Secretary for Housing-
Federal Housing Commissioner