U.S. ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D.C. 20640

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

APR 19 2001

Dear Colleague:

This letter clarifies the Title X requirements for rehabilitation and lead hazard reduction in property receiving up to $25,000 per unit in Federal rehabilitation assistance under regulations issued by the Department of Housing and Urban Development (HUD). This letter also clarifies the definition of "abatement" under regulations issued by the Environmental Protection Agency (EPA) and HUD. Both agencies issued their regulations under the authority of Title X of the 1992 Housing and Community Development Act, which among other things amended the Toxic Substances Control Act. EPA and HUD are working together to ensure that these two regulations complement each other to ensure that children are protected from lead-based paint hazards.

EPA is authorized to set minimal standards for all lead-based paint abatements, inspections, and risk assessments. This includes establishing training and certification requirements and work practice standards for individuals and firms engaged in those activities, and developing hazard standards. While EPA regulations do not mandate abatement, they require that whenever abatement activities occur by design, they be performed by certified personnel. EPA also authorizes states and tribes to operate their own training and certification programs to address inspections, risk assessments, and abatement if they demonstrate that they are at least as protective as the EPA program and provide for adequate enforcement. Because authorized state and tribal programs may differ from the EPA training and certification program, individuals and firms working in these areas must check with the authorized state or tribe to ensure compliance with those requirements. Local jurisdictions may also have requirements for lead hazard control.

HUD is authorized to require lead-based paint hazard control measures in federally-assisted housing, community development, and loan guarantee programs, and to provide grants to address lead-based paint hazards in low-income, privately-owned dwelling units. HUD's Lead Safe Housing Rule, also issued under the authority of Title X, requires that each recipient of Federal rehabilitation assistance less than $25,000 per unit must reduce lead-based paint hazards, through either interim controls or, if desired, abatement (this does not include public housing authorities conducting modernization). With limited exception, recipients conducting Federally assisted rehabilitation of more than $25,000 per unit must abate lead-based paint hazards.

Pursuant to Title X, both EPA's and HUD's regulations define abatement generally as any measure or set of measures *designed* to permanently eliminate lead-based paint hazards, including occupant protection and safe work practices. Whenever activities intended to permanently eliminate lead hazards are being conducted, EPA and HUD consider such activities

to be abatement. Under HUD's Lead Safe Housing Rule, intention to conduct abatement would, in virtually all circumstances, be established when HUD regulations require abatement, when abatement is specified in work specifications, job write-ups, cost allocation, or similar documents, or when abatement is expressly ordered by a responsible state or local agency or court order. HUD regulations require abatement during modernization of conventional pre-1978 family public housing developments (regardless of funding level), conversions, and for housing rehabilitation programs funded through the HUD Office of Community Planning and Development when Federal rehabilitation assistance exceeds $25,000 per unit.

EPA's regulations at 40 CFR Part 745.223 exclude from abatement "renovation, remodeling, landscaping or other activities, when such activities are not *designed* to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards" (emphasis added). When the primary purpose of work is rehabilitation or weatherization, EPA and HUD do not consider such activities to be abatement. The presence of a lead inspection or risk assessment report or the presumption of the presence of lead-based paint does not trigger federal abatement requirements or automatically change a housing rehabilitation project into an abatement project. Similarly, the use of specific work practices, such as window replacement, does not by itself change a rehabilitation project into an abatement project. On the other hand, even if a housing unit's Federal rehabilitation assistance is less than $25,000, activities expressly intended to permanently eliminate lead hazards are considered abatement. For example, if a cost allocation document subtracts the cost of window replacement from the hard cost of rehabilitation as a lead-based paint hazard reduction measure, the window removal is considered to be abatement. Any other building component replacement, enclosure, or encapsulation measure intended to permanently eliminate a lead-based paint hazard, particularly as documented in regulation, project specifications, cost allocation document, or court or agency order is abatement.

For paint repair and rehabilitation activities in properties receiving less than $25,000 in federal rehabilitation assistance, HUD regulations require occupant protection, the use of workers trained in lead-safe work practices and clearance testing whenever more than de minimis amounts of paint are disturbed. Occupant protection is a required element of all federally-assisted rehabilitation projects covered under Subpart J of the HUD regulation, regardless of funding level, because occupant protection is a requirement under lead-safe work practices (see 24 CFR 35.1350(b) and 24 CFR 35.1345). While EPA does not currently regulate remodeling or renovation activities, both EPA and HUD support the use of lead-safe work practices for all rehabilitation and paint repair activities involving surfaces that may contain lead-based paint. HUD has adapted EPA's one-day training courses to address the requirements of HUD's Lead Safe Housing Rule and HUD is working to make its courses widely available for those subject to HUD's rule (see www.hud.gov/offices/lead for a schedule of course offerings).

HUD will enforce its requirements. Those who believe HUD's lead-based paint

regulations are being violated should send a written complaint and supporting documentation to:

John P. Kennedy
Associate General Counsel for Finance and Regulatory Enforcement
U. S. Department of Housing and Urban Development
451 Seventh St., SW
Washington, DC 20410

When fully implemented, these requirements will help to ensure that every child living in federally-assisted housing will have a lead-safe home.

William H. Sanders, III, Director
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency

David E. Jacobs, Director
Office of Healthy Homes and Lead Hazard Control
U.S. Department of Housing and Urban Development