



U. S. Department of Housing and Urban Development
Washington, D.C. 20410

OFFICE OF LEAD HAZARD CONTROL

POLICY GUIDANCE NUMBER: 95-01		DATE: March 7, 1995
SUBJECT:	Supplemental Guidance to [94-06] Correspondence Regarding Environmental Review Procedures and Requirements	
STATUS:	Current	
APPLICABILITY:	All grant rounds.	
RELATED GUIDANCES:	Policy guidance 94-06, 95-06.	
COMMENTS:		

Dear Lead-Based Paint Hazard Control Grantee:

This letter supplements correspondence sent to you on August 30, 1994, regarding environmental requirements under the Lead-Based Paint Hazard Control Grant Program.

As you are aware, all grantees receiving Lead-Based Paint Hazard Control Program funds must determine the environmental effects of each activity prior to receipt of LBP funds.

This letter describes how compliance with the environmental rules may be achieved. Specifically it;

- 1) Identifies Federal environmental laws applicable to the LBP Program.
- 2) Shows how LBP environmental compliance procedures can be simplified by combining them with compliance procedures for other HUD programs.
- 3) Describes how a grantee may prepare a generic environmental compliance review when a neighborhood-wide or community-wide Lead-Based Paint Hazard Control Program is prepared without the knowledge of the specific geographic sites to be treated.
- 4) In appendix "A", it summarizes the analytic process a grantee must use to comply with the federal environmental requirements for LBP assistance.

(For detailed environmental requirements guidance, refer to the federal regulations in 24 CFR Part 58.)

1) Environmental Laws Applicable to HUD LBP Assistance

HUD has determined that any activity funded with LBP funds alone will not produce a significant impact on the environment. Therefore, all LBP-eligible activities are categorically excluded from the National Environmental Policy Act (NEPA) review. HUD has also determined that the only related laws (24 CFR Part 58.5) that need to be considered, prior to receipt of LBP Program funds, are:

- Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA);
- The Coastal Barriers Resources Act (CBRA);
- The Flood Disaster Protection Act (FDPA).

(Appendix "A" describes the analytic process grantees should use to decide the environmental effects upon Coastal Barrier Islands, historic places, and floodplains in order to be in compliance with Section 106 of NHPA, CBRA, and FDPA.)

2) Combined LBP, CDBG, and HOME Programs Compliance Procedures

When LBP funds are used in conjunction with HOME or CDBG funds, NEPA and additional Federal environmental laws may apply to the CDBG or HOME funded activities. Therefore, for any activity receiving even partial CDBG or HOME assistance, separate determinations of which environmental laws apply and compliance with those laws must be made by the grantee. Once all the appropriate CDBG or HOME environmental determinations have been made and the public has been properly informed and had the proper time to comment, the grantee may make a single request to HUD for release of funds covering all programs or activities. The combined request must be preceded by a public notification or an intent to request release of funds. The notification must be published at least seven days prior to submitting the request for release of funds to HUD. The earliest HUD can release the funds is 15 days after it receives the request to release funds. (The detailed release of funds requirements are contained in 24 CFR Part 58 Subpart J.)

3) Lead-Based Paint Abatement Generic (neighborhood/community-wide) Environmental Compliance Reviews

If the LBP grantee knows only the general area and not the specific location of all the properties to receive LBP assistance, it may conduct a generic review of the general area where the activities are to take place. Upon

completion of the generic review, the grantee may request a release of funds from HUD.

The generic review must be followed up with the appropriate property by property reviews for those related laws that were not covered under the generic review. One purpose of the generic review is to determine if follow up site specific reviews must be performed, and if so, which reviews will be required. In the case of the Lead-Based Paint Hazard Control Grant Program, site specific reviews are almost certainly required because many properties will be considered historic or in a designated historic area.

As noted above, LBP-assisted activities only require compliance reviews for historic preservation, floodplain, and coastal barriers laws and regulations. Thus, generic reviews only have to include these 'three compliance considerations.

For example, the generic review of LBP funded activities should note how much of the target area is within a floodplain as identified in 24 CFR Part 55. If the target area is entirely outside the floodplain, the assessment would conclude that no site specific floodplain compliance reviews need to be performed. If only part of the area is within the floodplain, then the review should conclude that floodplain reviews must be conducted in those areas subject to flooding as identified in 24 CFR Part 55. If entirely in the floodplain, then the generic review must conclude that floodplain reviews will be performed for each property.

Similarly, the Coastal Barriers Resources Act may apply to all, some, or none of the area covered by the LBP-funded local program. Only those areas which may potentially be covered by the Coastal Barriers Act should have individual property determinations made for compliance with the Coastal Barriers Resources Act. However, the generic review must state if further site specific reviews will include Coastal Barriers compliance reviews.

The determination of the need for site specific reviews applies equally to historic preservation. As a rule of thumb, if the target area buildings are 50 or more years old, site specific reviews will be required. Most areas targeted for LBP will require historic preservation reviews as provided for in 36 CFR Part 800.

Completion of the review for compliance with the National Historic Preservation Act often is the most difficult and time consuming of the three required LEP environmental compliance reviews. Several localities have established agreements with their State Historic Preservation Officer (SHPO, to streamline the historic preservation review process. The agreements can be helpful in defining activities that 1) do not need to be reviewed by the SHPO, 2) will need a short review by the SHPO, or 3) will require consultation with the SHPO and possible further action. Since procedures and activities will differ from state to state, it is important that each grantee contact its own SHPO to work out

an acceptable agreement. (HUD is currently working with the Advisory Council on Historic Preservation to jointly develop a model historic preservation agreement for compliance with Section 106 of the HP Act.)

It should be noted that grantees are responsible for: 1) completing their generic environmental reviews and requests for release of funds before any commitment of LBP funds other than activities which are exempt from environmental review; 2) complete required site specific reviews, if any, on a property before undertaking any physical activities on the property; and 3) avoid any commitment of non-Federal funds to the project that would have an adverse environmental impact or limit the choice of reasonable alternatives prior to the completion of steps 1) and 2).

If you have any further questions, please call your GTR at (202) 755-1822.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellis G. Goldman", with a long horizontal flourish extending to the left.

Ellis G. Goldman
Director, Program Management Division

Enclosures

APPENDIX "A" - Process for Analyzing Environmental Impact HUD Lead-Based Paint Hazard Control Program

COASTAL BARRIERS RESOURCES ACT

Question: Is the area where HUD Lead-Based Paint funds are to be used an island?

Possible Answer: No

Action: Record the information as part of the environmental record. The analysis required for compliance is complete.

Question: If the area is an island, is it a Coastal Barriers Island?

Information needed to make a decision: If your community is investing CDBG and/ or HOME funds in the same area where LBP funds may be used, determine if the data for their analysis is current and can be used for your compliance review. If not, ask the State agency responsible for administering the Coastal Barriers Resources Act.

Possible Answer: No

Action: Record information and source as part of the environmental record. The analysis required for compliance review is complete.

Possible Answer: Yes

Action: Change your local program so that no federal assistance goes to rehabilitate properties on Coastal Barrier Islands.

FLOOD DISASTER PROTECTION ACT

Question: Is the area where HUD Lead-Based Paint Hazard Control funds are to be used in a federally designated floodplain (officially called a Special Flood Hazard Area)?

Information used to make the decision: Ask your sister agency or fellow staff person who administers CDBG or HOME environmental requirements if they have made a recent floodplain determination in the same area and use his/ her data as a source to record your similar decision. If CDBG or HOME data is not available, obtain a set of official floodplain maps from the Federal Emergency Management Assistance Agency. (The FEMA phone number to obtain maps is 1-800-638-6200).

Possible Answer: No, none of the area is in an official floodplain.

Action: Record conclusion along with floodplain map panel numbers in the environmental record. The analysis required for compliance is complete.

Possible Answer: Yes some, or all of the area is in an official floodplain.

Action: Record conclusion, noting map panel number and which areas are in and out of the floodplain. For areas and structures completely out of the floodplain, the analysis required for compliance is complete. For areas and structures inside the floodplain record conclusion along with floodplain map panel numbers in the environmental record. For any structure in the floodplain receiving LBP funds, flood insurance is required in the amount of the assistance provided. The minimum requirements for participation are found in 44 CFR Part 60.

HISTORIC PRESERVATION

Questions: Is the area/property to receive LBP assistance historic or could it be declared historic?

Will LBP assisted activities impact other historic or potentially historic properties?

Information used to make a decision: Ask your sister agency or fellow staff person who administers CDBG or HOME program environmental requirements if they have determined the historic potential of the area/ structure and if the proposed LBP assisted activities are similar to those they have performed.

If they have made a determination, and have reached an agreement with the State Historic Preservation Officer (SHPO), check with the SHPO to see if the agreement can be expanded to include LBP funded activities.

If no agreement or determination has been made, determine if the property/ area is historic or could be declared historic. (Technically, inclusion in the National Register of Historic Places makes a property/ area officially historic). Check the National Register of Historic Places and, as necessary, check local permit records, visual surveys, historic maps, and consult local historians and local historical associations to determine the historical character of the area/ property. Also, consult with the SHPO to help you determine if the property/area could be historic. If you and the SHPO disagree, you must then consult with the Secretary of Interior for a final determination.

Possible Answer: No, the property/ area is not officially declared historic nor could be declared historic.

Action: The analysis part of your compliance review is complete. Record, as part of your environmental record, your conclusion, and the analytic process, including any consultations and data you used to arrive at your conclusion.

Possible Answer: Yes, the property/ area is historic, or could potentially be declared historic.

Action: Consult with your SHPO and determine appropriate actions.

Possible Answer: The property/ area is not historic, but the LBP assisted activities could impact adversely on official historic properties/ areas or potentially historic properties/ areas.

Action: Consult with your SHPO and determine appropriate actions.