



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.

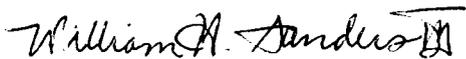
For paint repair and rehabilitation activities in properties receiving less than \$25,000 in federal rehabilitation assistance, HUD regulations require occupant protection, the use of workers trained in lead-safe work practices and clearance testing whenever more than de minimis amounts of paint are 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](http://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

## Applying the Policy in the HUD/EPA Abatement Letter

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The following provides sample scenarios of the some of the decisions that program administrators will face when determining if the work being done in a rehabilitation project is abatement.

The analysis of each scenario is based on two principles:

1. **Intent.** The HUD/EPA Abatement Letter of April 19, 2001 stresses the importance of intent in determining whether or not a specific activity constitutes abatement. Abatement is defined as an activity that is specifically intended to permanently eliminate lead-based paint or lead-based paint hazards.

The intention to permanently eliminate lead-based paint can be established in one of four ways:

- Abatement is required by a regulation such as the Lead Safe Housing Rule. (Example: Abatement of identified lead hazards conducted in the interior of a unit where the level of rehabilitation assistance is over \$25,000 per unit).
- Abatement is required by a court or agency order. (Example: A court orders abatement of a unit after a lead-poisoned child is identified in the unit).
- Project work specifications call for abatement. (Example: The project work specifications specifically state that lead is being permanently removed.)
- A cost allocation document attributes the cost of an activity to lead hazard reduction **and** the activity in question is an abatement method. There are four abatement methods: component replacement, paint removal, enclosure , and encapsulation. (Example: For a \$18,000 HOME-funded rehabilitation project, a cost allocation document allocates the cost of window replacement to lead hazard reduction. Because the window replacement is classified as a lead hazard reduction cost **and** window replacement is “component replacement”, which is an abatement method, the window replacement is considered an abatement activity and must be performed by a certified abatement contractor.)

2. **Cost Allocation.** As explained above, the intent to abate may be established in a cost allocation document. This means that the allocation of costs – between “hard costs of rehabilitation” and “lead hazard reduction” can have significant implications on the nature of the job and hence, the qualifications of the personnel who do this job. The following scenarios illustrate this point.

## Scenarios – Cost Allocation and Implications for Job Planning

(NOTE: For the sake of simplicity, all scenarios below assume full federal funding for the rehabilitation.)

**Scenario 1:** A \$12,000 rehab project (hard costs) does not include window replacement. The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (interim controls). The rehab specialist decides to change the scope of his rehab project to include the replacement of windows (it turns out they are really old and there are compelling energy as well as lead reasons to replace them).

*What does this mean for cost allocation purposes?* In this case, the rehab specialist has two options.

Option 1: He can allocate cost of window replacement as a rehabilitation hard cost. In this case, an abatement crew is not required but safe work practices must be followed because lead-based paint is known to be present. Workers must, therefore be trained in safe work practices or supervised by a certified abatement supervisor.

Option 2: He can allocate the cost of window replacement to lead hazard reduction. In this case an abatement contractor will be required because window replacement is an abatement method. (It is component replacement).

Note: State regulations may affect these options. If the state regulation requires abatement certification and training for workers who perform any kind of work on a surface known to contain lead, then state requirements regarding the training and certification of such workers applies, regardless of how the costs are allocated.

**Scenario 2:** A \$28,000 rehab project (hard costs) includes window replacement (of \$8000). The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (non-abatement). The risk assessment also identifies various other small hazards. The rehab specialist decides to go ahead with the window replacement. He then revises his work specs to include work on all hazards identified and finalizes his cost allocation document.

*What does this mean for cost allocation purposes?* In this case, the rehab specialist has two options.

Option 1: He can allocate the costs of the window replacement to lead hazard reduction. This would reduce the rehab hard costs to \$20K and allow them to perform interim controls as their method of lead hazard reduction (and use

trained workers). However, because component replacement is an abatement method, the window replacement must be done by an abatement crew.

Option 2: He can allocate the costs of the window replacement to rehab. This would bring the per unit rehab costs to \$28,000 (i.e. over \$25,000), so abatement of all hazards is required.

**Scenario 3:** A \$20,000 rehab project (hard costs) includes the replacement of the 8 windows on the first floor because they are old and don't work well anymore. Windows on the second floor are not scheduled for work. The risk assessment identifies all the windows in the unit as hazards and provides a choice between window replacement and window treatments. The risk assessment also identifies a number of other hazards. The rehab specialist decides to go forward with the replacement of the first floor windows. He opts to perform friction treatments on the remaining windows and to perform interim controls on the remaining hazards.

In the cost allocation document, he allocates the cost of the window replacement to rehabilitation costs. He allocates the cost of the friction treatments and all the reduction of the other hazards to lead hazard reduction. He uses workers trained in safe work practices to perform all the work.

*Is this a permissible approach?* Yes. None of the work on this job is abatement. Because of the way he allocated the costs, the window replacement is rehabilitation (not hazard reduction and therefore, not abatement). Further, the friction treatments on the remaining windows constitute interim controls, not abatement.

*What if he had chosen to allocate the cost of the window replacement to lead hazard reduction?* Then, it would be considered abatement because component replacement is an abatement method. In that case, he would need abatement workers to perform the window replacement. However, trained workers would be permitted to perform the friction treatments since that is an interim controls method.

*Note:* If a state law required work on any known to contain lead-based paint to be worked on by a certified contractor, then an abatement contractor would be required for all the lead hazard reduction work.

**Scenario 4:** A \$28,000 rehab project (hard costs) includes window replacement (of \$8000). The risk assessment identifies hazards throughout the unit (including the windows) and identified acceptable interim controls and abatement methods for each hazard. The cost of the abatement methods recommended by the risk assessor will total \$15,000. This cost is too high for the program to bear so they reconsider the scope of the project. The rehab specialist rewrites the scope of work to exclude the window replacement (thereby reducing the project hard costs to \$20,000) and include interim controls on all hazards, including the windows that

were originally scheduled for replacement. This option makes the project affordable to them.

*Is this a permissible approach? Yes.*