

Classification of Paint Programs

July 13, 1992

MEMORANDUM FOR: John E. Riordan, Director, Community Planning and Development, 5.3C

FROM: Don I. Patch, Director, Office of Block Grant Assistance, CGB

David M. Cohen, Director, Office of Affordable Housing Programs, CGH

SUBJECT: Classification of paint programs

This is in response to your question regarding whether a "paint program," through which exterior grade paint is distributed by a Community Development Block Grant (CDBG) grantee or subrecipient to low- and moderate-income homeowners who are then responsible for painting their homes, is considered a public service activity or housing rehabilitation. It is our understanding that this type of activity is currently carried out by several grantees in Ohio as a public service which is not subject to the requirements of 24 CFR 570.608, Lead-based paint. However, when distributing the paint, the grantees do provide notification of the hazard of lead-based paint poisoning in accordance with 24 CFR 570.608(b).

Although it is arguable that the provision of paint to low- and moderate-income persons could be considered a service, the fact remains that the paint is provided for the purpose of improving the exterior of a housing structure. Further, in the past, painting has been considered a rehabilitation activity. Based on this, we do not feel that a program that provides paint to a homeowner should be treated differently than a program through which a grantee has a contractor paint a house. Therefore, a CDBG-assisted program that provides paint to homeowners should be classified as rehabilitation under 24 CFR 570.202 and is subject to the provisions of 24 CFR 570.608, Lead-based paint.

To comply with the CDBG lead-based paint regulations, grantees that operate paint programs are required to provide the Departmental lead-based paint notification forms to program participants who reside in housing constructed prior to 1978. If a child under seven resides in any of the units to be painted, the grantee must inspect the exterior of these units for defective paint surfaces. Where defective paint surfaces are found, those surfaces must be treated in accordance with the requirements established at 24 CFR 570.608(c)(5). If a child under seven residing in the unit has an identified elevated blood-lead level, the grantee must test exterior chewable surfaces for lead content. If these surfaces are found to contain lead-based paint, they must be treated.

Even in the case where the only form of rehabilitation to be undertaken is the painting of a house, the hazards posed by the presence of lead-based paint are increased. Painting almost always involves some amount of scraping or sanding of the existing surface, whether the painting is done by the owner or a contractor. HUD's regulations concerning lead-based paint are aimed at minimizing those hazards. It is therefore appropriate that whenever Federal assistance is provided for painting of a house, even if the

assistance is limited to the provision of paint, the required protection against lead-based paint hazards should apply.

Compliance with the Department's lead-based paint requirements will tremendously complicate the operation of CDBG-assisted paint programs. However, ingestion of lead in dust and soil in and around dwelling units is the primary cause of lead-poisoning in children. Thus, grantees should be advised to exercise caution in conducting paint programs. Scraping or sanding of exterior paint produces significant amounts of dust that can be tracked inside houses and on to carpets or can settle in soil. This lead dust can remain in carpets and soil indefinitely and may pose a hazard to children currently residing in these dwelling units as well as to those who will inhabit them in the future. To avoid these risks, removal of lead-based paint on interior or exterior surfaces should only be attempted by qualified contractors using proper engineering controls in abatement, clean-up and disposal.

In the near future, the Department will be revising 24 CFR Part 35 and all corresponding program regulations to reflect the latest medical research regarding lead-poisoning and to incorporate new testing and abatement technologies. At that time, we will consider establishing a separate set of CDBG lead-based paint requirements appropriate for paint programs such as those operated by communities in Ohio. However, until that time, CDBG grantees must treat paint programs as a housing rehabilitation activity and comply with lead-based paint requirements in the manner outlined above.

Should you have any questions regarding this guidance, you should contact Stan Gimont of the Office of Block Grant Assistance on (202) 708-1577 or Ginny Sardone of the Office of Affordable Housing Programs on (202) 708-2470.