

CHAPTER 24

LEAD-BASED PAINT COMPLIANCE

- 24-1 **PURPOSE.** This Chapter explains how to monitor compliance with the requirements of the HUD/EPA Lead-Based Paint Disclosure Rule and HUD’s consolidated lead-based paint regulation, known as the Lead Safe Housing Rule. Both Rules implement the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the “Act”). The Act is also known as “Title X” because it is Title X (“ten”) of the Housing and Community Development Act of 1992. Information on HUD’s lead-based paint regulations is available from the Office of Lead Hazard Control and Healthy Homes (OLHCHH) website at: <http://www.hud.gov/offices/lead>.
- A. **LEAD DISCLOSURE RULE.** The Lead Disclosure Rule was published on March 6, 1996, at 24 CFR Part 35, Subpart A. The Lead Disclosure Rule requires sellers and lessors to disclose known information about lead-based paint and lead-based paint hazards, including records and reports, in most pre-1978 housing. It implements section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.
- B. **LEAD SAFE HOUSING RULE.** The Lead Safe Housing Rule, implementing sections 1012 and 1013 of Title X, was published on September 15, 1999, at 24 CFR Part 35, subparts B through R, and amended on June 21, 2004. The Lead Safe Housing Rule is designed to help ensure that Federally-assisted housing, and Federally-owned housing being disposed of, does not pose lead-based paint hazards to young children. A technical amendment to this regulation was published in the Federal Register on June 21, 2004. Reviewers should use the amended version, available at <https://www.ecfr.gov/current/title-24/subtitle-A/part-35>.
- C. **HISTORIC PROPERTIES.** Information about fair housing issues and monitoring projects in historical properties is included in Section 24-8 of this Chapter.
- D. **EPA LEAD-BASED PAINT RULES.** EPA's Lead Renovation, Repair and Painting Rule (RRP Rule) (40 CFR 745, especially subparts E and Q) requires, with some exceptions, that firms performing renovation, repair, and painting projects that may disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA-authorized state), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. Renovation firms have to provide owners and occupants with the EPA-renovation-specific pamphlet, “Renovate Right,” before they start the renovation work. Similarly, lead-based paint abatement, and lead-based paint hazard abatement in these facilities (such as is required for rehabilitation of target housing receiving over \$25,000 in federal rehabilitation assistance per housing unit) are covered by EPA’s Lead-Based Paint Activities rule (40 CFR 745, especially subparts L and Q), and firms conducting these abatement activities must be certified and use

certified abatement supervisors and workers. See <https://www.epa.gov/lead>. Where specific provisions of the Lead Safe Housing Rule and the EPA rules differ in a particular situation, the more protective of the two provisions applies to that situation.

24-2 APPLICABILITY OF THE LEAD RULES IN 24 CFR PART 35.

- A. LEAD DISCLOSURE RULE (24 CFR Part 35, Subpart A). This Rule applies to transactions to sell or lease target housing, including subleases. Title X defines target housing as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless a child under age six resides or is expected to reside in such housing).

The Lead Disclosure Rule does not cover the following transactions:

1. sales of target housing at foreclosure;
2. leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a Federally-accredited State or tribal certification program;
3. short-term leases of 100 days or less, where no lease renewal or extension can occur;
4. renewals of existing leases in target housing in which the lessor has previously disclosed all information required under 24 CFR 35.88 and where no new information described in 24 CFR 35.88 has come into the possession of the lessor.

CPD reviewers are only required to monitor for compliance with the Lead Disclosure Rule in activities or projects where the program participant is the seller or lessor of target housing.

- B. LEAD-SAFE HOUSING RULE (24 CFR Part 35, Subparts B-R). The Lead Safe Housing Rule applies to pre-1978 Federally assisted housing or pre-1978 Federally owned housing being disposed of, unless the property or project meets one of the exemptions listed in the Rule at 24 CFR 35.115(a). Properties built on or after January 1, 1978, are not target housing, so they are exempt from the Rule [24 CFR 35.115(a)(1)].

The subparts of the Rule cover similar programmatic activities (such as rehabilitation or acquisition assistance) rather than specific programs (such as HOME Investment Partnerships program (HOME) or Emergency Solutions Grants). The subparts most applicable for monitoring CPD programs are:

- Subpart B (general requirements and definitions);
- Subpart H (project-based rental assistance);
- Subpart J (rehabilitation);
- Subpart K (acquisition, leasing, support services, or operations);
- Subpart M (tenant-based rental assistance); and
- Subpart R (methods and standards for hazard evaluation and reduction).

For CPD programs covered by subparts H and M, and for HOME and Housing Trust Fund (HTF) program activities covered by subpart J, when a child under age 6 living or expected to live in a housing unit covered by the program has a confirmed blood lead level of at least 5 micrograms of lead per deciliter (one tenth of a liter) of blood, specific elevated blood lead level requirements for prompt environmental investigation and lead hazard control apply to the housing unit the child lives in and, if the unit is in a multi-unit property, the common areas servicing the child's unit, and possibly other assisted units with children under age 6 residing. The Field Office and OLHCHH will have to be notified of the case, the evaluation will expand to an environmental investigation, other assisted units in the property with a child under age 6 will have to have a risk assessment (with some exceptions), and lead-based paint hazards identified will have to be controlled promptly.]

The programs covered in the Exhibits in this Chapter and the regulatory citations that make each of these requirements applicable to funds provided under these programs include:

- Community Development Block Grants (CDBG): 24 CFR 570.485(c), 570.487(c), and 570.608;
- Emergency Solutions Grants (ESG): 24 CFR 576.57(c);
- HOME: 24 CFR 92.355; (Requires compliance with 24 CFR part 35, subparts A, B, J, K, M and R);
- HOPE 3: 24 CFR 572.100, 572.215, 572.420;
- HTF: 24 CFR 93.351 (Requires compliance with 24 CFR part 35, subparts A, B, J, K, and R);
- Housing for Persons with AIDS (HOPWA): 24 CFR 574.635;
- Loan Guarantee: 24 CFR 573.9;
- Rental Rehabilitation: 24 CFR 511.10, 511.15;
- Shelter Plus Care: 24 CFR 582.305(a);
- Supportive Housing Program (SHP): 24 CFR 583.330(d);
- Consolidated Plan: 24 CFR 91.215(i) and 91.315(i); and
- YouthBuild: 24 CFR 585.305, 585.502.

C. EXEMPTIONS.

1. Lead Disclosure Rule. The following housing types are exempt: housing constructed after 1978, zero-bedroom units, and housing designated for the elderly or disabled (unless a child under age six resides or is expected to reside in such housing for the elderly or disabled). See Section 24-7.B.1 for more information on "expected to reside."
2. Lead Safe Housing Rule. A key role of the CPD reviewer will be to recognize when a program or project is exempt from the Rule. Exemptions are listed at 24 CFR 35.115(a). See also the Rule's Interpretive Guidance, June 21, 2004, posted at <http://www.hud.gov/offices/lead/enforcement/lshr>, items B9-B12.

- i. Exempt Programs. If a program participant claims that its CPD-funded activities are exempt from the Lead Safe Housing Rule, the program participant must be able to justify its position. For example, a new construction project is, by its nature, exempt from the Rule. A subtler example is an emergency repairs program. In that case, the program participant must be able to show that its program accepts only projects that qualify as emergencies *as defined in the Lead Safe Housing Rule* [24 CFR 35.115(a)(9)]. Programs are not allowed to have general policies or practices prohibiting assistance to pre-1978 housing units because such assistance triggers lead-based paint requirements. Such policies or practices could result in failure to provide housing, services or benefits to families with children under age six. This could place the participant at risk of violating the Fair Housing Act (see section 24-8.B, below) or state or local fair housing laws.
- ii. Exempt Projects. If an individual project in a pre-1978 dwelling unit is exempt from the Rule, the file must document that the project is exempt. The file must cite the specific exemption as given in the Rule or described in its interpretive guidance. Program participants need not document the exemption of individual projects in units constructed during or after 1978.

Program participants sometimes interpret a program or project as exempt when it is not. One common error concerns emergency repair programs. While the Rule at 24 CFR 35.115(a)(9) exempts emergency actions, it is quite specific about the definition of emergency actions as it relates to the Rule's exemptions; this exemption is different from some other HUD program emergency exemptions. The Rule exempts only projects in target housing immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse). This exemption applies only to repairs necessary to respond to the emergency, and the Rule applies to any work undertaken subsequent to, or above and beyond, such emergency actions.

The program participant must demonstrate that each project claimed to be an emergency actually met that standard. Similarly, program participants could possibly overlook the requirements for programs that provide small amounts of assistance, such as paint programs and security deposit assistance. However, even modest levels of assistance trigger the regulatory requirements. Finally, program participants sometimes assume that work by volunteers is not covered. In fact, volunteers must meet the same safe work standards as professional workers, in order to protect the children living in the housing units being assisted.

24-3 EFFECTIVE DATES.

- A. LEAD DISCLOSURE RULE. For owners and agents of a property of more than four residential dwellings, the Lead Disclosure Rule has been applicable since September 6, 1996. For owners and agents of a property of one to four residential dwellings, the Rule has been applicable since December 6, 1996.
- B. LEAD SAFE HOUSING RULE. The Rule has been in full effect for all programs and jurisdictions for which funds were obligated, granted, or awarded on or after January 10, 2002.
- C. EPA'S LEAD SAFETY RULES.
 - 1. LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING (RRP) RULE. The RRP Rule became effective April 22, 2010.
 - 2. EPA'S LEAD ABATEMENT RULE. EPA's lead abatement rule has been in effect since August 31, 1998.

24-4 PREPARING FOR LEAD-BASED PAINT MONITORING.

- A. ACTIVITY AND EXHIBIT SELECTION. Reviewers should be familiar with the activities performed by the program participants and customize the lead-based paint monitoring by selecting appropriate Exhibits (see Section 24-9 below). Because of the limited time available for monitoring, reviewers should structure their file reviews and interviews when monitoring programs having regular activities in pre-1978 housing to afford a general, but efficient, assessment of the program's level of compliance, rather than a comprehensive review of all of the program participant's files. Reviewers should also familiarize themselves with the Exhibits so meaningful responses are provided in the limited time frame. The Chapter Exhibits correlate to the category of assistance provided. For example, if a reviewer is preparing to monitor a program that usually provides rehabilitation assistance up to and including \$5,000 per unit and homebuyer assistance, the reviewer would select Exhibit 24-1, "Guide for Reviewing Properties Receiving an Average of Up to and Including \$5,000 Per Unit in Federal Rehabilitation Assistance," and Exhibit 24-5, "Guide for Reviewing Acquisition, Leasing, Support Services, or Operations." The review should include a random selection of files (at least 2-3) as well as staff interviews (see Section 24-5 below). This approach is consistent with the definition of "limited monitoring" provided in Chapter 1, Section 1-6.E.
- B. LEAD HAZARD CONTROL GRANTS. Because some program participants may blend CPD rehabilitation assistance with OLHCHH Lead Hazard Control grant funds, CPD reviewers should, prior to monitoring, determine if the program participant has a current Lead Hazard Control grant. If so, CPD reviewers may choose other projects to review in these jurisdictions for lead-based paint activities, because OLHCHH staff monitor lead grantees' lead hazard control program activities. Therefore, CPD

reviewers are not responsible for monitoring compliance with the Lead Safe Housing Rule's rehabilitation requirements for these projects.

OLHCHH has awarded HUD Lead Hazard Control grants to many State and local governments for the purpose of reducing identified lead hazards in privately-owned target housing. The lead grant program's requirements are at least as stringent as the Lead Safe Housing Rule's requirements for rehabilitation projects receiving up to and including \$25,000 per unit. Several jurisdictions combine their Lead Hazard Control grant funds with CPD funds to perform lead hazard control in pre-1978 units in conjunction with CPD-funded rehabilitation. Additional information about the Lead Hazard Control grant programs (Lead-Based Paint Hazard Control, and Lead Hazard Reduction Demonstration) can be obtained via OHHLHC's website (www.hud.gov/offices/lead/).

C. RESOURCES. Resources available to CPD reviewers on the requirements of the lead regulations include:

1. Lead Disclosure Rule. The regulation at 24 CFR Part 35, Subpart A (Sections 35.80 to 35.98), is available on HUD's website at: www.hud.gov/offices/lead/. The three-part Interpretive Guidance with answers to frequently asked questions about the Lead Disclosure Rule is available at the same website.
2. Lead Safe Housing Rule. The Rule at 24 CFR Part 35, Subparts B – R, as amended on June 21, 2004, is available on OHHLHC's website at: www.hud.gov/lead/. The Interpretive Guidance on the Lead Safe Housing Rule, revised to reflect the technical amendments, is also available at the same website.
3. Training Curricula on the Lead Safe Housing Rule. Effective monitoring is possible when reviewers understand the program participant's lead-based paint requirements. CPD has developed two training products on the Lead Safe Housing Rule. *Basically CDBG for States, chapter 13, Lead-Based Paint* (<https://www.hudexchange.info/sites/onecpd/assets/File/Basically-CDBG-State-Chapter-13-Lead.pdf>), and the related *Basically CDBG for Entitlements, chapter 17, Lead-Based Paint* (<https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-17-Lead.pdf>) outline the Rule's requirements and provide basic guidance to program participants on implementing the Rule's provisions. *Making it Work: Implementing the Lead-Safe Housing Rule in CPD-Funded Programs* (<https://files.hudexchange.info/resources/documents/MakingItWorkReferenceManual.pdf>) includes the original information from *Basically CDBG* but provides more detailed guidance, including suggested forms and sample documents, to help program participants move forward with the implementation of the Rules. Both courses are available on the [HUD Exchange](http://www.hudexchange.info/) website.

(<https://www.hudexchange.info/>). Requests for training should be addressed to Field Office CPD management and then to CPD Headquarters.

For certain activities and programs, a visual assessment for deteriorated paint in target housing is required, and persons doing that work must be trained in it. The training for certification as a lead-based paint risk assessor covers this subject, so certified risk assessors may conduct visual assessments without further training. For other persons, the OLHCHH has developed an on-line Visual Assessment Course (typically taking 15 to 30 minutes); after passing the end-of-course quiz, a notice of completion can be downloaded to serve as training documentation. The course is at

<https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm>.

4. OHHLHC Technical Assistance Hotline. HUD reviewers with questions on the Lead Safe Housing Rule may contact the OLHCHH hotline via telephone at (202) 402-7698 or send an email to lead.regulations@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

24-5 MONITORING COORDINATION. (See also Chapter 2, Section 2-6.)

A. LEAD SAFE HOUSING RULE

Since CPD is responsible for monitoring and enforcing the Lead Safe Housing Rule in regard to CPD-assisted housing, OLHCHH does not monitor CPD's program participants for compliance with that Rule. However, OLHCHH staff will work with CPD staff to determine if assisted activities trigger the Lead Safe Housing Rule and will provide technical assistance when requested. To assist in this effort, OLHCHH has developed a compliance toolkit and has several OLHCHH Field Representatives in Field Offices (see

https://www.hud.gov/program_offices/healthy_homes/STAFF_DIRECTORY for a staff list). OLHCHH does not request CPD reviewers to contact OLHCHH for input prior to monitoring, although they may do so if they have questions not answered by the materials mentioned in section 24-4.D, Resources. However:

1. Assignment of corrective actions should be consistent with established CPD procedures and practice.
2. Copies of all monitoring letters covering corrective actions based on lead-based paint reviews are to be sent to OLHCHH, Lead Programs Enforcement Division, for follow up.

Questions for OLHCHH regulatory enforcement should be addressed by correspondence to: Office of Lead Hazard Control and Healthy Homes, Lead Programs Enforcement Division, 451 7th St. S.W., Room 8236, Washington, D.C. 20410; or by calling (202) 402-7698. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

B. SHARED HUD-EPA ENFORCEMENT OF THE LEAD DISCLOSURE RULE

Both HUD and EPA share enforcement of the Lead Disclosure Rule. Under a 1997 Memorandum of Understanding (MOU) and its implementing guidance, HUD has initial responsibility for enforcement of the Lead Disclosure Rule for all sites receiving HUD assistance. This assistance includes conventional public housing, project-based rental assistance, tenant-based rental assistance, and HUD grants such as HOME and CDBG. Guidance in the MOU provides that if, during the course of an enforcement investigation, EPA becomes aware of HUD assistance, EPA will refer these sites to HUD for enforcement.

While the MOU clarifies this relationship, some EPA Regions have performed records inspections of HUD-assisted sites and public housing agencies (PHAs) without notifying HUD. As a result, HUD recommends that, if EPA requests an inspection for compliance with the Lead Disclosure Rule, and/or issues a subpoena, the PHA or owner should request that EPA temporarily suspend the investigation to allow for consultation with HUD. EPA inspections for compliance with the Lead Disclosure Rule are voluntary; however, EPA may issue a subpoena if the entity is uncooperative and refuses an inspection. Subpoenas normally offer the PHA or owner a reasonable time period to comply, and during this time, the PHA and/or owner have a reasonable amount of time to consult with legal counsel and HUD.

HUD Field Offices should contact CPD, OLHCHH and/or the Office of General Counsel's Administrative Law Division in HUD Headquarters for guidance. (OHHLHC and Office of General Counsel were parties to the MOU Guidance, and as such, should be notified so that they may notify relevant EPA staff.)

24-6 CONDUCTING LEAD-BASED PAINT MONITORING.

- A. SELECTION OF PROJECT FILES. As described in Chapter 2, the risk analysis process will be used to determine which areas should be reviewed. Once that process has been completed, the CPD reviewer should consider the following factors when determining which specific files in an area should comprise the review sample for the monitored program:

1. Where feasible, initial file selection should be made using a random selection method to produce a total of 3 to 5 project files less than 3 years old for

assistance provided for pre-1978 housing units that are covered by the Lead Safe Housing Rule.

2. The reviewer should add files to this selection in order to:
 - i. Examine files from each category of activity being reviewed (e.g., rehabilitation, homebuyer program);
 - ii. Include a file(s) from each State or staff person responsible for oversight of state recipients;
 - iii. Expand the sample, if possible, to include additional files with similar characteristics, if indicated by the severity or nature of any problems(s) noted during the initial selection's review (for example, emergency assistance provided for roof repairs to pre-1978 units). This expanded sampling aids in determining whether problems were isolated events or represent a systemic problem.
3. As discussed in Section 24-4.C above, CPD staff are responsible for monitoring CPD-funded projects that do not involve OLCCHH lead hazard control grant dollars.

B. SELECTION OF PROGRAM FILES AND STAFF INTERVIEWS. Reviewers should review program files to assess whether the program has procedures in place to comply with the lead-based paint regulations. HUD does not prescribe a management system or file system that program participants must use. Rather, each participant may devise any system that achieves program compliance. To this end, reviewers are encouraged to interview staff members/positions identified in the program's lead-based paint management procedures to determine the level of familiarity with their assigned roles and the execution of those roles. Especially in the file review section, staff interviews should not be relied upon as the only evidence to support compliance. Reviewers should also review contract documents and other records in responding to the questions in the File Review section of the Exhibits. A general statement that "program documents were reviewed" or "staff interviews" are inadequate. The reviewer's basis for his/her decision must include specific references to all supporting documents.

The lead disclosure requirements apply to the sale and lease of pre-1978 target housing. Therefore, a CPD Tenant-Based Rental Assistance (TBRA) or homebuyer program must comply when it is the seller or lessor. CPD reviewers are not required to personally examine owners' files to determine if owners are complying with the Lead Disclosure Rule, but program participants should be able to provide CPD reviewers with evidence of owner compliance if the CPD reviewers have concerns about owner compliance. CPD reviewers should monitor the acceptability of a program participant's performance according to the participant's Agreement.

24-7 DEVELOPING CORRECTIVE ACTIONS.

A. GENERAL. In developing corrective actions under the Lead Disclosure Rule and/or the Lead Safe Housing Rule, reviewers should note the following:

1. Corrective actions for the Lead Safe Housing Rule are not explicitly provided in that Rule.
2. The Lead Safe Housing Rule at 24 CFR 35.170(a) states that, “A designated party who fails to comply with any requirement...shall be subject to the sanctions available under relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.” To make this meaningful, CPD’s program regulations adopted this Rule, so the sanctions of the CPD assistance or ownership program apply.
3. The Lead Disclosure Rule allows HUD and EPA to impose civil money penalties up to \$21,018 per violation (per 24 CFR 30.65(b)) as of March 27, 2023; the limit is revised annually) and makes the property owner liable for three times the amount of any damages to the buyer or tenant (see 24 CFR 35.96). (Note that a rental transaction for a single target housing unit may create up to 10 violations; a sales transaction, up to 11.)
4. The Lead Disclosure Rule is a joint HUD and Environmental Protection Agency (EPA) regulation; both agencies monitor and enforce it (24 CFR Part 35, Subpart A, and 40 CFR Part 745, Subpart F).

The CPD reviewer must rely on knowledge and experience to develop corrective actions that are fair, effective, and consistent with program policy. For example, the Lead Safe Housing Rule requires that families be relocated temporarily during lead hazard reduction activities for projects inside their homes lasting more than 5 days [see 24 CFR 35.1345(a)(2)(iv)]. The Rule itself does not identify corrective actions to be used if the family was left in their unit and exposed to lead dust from the work. Instead, if the work was CPD-assisted, under 24 CFR 35.170(a), sanctions for deficiencies would be developed as described in Chapter 2 and following the program sanction requirements as identified in Exhibit 2-2 in Chapter 2.

B. COMMON FINDINGS. Typically, lead-based paint hazard findings are of two types: record keeping violations and failure to perform required activities. The Lead Disclosure Rule requires owners to provide certain records to prospective tenants and buyers of target housing. Performing limited monitoring for compliance with the Lead Disclosure Rule consists of reviewing records to ensure that disclosure was made prior to a prospective buyer or tenant becoming obligated under a sale or lease contract.

Many of the Lead Safe Housing Rule requirements are based on the type and amount of housing assistance provided for target housing. Because file reviews are a vital part of monitoring, reviewers should note that the Lead Safe Housing Rule not only

specifies actions that must be performed when the Rule applies, but also identifies records that must be kept, and for how long they must be kept. (If a program record keeping regulation also applies to the entity being monitored, then the most stringent regulation must be followed.)

1. Record Keeping Violations under the Lead Disclosure Rule. This Rule requires that sellers, lessors and agents of housing constructed prior to 1978 provide each buyer or lessee with:
 - an EPA-approved lead hazard information pamphlet;
 - any information and/or records or reports known to the seller or lessor concerning lead-based paint or lead-based paint hazards in the property, or a statement that they have no such information and/or records or reports; and
 - an attachment containing the Lead Warning Statement with date and signature lines certifying that the lead-based paint information was provided to the buyer or lessee.

Additionally, sellers are required to provide buyers with a 10-day opportunity to conduct an evaluation (inspection or risk assessment) for the presence of lead-based paint and/or lead-based paint hazards (or an inspection period of a different and mutually agreeable length).

All of this information must be provided before the buyer or lessee is obligated under any contract to buy or lease target housing, including both new leases and lease renewals. As applicable, project files should contain evidence that lessors and buyers:

- received the lead warning statement and the lead information pamphlet;
- received the owner's lead disclosure; and
- offered prospective buyers a period of time to obtain a lead evaluation of the property, even if such opportunity is waived by the buyer.

2. Record Keeping Violations under the Lead Safe Housing Rule. This Rule requires that program participants, or other "designated parties" responsible for implementing the Rule in a specific property, keep the following documents for at least three years: each notice of evaluation or lead hazard reduction, evaluation report, and clearance or abatement report, as applicable (see 24 CFR 35.175).

For example, HOME program participants are required by the program regulation at 24 CFR 92.508(a)(7)(vi) to keep records demonstrating compliance with Part 35, Subpart A (for the Lead Disclosure Rule, if the program participant is selling or leasing the property) and Subparts B, H, J, K, M, and R (for the Lead Safe Housing Rule). If a program participant could provide the reviewer with evidence that residents were notified, but couldn't provide a copy of the notice itself, it would be a violation of the HOME regulation at 24 CFR 92.508(a)(7)(vi) and the Lead Safe Housing Rule's record retention provision at 24 CFR 35.175.

The Lead Safe Housing Rule's Subpart J, on rehabilitation, requires that a Consolidated Plan program participant notify occupants of housing where CDBG-assisted lead hazard control work was conducted and the results of that work and retain records for three years [see 24 CFR 35.910(a) which references 24 CFR 35.125]. The Consolidated Plan regulation at 24 CFR 91.225(b)(7) requires the participant to submit a certification that its activities will comply with Subparts A (if the program participant is selling or leasing the property) and Subparts B, J, K and R of Part 35. If the jurisdiction does not have the compliance certification, it would be a violation of the Consolidated Plan regulation.

24-8 OTHER LEAD-RELATED ISSUES: HISTORIC PRESERVATION AND FAIR HOUSING.

- A. Historic Preservation: For historic properties or properties eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, reviewers should evaluate programs in light of the allowance of interim controls and ongoing lead-based paint maintenance, where abatement of lead-based paint hazards is otherwise required. Reviewers should look for inappropriate programmatic insistence on abatement where interim controls are technically feasible and are, in fact, preferable in historic properties. Prices (per square or linear foot of building component) for abatement are generally higher than interim controls. This insistence on abatement could represent unnecessary costs to the program.

Through the Lead Safe Housing Rule, the interests of the historic preservation and lead-safe housing communities shift from competing to complementary. For programs that routinely perform rehabilitation of historic properties, reviewers should evaluate programs in light of the Lead Safe Housing Rule's allowance of interim controls and ongoing lead-based paint maintenance, instead of lead hazard abatement that would otherwise be required [24 CFR 35.115(a)(13)]. If the property has been listed or been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the Rule states that interim controls may be used instead of abatement if requested by the State Historic Preservation Officer (SHPO).

Some HUD program participants and subrecipients appear to be confused over the application of the Lead-Safe Housing Rule to historic properties. According to some SHPOs, confusion stems from the fact that some program participants and subrecipients believe, despite the language of the Rule, that abatement is the only treatment suitable for properties with lead-based paint hazards. In many cases, certain forms of abatement, like removal of original material, encapsulation, or replacement with inappropriate material, adversely affect historic properties. Consequently, SHPOs find themselves objecting to, or disagreeing with, program participants and subrecipients over lead hazard reduction methods, thereby causing some delay with Section 106 compliance (36 CFR Part 800, Protection of Historic Properties.)

In other cases, performing interim controls on building components in very poor condition may be infeasible from a technical perspective, e.g., the components lack the structural integrity to support a repair or interim control treatment. In these cases, preserving the existing structure of the property may not be in its best interest from the historical, lead hazard control, or financial perspectives. In cases such as these, program participants are encouraged to work with SHPOs to identify historically acceptable strategies, such as the use of satisfactory replacement materials and safe work practices that also reduce identified lead hazards. To this end, program participants should document their position that interim controls are not effective or adequately durable before requesting approval of abatement from their SHPO.

While it is generally easier and sometimes more cost-effective to replace building components, HUD and the National Park Service agree that the historical fabric and character of the property is important. When interim controls are feasible for an historic property, program participants should embrace their use and routinely incorporate them into their preferred and viable options for rehabilitation/lead hazard control plans. When formulating a lead hazard control strategy for a property, program participants must, of course, consider each property's particular situation and all applicable State lead-based paint requirements. HUD believes that both communities will view the positioning of interim controls as the preferred method of lead hazard control for historic properties as a strategic and sensible policy. Reviewers dealing with historic properties should read the National Park Service's Preservation Brief #37, "Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing" and encourage program participants to communicate with their SHPOs on these issues. (See Attachment 24-2 in this Chapter on Historic Properties and the Lead Safe Housing Rule.)

Reviewers should note that, when interim controls are used instead of hazard abatement, ongoing lead-based paint maintenance and reevaluation activities are required [24 CFR 35.1355].

- B. Fair Housing Issues. Fair housing problems frequently arise from misunderstanding of the Lead Safe Housing Rule. It would be a violation of the Federal Fair Housing Act for housing providers to refuse to rent or sell a unit, even one with lead-based paint hazards, or to provide other services, such as housing rehabilitation, to at-risk households due to their familial or disability status. The Fair Housing Act prohibits discrimination on the basis of familial status (i.e., the presence of children under 18, a child with an elevated blood lead level, or a pregnant woman in the household) and disability. Housing providers are required to tell all prospective tenants/buyers of the danger of moving into units with lead hazards. Housing providers may also recommend alternative units to households with at-risk children (under age 6 or with elevated blood lead levels), pregnant women and adults with lead-based paint sensitivity and may also give such households priority for lead-treated units. Children with an elevated blood lead level may fall under the definition of persons with disabilities. [See preamble to the Lead Safe Housing Rule, III.D.7, 64 FR 50158; 24 CFR 100.50(b)(2).]

The following explanation is provided to clarify the applicability of the Rule to dwelling units housing children under age 6. [See 24 CFR 35.115(a)(3); the related definitions at 24 CFR 35.110, and the related explanation in the preamble to the Rule at 64 FR 50149, September 15, 1999.] To minimize confusion, HUD has provided its definition of “expected to reside.”

1. Housing Designated for the Elderly. There is a general exemption from the Rule for “housing for the elderly, or a residential property designated exclusively for persons with disabilities *except that this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit.*” [24 CFR 35.115(a)(3)].

The statutory intent of Title X was for HUD to issue regulations covering target housing receiving federal housing assistance. “Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any zero-bedroom dwelling (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities). This exemption means that, in the case of housing designated for the elderly or disabled which is normally exempt, the exemption is limited to units where children under 6 do not reside. When children under age 6 reside in units normally designated for the elderly or disabled, the Rule applies. Therefore, in regard to this exemption, “expected to reside” means that there is actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

2. Tenant-Based Rental Assistance. A second occurrence of this concept occurs in the Lead Safe Housing Rule’s Subpart M, “Tenant-Based Rental Assistance.” The Rule states, in 24 CFR 35.1200(b), that this subpart applies only to units “occupied or to be occupied by families that have one or more children of less than 6 years of age,” the associated common areas and exterior painted surfaces associated with such dwelling units or common areas.

It would not be unreasonable for people seeking to comply with the law to think that the term might refer to the distant future, that is, “expected to reside at some time, however far in the future.” That uncertain potentiality is not part of HUD’s interpretation of statutory intent. In the Lead Safe Housing Rule’s preamble, at 64 FR 50149, September 15, 1999, the Department defines the phrase “expected to reside” in the statutory definition of target housing as meaning that there is actual knowledge that a child is expected to reside, rather than a general presumption that a child will probably reside in the dwelling unit sometime in the future. If a woman residing in the dwelling unit is known to be pregnant, there is actual knowledge that a child is expected to reside in that unit. However, in the context of most residential real estate transactions, it is not advisable to inquire as

to whether a woman is pregnant. Therefore, HUD's definition of "expected to reside" means that there is actual knowledge that a child is expected to reside there and not a general presumption that one or more children under age 6 may one day occupy the unit.

This issue is addressed in the Questions 1 and 13 on Exhibit 24-3, *Guide for Review of Lead-Based Paint Compliance in Properties Receiving Tenant-Based Rental Assistance (TBRA)*.

- 24-9 EXHIBITS ASSOCIATED WITH THIS CHAPTER. When monitoring compliance with the Lead Safe Housing Rule, reviewers must select from the Exhibits in this Chapter. There are four Exhibits in this Chapter, each divided into two parts: Section A, Program Review, provides questions for reviewing the program's overall compliance; Section B provides a list of questions for each project file reviewed.

Use all Exhibit(s) reflecting the monitored program's activities. If a program provides more than one type of assistance to a project/unit, the most stringent requirements apply. Reviewers should select the Exhibit that reflects the more stringent requirements (e.g., acquisition assistance for the ultimate purpose of rehabilitation follows the rehabilitation requirements because the rehabilitation requirements are more stringent.) Section 35.100 of the regulation includes a table listing HUD programs from the most protective to the least protective hazard reduction requirements and provides guidance on how to use the table.

The Exhibits correlate to specific program activities, as described below:

- A. Exhibit 24-1, *Guide for Review of Lead-Based Paint Compliance in Properties Receiving Federal Rehabilitation Assistance*. The requirements for such projects are defined in 24 CFR 35, Subpart J.
- B. Exhibit 24-2, *Guide for Review of Lead-Based Paint Compliance in Properties Receiving Acquisition, Leasing, Support Services, or Operations Assistance*. This Exhibit applies to programs defined by the Rule at 24 CFR 35, Subpart K.
- C. Exhibit 24-3, *Guide for Review of Lead-Based Paint Compliance in Properties Receiving Tenant-Based Rental Assistance*. The requirements for such projects are defined at 24 CFR 35, Subpart M.
- D. Exhibit 24-4, *Guide for Review of Lead-Based Paint Compliance in Properties Receiving Project-Based Rental Assistance*. The requirements for such projects are defined at 24 CFR 35, Subpart H.

- 24-10 ATTACHMENTS TO THIS CHAPTER. This Chapter also includes three attachments:

Attachment 24-1 Summary of CPD's Lead Requirements for Pre-1978 Housing Under 24 CFR Part 35: A table which provides a Summary of CPD's Lead-Based Paint Monitoring

Requirements under 24 CFR Part 35, for each of the applicable subparts of that part (Lead Disclosure Rule; general requirements and definitions; rehabilitation assistance; acquisition, leasing, support services, or operation; project-based rental assistance; and tenant-based rental assistance for units occupied or to be occupied by children under 6 years of age).

Attachment 24-2 Historic Properties and the Lead Safe Housing Rule (24 CFR Part 35, Subparts B-R): A description of the relationship of Historic Properties and the Lead Safe Housing Rule, especially the use of interim controls in historic properties when abatement would otherwise be required, and a description of the National Park Service's guidance on lead hazard control in historic properties.

Attachment 24-3 Lead-Based Paint Provisions for Major CPD Programs: A description of major lead-based paint provisions, associated statutory and regulatory citations, and explanatory notes.