

Frequently Asked Questions For Rehabilitation Projects

The questions below are questions that are frequently asked about rehabilitation projects. The answers reference such sources as:

- The Lead Safe Housing Rule (LSHR) found at 24 CFR Part 35
- The Interpretive Guidance dated April 16, 2001 (This document can be found on HUD's web page for the Office of Healthy Homes and Lead Hazard Control at www.hud.gov/offices/lead.)
- Sample forms, which are included in this web module. See the topic entitled "Useful Forms" for a full listing of forms.

These quick answers are not a substitute for a full understanding of the rule and the Interpretive Guidance provided by HUD.

1. Is my emergency repairs program exempt from the LSHR?

No, the program is not exempt from the LSHR.

However, individual emergency repair projects may be exempt from the LSHR requirements if they meet the exemption criteria defined at 35.115(a)(9) for emergencies (i.e., the condition to be corrected must require an "emergency action necessary to safeguard against imminent danger to human life, healthy or safety or to protect property from further structural damage.") A good rule of thumb is that if the condition is not urgent enough to require action within the next 24 to 48 hours, it is not an emergency.

2. An elderly woman applied for a loan under our owner-occupied rehab program. Is her unit exempt from the LSHR?

No. Only units that are designated for the elderly are exempt from the LSHR. See 35.115 (a)(3). However, because this unit is occupied by an elderly person, it is eligible for a relocation waiver that will allow the elderly woman to stay in the unit while work is being performed. See Form 13 "Elderly Waiver for Relocation" in this web module for a sample relocation waiver form.

3. A job involves roof and furnace repair. The level of assistance is \$6,000. The job will disturb a small amount of paint, below the de minimis. Is the unit exempt from the lead safe housing rule?

No. Because paint will be disturbed (even though it is a small amount), this unit is not exempt. Because the level of assistance is over \$5,000, this job requires a risk assessment. If hazards are identified, they must be addressed using interim controls. Alternatively, you may presume that hazards are present and perform standard treatments on the whole unit.

4. A job involves window replacement. Does that make it an abatement job?

It depends. Window replacement is an abatement activity if the window is being replaced to address a lead hazard. If the window is being replaced for other reasons, such as weatherization, it is a rehabilitation activity. See Form 21 "Guidance on the HUD-EPA Abatement Letter" in this web module for more detail on the definition of an abatement activity vs. a rehabilitation activity.

5. We use volunteers in our graffiti removal program. Do they have to be trained in lead safe work practices?

If the volunteers will be scraping paint, above the de minimis level, that is known or presumed to be lead-based paint, they must use lead safe work practices. However, if the level of assistance does not exceed \$5,000, no specific training or supervision is required. HUD does recommend a short course in lead safe work practices to help ensure that workers use lead safe work practices correctly. *See the Interpretive Guidance, Question #J13 on volunteer paint programs.*

6. Do participants in our sweat equity program need to be trained in lead safe work practices?

See question #5 above. The same logic applies. Note, however, that if the sweat equity project involves assistance of \$5,000 or more, then training or supervision of workers is required. *See the Interpretive Guidance, Question #J15 on sweat equity programs.*

7. Is relocation of occupants required for all jobs involving lead-based paint?

No. Relocation is only required when it is necessary to protect the occupants from lead hazards created during work. These conditions are defined at 35.1345. See Form 14 "Guidance on Relocation" in this web module, for a full explanation of relocation requirements.

8. Does a change order affect the level of assistance?

No. A change order does not affect the level of assistance. However, if program monitoring shows a pattern of change orders that suggests this provision is being used to circumvent the level of assistance, the program will be considered out of compliance with the LSHR. *See the Interpretive Guidance, Question #J4 on change orders.*

9. A leaky roof is causing damage to lead-based paint. Since controlling the lead hazard involves fixing the roof, does the roof repair count as a lead hazard reduction cost? Can that be subtracted from the rehabilitation hard costs?

No. The leaky roof must be fixed regardless of the lead-based paint in the house; therefore, it is not a lead hazard reduction cost. *See the Interpretive Guidance, Question #J6 for more on this issue.*

10. When calculating average federal assistance per unit, should I include funds from other Federal agencies?

Yes. All Federal housing assistance counts as federal assistance to the unit. Note, DOE Weatherization funds are not considered housing assistance so they are not counted in the formula. *See Interpretive Guidance Question # J11.*

11. If CDBG funds are being used to fund only program administration or program coordination costs, are projects subject to the LSHR?

In most cases, the answer is no. If costs covered with Federal funds are for administration or coordination only, LSHR requirements are not triggered. However, if a project coordinator has actual day-to-day control over the actual work being performed at a project site (for example, a volunteer paint program coordinator who supervises work on-site), then those funds are deemed to be used for rehabilitation activities and the requirements of Subpart J (rehabilitation) are triggered. *See the Interpretive Guidance, Question #J14 and J25 for more discussion of this issue.*

12. If HOME or CDBG funds are used to renovate the façade of a mixed-use building, is the LSHR triggered?

Yes. If the façade is the exterior of residential units, then Subpart J of the LSHR applies. *See the Interpretive Guidance, Question #J17 on facades and signs.*

13. Can HOME and CDBG funds be used to pay for training contractors or landlords in lead safe work practices or to purchase equipment such as an XRF?

Training contractors or landlords can be funded under CDBG as a rehabilitation service [24 CFR 570.202(b)(9)] or as an administrative expense [24 CFR 570.206]. Under the HOME program, such training can be funded as an administrative expense [24 CFR 92.207] or as a project delivery cost [24 CFR 92.206(d)].

Equipment can be purchased as rehabilitation service under CDBG [24 CFR 570.202(b)(9)] or a project delivery cost under HOME [24 CFR 92.206(d)].

See the Interpretive Guidance, Question #J18 for more discussion of this issue.

14. If a project is not receiving Federal assistance but the contributions to the project are being counted as HOME Match, does the LSHR apply?

No. *See the Interpretive Guidance, Question #J19 on HOME match.*

15. If a project includes both HOME-assisted and non-assisted units, does the LSHR apply to the non-assisted units?

Yes. If a project receives HOME funds, the LSHR applies to the entire project. *See the Interpretive Guidance, Question #J20 on partially HOME-assisted projects.*

16. If a worker has not been trained in lead safe work practices but is being supervised by a certified supervisor, what is the extent of supervision needed?

HUD has no requirements. It is the responsibility of the supervisor to ensure that the work is being performed safely and effectively. *See the Interpretive Guidance, Question #R6 on the extent of supervision.*

17. Must clearance be performed on the whole unit or just the worksite?

Clearance must be on the entire unit unless the worksite has been properly contained or the LSHR specifically permits worksite only clearance. The LSHR permits worksite only clearance for units receiving assistance up to and including \$5,000 and for ongoing lead-based paint maintenance activities. *See the Interpretive Guidance, Question # R8 on worksite/unit clearance.*

18. Is clearance required when work is below the de minimis?

No. Lead safe work practices and clearance are not required for work below the de minimis. *See the Interpretive Guidance, Question #R9 on clearance and de minimis.*

19. I'm confused. De minimis is defined as an area not exceeding two square feet in the interior, 20 square feet in the exterior, or 10 percent of a component. How do the square feet measurements work with the 10 percent threshold?

Both thresholds, the square feet and 10 percent, apply at the same time. This means that on the interior, if the deteriorated paint on a windowsill exceeds two square feet or 10 percent of the surface area of the component, the de minimis does not apply. Similarly, on the exterior, if the deteriorated paint exceeds 20 square feet or 10 percent of the surface area of a component, the de minimis does not apply. *See the Interpretive Guidance, Question # R17 on de minimis.*

Frequently Asked Questions For Homebuyer Programs

The questions below are questions that are frequently asked about homebuyer programs. The answers reference such sources as:

- The Lead Safe Housing Rule (LSHR) found at 24 CFR Part 35
- The Interpretive Guidance dated April 16, 2001 (This document can be found on HUD's web page for the Office of Healthy Homes and Lead Hazard Control at www.hud.gov/offices/lead.)
- Sample forms, included in this web module. See the topic entitled "Useful Forms" for a full listing of forms.

- 1. What do we do if a program participant chooses to exercise her option to evaluate a property? Our program has no funds available to address any hazards found during an evaluation.**

All homebuyers, regardless of Federal assistance, have the option to evaluate. Homebuyer programs should, therefore, be designed to account for this possibility, including contract language that allows for evaluation and policies to address any identified hazards. See Form 33 "Guidance on the Homeowner's Option to Test" for a discussion of the requirement and program design options.

- 2. The Jones family has just purchased a home through our HOME funded downpayment assistance program. The home needs significant work to bring it to code. Do the requirements of Subpart J (rehabilitation) apply to this project?**

Yes. Because the HOME program requires that homes purchased with HOME funds be brought up to code, the use of Federal funds has triggered rehabilitation activities. These activities must be done in accordance with the LSHR, regardless of who is paying for them.

- 3. The Jones family just purchased a home through the HOME funded downpayment assistance program from the ABC Housing Corporation. The ABC Housing Corporation did extensive rehabilitation on the unit prior to the purchase. Is the purchase subject to Subpart J or K?**

Subpart K. The Jones family's purchase did not trigger the rehabilitation. Any work done by ABC Housing Corporation was subject to the rules of its funding.

- 4. Who is responsible for fixing deteriorated paint identified during the visual inspection?**

The LSHR does not specify who is responsible. The grantee may design its program to allow the seller, the purchaser, or a third party to make the repairs. However, the grantee must ensure that repairs are done using lead safe work practices. No special training is required in this case; however, the person who performs the work should certify that it was done in accordance with lead safe work practices.

Frequently Asked Questions For Tenant Based Rental Assistance Programs

The questions below are questions that are frequently asked about tenant based rental assistance (TBRA) programs. The answers reference such sources as:

- The Lead Safe Housing Rule (LSHR) found at 24 CFR Part 35
- The Interpretive Guidance dated April 16, 2001 (This document can be found on HUD's web page for the Office of Healthy Homes and Lead Hazard Control at www.hud.gov/offices/lead.)

1. If a pregnant woman applies for TBRA, is her unit affected?

If the woman declares that a child is expected to live in the unit, the LSHR is triggered. *See the Interpretive Guidance, Question #M1.*

2. Consider these facts. A family receives TBRA. This family has a child with an environmental intervention blood lead level. The LSHR states that the unit must go undergo a risk assessment and lead hazard reduction, but the family decides to move out before this work can be done. Do we still need to perform the risk assessment and lead hazard reduction in this unit?

If the unit will be occupied by a family receiving TBRA, the answer is yes. Even if the new family has no children under age six, the work must be performed.

If the unit will no longer be occupied by a family receiving assistance, then the work is not required.

See the Interpretive Guidance, Question #M3.

3. Subpart K provides an exemption emergency assistance lasting less than 100 days. It mentions TBRA as a form of emergency assistance. However, TBRA is covered by Subpart M. I'm confused. Why is an activity covered by Subpart M be exempt from Subpart K?

Short-term emergency rental assistance is covered by Subpart K. Long-term rental assistance is covered by Subpart M. *See the Interpretive Guidance, Question #M4 on short term and long-term assistance. Also see Question #K7 on emergency rental assistance.*

4. Under HOME, is security deposit assistance covered by Subpart K or M?

HOME defines security deposit assistance as TBRA. Therefore it is covered under Subpart M. However, security deposit assistance provided under another program can be considered emergency rental assistance, defined as exempt under Subpart K. *See the Interpretive Guidance, Question #M5 on HOME security deposits.*

5. In some States, the public health department cannot provide the addresses of children with environmental blood lead levels because of privacy concerns. How can the grantee comply with the LSHR requirement to match addresses of poisoned children with assisted children?

If the health department cannot provide addresses to the grantee, the grantee should provide addresses of TBRA recipients to the health department. *See the Interpretive Guidance, Question #M6 on confidential medical information.*