



U.S. Department of Housing and Urban Development  
Public and Indian Housing  
Office of Healthy Homes and Lead Hazard Control

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Special Attention of:  
Office Directors of Public Housing;  
Regional Directors; Public Housing  
Agencies; Housing Choice Voucher  
Property Owners.

Notice PIH 2011-44 (HA); OHHLHC 2011-01

Issued: July 29, 2011

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Cross References:

24 CFR Part 35  
24 CFR Part 901  
24 CFR Part 941  
24 CFR Part 965  
24 CFR Part 968  
24 CFR Part 970  
24 CFR Part 982  
24 CFR Part 983

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**SUBJECT:** Guidance on EPA's Lead-Based Paint Renovation, Repair and Painting (RRP) Rule, HUD's Lead Safe Housing Rule, and the EPA-HUD Lead Disclosure Rule.

**1. Purpose.**

This Notice provides guidance to public housing agencies (PHAs) and Housing Choice Voucher (HCV) property owners and summarizes the regulations pertaining to lead-based paint under the Environmental Protection Agency's (EPA's) Renovation, Repair and Painting (RRP) Rule at 40 CFR Part 745, and HUD's regulations at 24 CFR Part 35, commonly known as the Lead Safe Housing Rule (LSHR) and the Lead Disclosure Rule (LDR). It also includes a description of EPA enforcement and fines, and provides PHAs with examples of possible compliance issues that PHAs should work to avoid. Additionally, PHAs must incorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations.

This Notice will remain effective until, amended, superseded or rescinded.

**2. HUD Directives and Applicable Regulations.**

Lead poisoning remains a major environmental health problem in the United States. Lead poisoning is a health hazard that can have life-long effects on the health of adults and children, especially young children under six. Although the overall incidence of lead poisoning has decreased since the banning of lead-based paint, and leaded gasoline, lead poisoning has been linked to neurological development issues, including cognitive deficits (e.g., lowered IQ).

HUD is committed to eliminating and controlling lead hazards in its properties, as well as using HUD assistance to improve health outcomes. HUD is issuing this Notice to assist PHAs in complying with HUD and EPA's regulations on lead-based paint and controlling lead-based paint hazards.

### **3. Existing Federal Regulations.**

The LSHR is the primary regulation of lead-based paint related activity for assisted housing. The Office of Public and Indian Housing (PIH) and the Office of Healthy Homes and Lead Hazard Control (OHHLHC) have issued detailed guidance on the LSHR to HUD staff and clients and a toolkit for the Housing Choice voucher program, which can be found at <http://www.hud.gov/offices/adm/hudclips/guidebooks/PIH-2007-101/index.cfm>. The guidance clearly delineates the responsibilities of the PHA for both the Housing Choice Voucher program and the public housing program and should be read by both programs.

For the LSHR, in the public housing program, the PHA is considered the owner. The PHA is usually responsible for ensuring the landlords comply with the Housing Choice Voucher lead requirements, which are not the same as the requirements for the Housing Authority.

In addition to the LSHR, PHAs are required to comply with the LDR. The LDR applies to federally-assisted and private housing built before 1978, with certain exceptions. Under the LDR, the owner of a property is required to inform tenants about the hazard of lead-based paint (Lead Warning Statement), and make a disclosure statement that advises the tenant of the presence of any known lead-based paint and or lead-based paint hazards, in the unit, common areas servicing the unit, and exterior areas. Alternatively, the disclosure must indicate that the owner has no knowledge of the presence of any lead-based paint and/or lead-based paint hazards.

The statement must also list any records or reports available to the owner, and verification that the records or reports have been made available to the tenant. The owner of a property must also provide to the occupants an EPA approved brochure titled "Protect Your Family from Lead in Your Home." For the HCV program, the PHA is required to take specific steps to ensure that the owner abides by the LDR.

PIH encourages PHAs and HUD staff to familiarize themselves with the guidance, which is still relevant.

In addition to the LSHR, EPA has issued final regulations for renovation of pre-1978 housing. Under the RRP Rule at 40 CFR Part 745 contractors and maintenance/rehab staff from housing agencies that perform renovation, repair, and painting projects that disturb paint in homes and child occupied facilities built before 1978 must be certified as renovators and must follow specific work practices to prevent lead contamination. Practices include proper preparation of the site, providing proper notice of work, practices to control dust, paint and other hazards, and disposal of materials. Online training on EPA's RRP Rule's impact on HUD funded lead-based paint activities is available at <http://webcast.hud.gov/508/index.php?search=lead#>.

If a PHA uses its own staff to perform repairs, maintenance, and rehabilitation of pre-1978 housing that has not been certified as lead-free (referred to as renovation, repair, and painting projects by EPA), the staff must obtain training and apply to EPA to become a certified renovation firm. A subject agency must also ensure that it has at least one certified renovator on staff to be available to actively supervise projects. Individuals can become certified renovators as well by taking an eight hour training course from an EPA approved provider, or a four hour refresher course if they have already taken training in Lead Safe Work Practices within the last five years. Training may be available from local trade associations; however information about certification requirements and available training providers is available at [www.epa.gov/lead/pubs/renovation.htm](http://www.epa.gov/lead/pubs/renovation.htm).

PHAs should continue to comply with the LSHR and LDR in addition to the RRP Rule. While there is an overlap in the requirements, the LSHR is generally more stringent than the EPA requirements for paint testing, worker certification, worksite clearance, and management of units where a child with lead poisoning has been identified. Whenever more than one federal rule applies, the most protective section applies. Additionally, if state, tribal or local law, ordinance, code, or regulation defines lead-based paint differently than the Federal definition, the more protective definition must be followed in that jurisdiction. Some states operate their own program for training and certification under the RRP rule. Contractors and training providers working in those states must contact the state to find out more about training and certification requirements. A list of those states can be found at <http://www.epa.gov/lead/pubs/renovation.htm#authorized>, or by contacting your local EPA office.

A comparison of HUD's and EPA's regulations for lead based paint requirements can be found in the EPA/HUD Model Renovator Training Course, Appendix 2, available at [www.epa.gov/lead/pubs/rrp\\_8hr\\_app2\\_feb09.pdf](http://www.epa.gov/lead/pubs/rrp_8hr_app2_feb09.pdf).

#### **4. EPA Enforcement and Fines.**

In August, 2010, EPA issued its final "Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule". Under this policy, EPA can collect up to \$37,500 per violation. EPA enforcement cases under its lead-based paint regulations may include multiple violations, especially in multi-family properties where violations are assessed on a per-unit basis. For more information, see EPA's policy at <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>.

If EPA requests a record inspection for the RRP rule, contact your counsel for the PHA (in-house or outside counsel) regarding the request. OHHLHC will provide technical support for RRP inquiries. EPA inspections are voluntary; however EPA can issue a subpoena to compel record disclosure. **Attachment 1** is a checklist to assist in compliance, and includes the types of documentation that a PHA may be asked to produce during an EPA inspection.

Pursuant to a Memorandum of Understanding between HUD and EPA, if EPA visits a HUD-assisted property to investigate for compliance with the Lead Disclosure Rule, you should notify the investigator that this is a HUD-assisted property and should refer the investigator to the Office of Healthy Homes and Lead Hazard Control for further investigation and resolution. (See page 10 of the February 22, 2008 memorandum on "PIH Guidance on the Lead-Safe Housing

Rule and Lead Disclosure Rule for Field Office Staff' at [www.hud.gov/offices/adm/hudclips/guidebooks/PIH-2007-101/index.cfm](http://www.hud.gov/offices/adm/hudclips/guidebooks/PIH-2007-101/index.cfm)). For more information, you may contact the Director of the Lead Programs Enforcement Division. For current contact information, see [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/leadstaff](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/leadstaff).

## **5. Compliance Requirements and Additional Resources.**

PIH has appointed two coordinators at Headquarters on lead-based paint issues for PHAs. Contact Nora McArdle at [Nora.C.McArdle@hud.gov](mailto:Nora.C.McArdle@hud.gov) or (202) 402-3967, or Tobey Zimmer at [Tobey.J.Zimmer@hud.gov](mailto:Tobey.J.Zimmer@hud.gov) or (202) 402-6230.

All PHAs should have already completed the lead-based paint inspections of public housing properties. Risk assessments should have been performed if the inspections found lead-based paint. If a PHA has not performed lead-based paint inspections of its units, it should immediately take steps to do so.

By this Notice, all PHAs must identify and accumulate all lead-based paint records pertaining to their properties. A PHA may keep the original records either at a project management office, or a central office, or archived off-site; however a detailed summary of the records and a record of their current physical location should be available at both the project office and a central management office. This summary must be provided to the local HUD field office upon request. In addition, the PHA must make a copy of the full reports and records available to be inspected by tenants, and advise tenants as to when they can inspect the full reports and records.

In addition, HUD encourages PHAs to keep both a hard and soft/electronic copy of the records. Copies should be made by photocopying, scanning, or otherwise creating unalterable copies of the original records. Original records should be kept in a secure place for compliance purposes.

If previous inspections or risk assessments were performed, this information should be scrutinized to determine if the housing is still in compliance with the LSHR. If these evaluations were completed before 1999, additional work may have to be done to comply. For example, in public housing, a paint inspection and abatement is required with comprehensive modernization, but not all housing units may have been modernized since the Rule was finalized in 1999. Because lead hazards can change over time with the degradation of paint, if lead-based paint had been previously found in a unit, in advance of modernization, the PHA must complete a risk assessment, and implement interim controls if hazards are found. Lead risk assessments may be no older than 12 months to be current. Abatement work should be completed during modernization. Once the work is completed, the PHA must perform clearance procedures, and must incorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations if any lead-based paint remains on the property. See 24 CFR 35.1115, 34.1120, and 35.1355.

Any claim that properties are lead-free must be appropriately documented in accordance with Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint at [www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm](http://www.hud.gov/offices/lead/lbp/hudguidelines/index.cfm).

## 6. Possible Compliance Issues in Public Housing

PHAs should take care to ensure compliance with the HUD/EPA Lead Disclosure Rule, the HUD Lead Safe Housing Rule and the EPA Renovation, Repair and Painting Rule. Some examples of possible compliance issues include:

- Under the Lead Disclosure Rule, landlords, including PHAs, are required to provide their tenants with a brochure detailing the effects of lead-based poisoning, and disclose all known lead hazards at the property. The brochure was updated in 2010. Brochures created before the update should be destroyed. A copy of the latest version of the pamphlet, the EPA's "Protect Your Family from Lead in Your Home" as well as required specific disclosure language and documentation that supersedes Handbook 7487.1 is available at [www.hud.gov/offices/lead/enforcement/disclosure.cfm](http://www.hud.gov/offices/lead/enforcement/disclosure.cfm).
- PHAs must take steps to ensure that landlords participating in the Housing Choice Voucher program maintain lead paint disclosure records and disclose all known information about lead paint in units and common areas where testing and lead hazard control work has been performed. PHAs must also maintain all records regarding lead paint and make them available to residents as part of the disclosure process, as well as keeping records of the disclosure process for three years.
- If a unit is found to be out of compliance with HQS because of a lead paint inspection prior to occupancy by a child under 6 or due to a risk assessment of the unit because a child living in the unit was reported to have an environmental blood lead level, the unit is not in compliance with HQS until the lead hazard is cleared. This is true whether a child will be living in the unit or not. PHAs are encouraged to maintain records of all such units so that they are not approved for occupancy with a HCV until the unit is cleared.
- Under the Lead Safe Housing Rule, PHAs must ensure that all lead based paint testing and lead abatement/hazard control has been completed in compliance with the regulations. A summary of requirements by the type of program can be found at [www.hud.gov/offices/lead/enforcement/lshr\\_summary.cfm](http://www.hud.gov/offices/lead/enforcement/lshr_summary.cfm). Requirements for Public Housing are found in 24 CFR Part 35 Subpart L and requirements for Housing Choice Voucher program units are found in 24 CFR Part 35 Subpart M for tenant-based rental assistance.
- PHAs must provide the local health department an updated list of unit addresses receiving assistance under a tenant based rental assistance program on a quarterly basis, as described under 24 CFR 35.1225(f). This data sharing helps ensure that children living in HUD-assisted housing who are lead-poisoned are quickly identified to prevent additional harm.
- The PHA must notify the Health Department within five days if it learns of a lead-poisoned child based on a report from any other medical health care professional (24 CFR 35.1130). PHAs must take appropriate steps to determine the source of the lead

and take corrective actions if the housing unit or common areas are the source and inform HUD project managers if a child has an environmental intervention blood lead level (24 CFR 1130).

- PHAs cannot exclude families with young children from participating in housing programs because of the lead-based paint requirements, or require parents to provide information about child blood lead levels before offering housing. Policies of this type are a violation of the Fair Housing Act and medical privacy standards.
- There are some differences between the RRP and the Lead Safe Housing Rule. The attached checklist will assist you in complying with both laws.

### **7. For Further Information.**

Contact Nora McArdle at [Nora.C.McArdle@hud.gov](mailto:Nora.C.McArdle@hud.gov) or (202) 402-3967, Office of Policy, Program and Legislative Initiatives, Tara Radosevich, Office of Public Housing (612)-370-3000 or [Tara.J.Radosevich@hud.gov](mailto:Tara.J.Radosevich@hud.gov), or the Office of Healthy Homes and Lead Hazard Control, Lead Programs Enforcement Division, Room 8236, Department of Housing and Urban Development, 451 7<sup>th</sup> Street, SW, Washington, DC 20410 or [LEAD.Enforcement@hud.gov](mailto:LEAD.Enforcement@hud.gov).

/s/

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Sandra B. Henriquez, Assistant Secretary for  
Public and Indian Housing

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Jon L. Gant, Director, Office of Healthy Homes and Lead  
Hazard Control

**Attachment 1.**

**Public Housing RRP Review Checklist:**

Housing Agency Name: \_\_\_\_\_ Yes No

Does the PHA have any pre-1978 properties? .....

Are any properties (1) designated Elderly Disabled **and** (2) do not have, or expect to have, a child under the age of 6? .....

Does the PHA have Child Care facilities on any properties? .....

Has the PHA completed Lead-Based Paint inspections of all properties? .....

Does the PHA have property inventories of where any lead-based paint exists? .....

Does the PHA know which surfaces for each property have lead-based paint? .....

If **all** PHA properties are documented to be lead-based paint free or exempt, stop.

Does the PHA staff perform maintenance in pre-1978 properties with lead-based paint? .....

If Yes,

Is the PHA an EPA Certified Firm? .....

Does the PHA have at least one Certified Renovator? .....

Are training records available? .....

Have other staff been trained by the Certified Renovator? .....

Does the PHA have copies of the EPA's lead hazard information pamphlet *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*? .....

Does the PHA have tenants sign RRP notification forms and maintain documentation for at least 3-years? .....

Does the PHA hire outside contractors to perform any maintenance or rehabilitation work .....

If Yes,

Do PHA contracting documents require that contractors be EPA certified? .....

Does the PHA receive notification from contractors and keep the notification for at least 3-years? .....

Regardless of who does the work, the Lead Safe Housing Rule (LSHR) will require clearance using the wipe test procedure and tenant notification. Both RRP and LSHR require proper documentation. See the following pages for additional information.

**Work Order/ Maintenance File Review:**

Does the PHA have a work order tracking system? .....

Do work orders indicate whether the RRP applies or does not apply? .....

Has the PHA established which classifications of work would and

- would not be subject to the requirements of the RRP?.....
- Are work order records impacted by the RRP maintained  
for at least three years? .....
- Are PHA records maintained for units found to not meet HQS due to a LBP  
visual assessment until the unit is cleared, in order to ensure that  
no HCV holder occupies the unit? .....