

REQUIREMENTS FOR NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN VA-ACQUIRED PROPERTIES

1. **Purpose.** To adapt VA guidelines on implementation of Department of Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) final rules governing the notification, evaluation, and reduction of lead-based paint (LBP) and/or lead-based paint hazards in federally owned residential housing for management of VA acquired properties by a private sector service provider.

2. **Background.** The final rules, dated September 15, 1999, implemented sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. The transfer in management of VA Property Management operation to a private sector service provider required changes to the procedures outlined in Circular 26-01-1 which established VA requirements for notification, evaluation and reduction of lead-based paint hazards in VA-acquired properties. This circular implements those changes.

3. **Title X Requirements.** The full text of the final rule is in the Federal Register dated September 15, 1999. It is entitled “*Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance: Final Rule.*” The most effective and comprehensive document available to understand the procedures and technology involved in implementing these requirements is printed in “*HUD Guidelines For the Evaluation and Control of Lead-Based Paint Hazards in Housing.*” Copies can be downloaded from HUD’s website at www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm

a. In accordance with the final rule which identifies “target housing” as any housing constructed prior to 1978, VA implemented the following requirements to eliminate, as far as practicable, lead-based paint hazards prior to the sale of a residential property that is owned by VA:

- Visual assessment report of all painted surfaces
- Paint stabilization of all deteriorated paint
- Clearance examination report
- Notification/Disclosure

b. **Definitions.** Lead-based paint (LBP), lead-based paint hazard and other terms related to this subject are defined in the HUD regulations and provided as exhibit A.

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c. Exempted Properties and Actions. The following properties and actions are exempted from these regulations:

- Emergency actions required to immediately safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (i.e., when a property has been damaged by a natural disaster, fire, or structural collapse). However, once emergency actions are completed, the requirements for lead-based paint activities in target housing outlined in this circular must then be met.
- Performance of the evaluation and the lead-based paint stabilization on an exterior painted surface as required under this part may be delayed for a reasonable period of time when weather conditions are unsuitable for conventional construction activities. However, service provider will complete the required lead-based paint activities prior to any sale as soon as the weather permits.
- An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition. However, parties planning demolition shall determine first whether other Federal, state or local environmental requirements apply. It is possible that lead hazards may be generated in the act of demolition of residential properties with lead-based paint. A clearance examination will report any unacceptable soil lead hazards. The appropriate lead control office of jurisdiction will provide guidance on eliminating unacceptable soil lead hazards.

4. **Implementation**. Implementation is a three-step process known as evaluation, reduction, and notification.

a. Evaluation. Lead hazard control efforts begin with an evaluation of the condition of all interior and exterior painted surfaces of a property. This evaluation is called a visual assessment, and will be performed on all target housing to determine if there is deteriorated paint. The service provider or its authorized representatives shall perform the visual assessment during the preparation of VA Form 26-0595v, Property Inspection Report and Market Analysis (PIR). The service provider shall ensure that the construction date is properly identified, and that the visual assessment is an accurate report of all deteriorated paint surfaces.

(1) Sections of the PIR which pertain to LBP are:

- Section 8 - The date the home was built.
- Section 15 - Estimated Costs.
- Section 18 - Provide complete repair specifications and cost estimates for stabilizing deteriorated paint.
- Section 26 – Provide the data source from where the construction date was obtained and results of the visual assessment of all painted surfaces, identifying the size and exact location of any deteriorated paint.

2.

(2) Visual Assessment Report. A visual assessment report of all exterior and interior painted surfaces must be completed by a person who has completed a visual assessment training course.

(3) Option for Further Evaluation: The service provider has the option to order a lead-based paint inspection (see exhibit A), on deteriorated paint surfaces to determine the presence of lead-based paint. When using this option, paint stabilization and clearance examinations are only required on those deteriorated surfaces that are reported to contain lead-based paint. The service provider shall consider ordering a lead-based paint inspection on a case-by-case basis. The lead-based paint inspection can only be performed by a qualified, EPA certified lead-based paint inspector.

A sample of a lead-based paint inspection report for a single-family residence is found in “*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*” Chapter 7, pages 7-35 and 7-36. A list of addendums, that are included with the report, are located on page 7-v.

b. Reduction. In compliance with HUD’s final rule, the service provider will reduce potential hazards by stabilizing all deteriorated paint in housing built prior to 1978 unless the property is exempt, or there is no lead-based paint present as reported in a lead-based paint inspection from a certified inspector. Deterioration limited to hairline cracks, small nicks, scratches or nail holes is not considered deteriorated paint.

(1) Paint Stabilization: This method for treating deteriorated paint surfaces means to:

- Repair any defect in the substrate, or any defect in a building component, that is causing the paint deterioration. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components not securely fastened. Examples of defective building components that cause paint deterioration include a doorknob that knocks into a wall, a door that knocks against its door frame, stuck windows causing abrasion, etc. A detailed summary of how to treat friction and impact surfaces is on page 11-25 of the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*.
- Remove all loose paint and other loose material from the surface to be treated and apply a new protective coating, or paint.

(2) Qualified Contractor. The contractors who perform paint stabilization must be qualified as defined by HUD guidance and local law to perform this activity.

(3) Safe work practices are required. Safe work practices are required for paint stabilization activities. See the *HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* which defines these practices. Chapters 8 through 15 discuss in detail the preparation for the project, hazard control, cleaning, and clearance.

(4) Clearance Examination Report. The clearance examination shall certify that the deteriorated paint surfaces have been eliminated and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling or unit. Clearance examinations must be done by a person who was not involved in performing the paint stabilization, and who is certified as a lead-based paint inspector, risk assessor, or a clearance technician. Uncertified, but trained clearance technicians can also perform clearances, as long as their clearance report is signed by a certified lead-based paint inspector or risk assessor.

Samples of clearance forms for a single-family dwelling are located in Chapter 15 of “*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.*”

c. Special Exemption to Stabilization Requirements. Properties constructed prior to 1978 that contain deteriorated paint surfaces can be exempt from paint stabilization and clearance requirements if VA Form 26-6701, Property Analysis and Recommendations clearly documents that the property meets all of the following conditions:

- Severely damaged as to be uninhabitable.
- The deteriorated paint surfaces will need to be opened or removed so that structural or utility systems repairs can be completed.
- The major renovation costs cannot be recovered.
- Cash offers only, no vendee financing.

The sales listing offering these properties must specify that they are uninhabitable, severely damaged with deteriorated paint surfaces that will not be treated by VA and which will need to be opened or removed so that structural or utility systems repairs can be completed prior to occupancy. Special exemption cases cannot be offered or sold with vendee financing. The service provider will ensure that special exemption case purchasers sign and return VA Form 26-6705e, Notice of Possible Lead-Based Paint.

d. Notification. The service provider will use VA Form 26-6705e, and provide notification and disclosure as follows:

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(1) Outline of Notification Requirements. All purchasers whose offers have been selected for processing will be provided with full lead-based paint notification in accordance with subpart A of the final rule. The detailed procedures for notification and disclosure are as follows:

- Provide notice of the presence of known lead-based paint and/or lead-based paint hazards in the housing to purchasers, lessees and agents using VA Form 26-6705e.
- Provide purchasers and lessees with copies of all available known records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. Although VA and VA's service provider have no knowledge of lead-based paint, and have stabilized deteriorated paint, the private sector service provider will provide a copy of the clearance examination report to purchasers.
- Provide purchasers and lessees with EPA Pamphlet 747-K-99-001, Protect Your Family From Lead in Your Home.
- Provide purchasers with a 10-day opportunity (the number of days can be changed by mutual consent) to conduct, at their own expense, a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before they are obligated under any purchase contract.

(2) Property Listings. All sales listings which include properties built before 1978, must state that the house was built prior to 1978 and lead-based paint potentially exists. It must contain the following statement or comparable language approved by the appropriate regional counsel:

A VA Form 26-6705, Offer to Purchase and Contract of Sale, submitted on a property built before 1978, is contingent upon a risk assessment or property inspection for the presence of lead-based paint and/or lead-based paint hazards. The purchaser may remove the contingency at any time without cause, or the duration of the contingency may be modified by agreement between the purchaser and the service provider; otherwise, the contingency lasts for 10 days after the date the offer is selected by the service provider on VA's behalf. The ending date will be stated in VA Form 26-6705e, which will be sent to the purchaser or the purchaser's agent when the offer is selected. The purchaser is responsible for ordering, and will bear the expense of, any risk assessment or inspection obtained under this contingency.

(3) Preparation of VA Form 26-6705e. Notification will be provided in VA Form 26-6705e, with a copy of the clearance report attached if paint stabilization was conducted. This form must be completed for all offers accepted for processing on target housing. The service provider will complete items 1 through 4, 5B, 10A and 10B of the form and will enter a date in item 5C(1), which is 11 days later than the date in item 1. (The additional day is intended to allow for time between release of the form by the service provider and receipt by the purchaser.) For seller's disclosure, the service provider will have one of two methods for filling out section 5B of the form.

(a) In sales of target housing that have had deteriorated paint repairs completed and a clearance examination obtained:

- In Block **B2** the service provider personnel shall insert their initials.
- In Block **B3** the service provider personnel shall insert their initials, and attach a copy of the clearance report for all purchasers.

(b) In sales of target housing that have no deteriorated paint and no clearance examination obtained:

- In Blocks **B2 and B4** the service provider personnel shall insert their initials.

(4) Release of VA Form 26-6705e. This form, with all required attachments, together with EPA Pamphlet 747-K-99-001, shall be forwarded to all purchasers on the selected offer along with the offer acknowledgment or acceptance letter for target housing. The purchaser, or the purchaser's agent, will be expected to return the completed notification form to the service provider to be received within 3 business days after the end of the 10-day opportunity period. In completing the form, the purchaser cannot date it before the end of the 10-day opportunity period unless the period is being waived. **EXCEPTION:** A purchaser may want to shorten the opportunity period, possibly because an inspection has been completed in less than 10 days. To do so, the purchaser must cross out the date in item 5C(1) and enter the earlier date chosen. VA Form 26-6705e can then be signed and dated as of the adjusted end of the opportunity period. The service provider will accept all such adjustments shortening the period.

(a) Offer Acknowledgment. The service provider shall ensure that term offer acknowledgment and cash offer acceptance letters advise prospective purchasers of target housing that their offer is contingent upon the receipt of the completed notification form in a timely manner.

(b) Absence of Notification Form. Brokers and purchasers must be advised that failure to submit a completed VA Form 26-6705e will result in the offer being rejected once the deadline for submission has passed. This notification form must be on file prior to closing the sale of a VA-owned property built prior to 1978 and no offer shall be processed in its absence. Before rejecting an offer because of the absence of the form, reasonable efforts shall be made to obtain it.

(c) Waiver of the 10-Day Opportunity Period. The 10-day opportunity period may be modified by mutual agreement. If the purchaser chooses to waive the evaluation opportunity, he/she is still obligated to acknowledge receipt of the evaluation opportunity on VA Form 26-6705e, documenting the voluntary decision to waive the opportunity. Verbal waivers will not be accepted.

5. **Sales Prior to Listing.** In target housing that is being sold prior to listing, the service provided must comply with the requirements of Title X. However, paint stabilization and clearance shall not be conducted while a property is occupied. If there is deteriorated paint in target house, the service provider shall notify all occupants approved for purchase by certified mail of our requirements under Title X. If the occupants wish to exercise their option to purchase, the property shall be vacated in order to complete the deteriorated paint repairs and obtain the clearance examination.

6. **Condominiums.** In target housing that has reported deteriorated paint surfaces which the service provider is prevented from repairing, and are the responsibility of the Homeowner's Association (HOA), the service provider shall notify the HOA by certified mail of the needed repairs under Title X requirements. If the HOA does not complete the required repairs within thirty days, the service provider shall list the property for sale with a notice disclosing deteriorated paint surfaces. The service provider is required to provide full disclosure to all purchasers. In addition to providing the pamphlet and VA Form 6705e, the service provider shall also provide a copy of the certified letter previously sent to the HOA which identified deteriorated paint surfaces that the HOA is responsible for repairing. The service provider shall also obtain a specific hold-harmless acknowledgement letter signed by all purchasers on these cases to ensure that the purchasers have been sufficiently notified about all reported deteriorated paint surfaces.

7. **Training and Resources.**

a. **Training.** The service provider shall conduct on-going lead-based paint activity training for all employees and its authorized representatives.

(1) **Initial Training.** The service provider shall conduct an initial training session for employees and its authorized representatives, to review and understand VA's policies on the requirements of the final rule.

(2) **On-going Training.** The service provider shall assure that its employees and authorized representative's knowledge of VA LBP regulations, requirements, and policies are current at all times.

b. **Resources.** The following is a list of resources to assist the service provider to implement the new lead-based paint requirements of this circular:

- technical information on lead-based paint activities call the HUD Office of Lead Hazard Control, at 202-755-1785, ext. 104, or e-mail HUD at Lead.Regulations@hud.gov. "*HUD Guidelines For The Evaluation and Control of Lead Based Paint Hazards in Housing*" are available at www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm and EPA's pamphlet 747-K-97-001 is available at www.epa.gov/opptintr/lead/rrpamph.pdf.

- HUD's internet site www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm and EPA's internet site www.epa.gov/opptintr/lead/index.html/.
- National Lead Information Clearinghouse, at 1-800-424-LEAD (5323), will provide publications and answers to specific lead-related questions.
- *EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil* provides guidance, as well as, methods or protocols issued by states and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs can be obtained from EPA's internet site.
- A copy of 40 CFR 745.227, *Work Practice Standards for Conducting Lead-based Paint Activities: Target Housing and Child-Occupied Facilities*, can also be downloaded from EPA's internet site.

8. **Record Keeping.** Under Title X, sellers and agents are required to retain a copy of the completed VA Form 26-6705e (notification) and all other related lead-based paint documents for three years. To comply with this requirement, the notification form and attachments will be maintained in the service provider's folder and the agent's copy will be included in the closing package. These documents shall be transferred with the new vendee file if the loan is sold.

9. **Contact.** Inquiries by subcontractors of the service provider concerning application of this circular to specific properties should be addressed to the service provider. Other inquiries concerning this circular or other lead-based paint issues may be made to Lance Kornicker (263) Central Office Property Management staff at (202) 273-7361 or by e-mail.

10. **Exhibit A.** Definitions of frequently used terms.

11. **RESCISSION:** This circular is rescinded April 1, 2009.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

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DEFINITIONS

Certified. Licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA).

Clearance Examination. An activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.

Deteriorated Paint. Any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dry Sanding. Sanding without moisture and includes both hand and machine sanding.

Dust-Lead Hazard. Surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA.

Enclosure. The use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent.

Friction Surface. An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

HEPA Vacuum. A vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Impact Surface. An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Lead-Based Paint. Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-Based Paint Hazard. Any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead-Based Paint Inspection. A surface-to-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation. Lead-based paint inspections measure the concentration of lead in paint on a surface-by-surface investigation of all painted surfaces (interior and exterior) using portable x-ray fluorescence paint analyzers and/or laboratory analysis of paint samples to determine the presence of lead-based paint, and a written report is provided on the results. Inspection reports identify only the presence of lead-based paint, and they do not establish the location of lead-based paint hazards. While very technical in nature, the report should clearly identify whether lead is present.

Lead-Contaminated Dust. Any surface dust in residential dwellings, or child occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by HUD.

Lead-Contaminated Soil. Bare soil on residential real property, and on the property of a child-occupied facility that contains lead at or in excess of levels identified by HUD.

Paint Stabilization. Repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint Testing. The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated surfaces or painted surfaces to be disturbed or replaced.

Residential Property. A dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land, not including paint on the pavement of parking lots, garages, or roadways.

Safe Work Practices. Contractors performing paint stabilization must be properly trained in safe work practices. The minimum requirements are: (1) Prohibited methods of paint removal shall not be used, (2) Proper worker protection, (3) Worksite preparation to prevent the release of any leaded debris or dust, (4) Warning Signs are properly posted, (5) Specialized cleaning after paint stabilization.

Substrate. The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

10.

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Exhibit A

Target Housing. Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (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) or any zero-bedroom dwelling.

Visual Assessment. Looking for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or (3) The completion or failure of a hazard reduction measure.