

# HOPWA Lead Based Paint Requirements

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Lead poisoning harms children. It has been conclusively demonstrated to cause learning disabilities, behavioral problems, reduced IQ, attention deficit disorder, and developmental delays. Young children from low income households are at the greatest risk of exposure. The **number one source of lead poisoning is paint in older housing**. Nearly 1 in 20 pre-school children in the US suffer from elevated blood lead levels. Preventing children from being exposed to lead based paint hazards is the responsibility of grantees and project sponsors under the HOPWA program.

Research has demonstrated that the greatest hazard is associated with lead dust resulting from deteriorated paint. This dust settles on floors, window sills and other surfaces. Paint repair can generate large amounts of lead dust. This cannot be cleaned up with brooms and lead-contaminated dust is not visible to the naked eye. The changes to the lead based paint requirements reflect the new understanding concerning the hazards of lead dust, require safe work practices for any stabilization or hazard reduction activities and clearance inspection upon completion of activities.

HUD's lead based paint requirements were changed in 2000 and their applicability to HOPWA housing assistance clearly delineated. The lead based paint requirements can affect much of the housing assistance provided through HOPWA. This fact sheet identifies the HOPWA activities that are subject to the lead based paint requirements and outlines the steps that grantees and project sponsors must take to ensure that HOPWA-assisted housing is lead safe.

## Applicability

The HOPWA regulations (24 CFR 574.635) state that The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856) apply to activities under the HOPWA program and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to HOPWA activities.

The Lead Based Paint regulations (24 CFR PART 35 LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES) cover HOPWA supported tenant based rental assistance, acquisition, leasing, supportive services, operations, project based rental assistance, rehabilitation assistance, and security deposits under sub-parts H, J, K, M.

The Part 35 requirements impose significant obligations on HOPWA grantees and the requirements vary depending on the type of HOPWA assistance received. If lead based paint requirements apply to a HOPWA assisted unit, the most common requirements are to conduct a visual assessment, paint stabilization (if required), conduct a clearance after stabilization is completed, provide notices to occupants, and conducting on-going assessments of paint conditions. The table below fully delineates the lead based paint compliance requirements by type of HOPWA provided assistance.

There are a number of significant exemptions to these requirements which will substantially lessen the impact for HOPWA providers. Exempt projects/properties have no need to comply with the lead based paint requirements. However, in all HOPWA supported activities in which children less

than six years of age are present, sponsors should seek to maintain a lead based paint free environment.

24 CFR 35.115 Exemptions from Lead Based Paint Requirements	
<b>All Housing Constructed after 1/1/78</b>	All residential property for which construction was completed on or after January 1, 1978
<b>A zero-bedroom dwelling unit</b>	This includes a <b>single room occupancy (SRO)</b> dwelling unit; If <b>shelters</b> do not provide separate bedrooms, they are exempt under the zero bedroom exemption
<b>Emergency rental assistance or foreclosure prevention assistance up to 100 days</b>	This exemption for a dwelling unit expires no later than 100 days after the initial payment or assistance – the exemption applies to the unit and the length of time the unit receives HUD assistance
<b>For Tenant Based Rental Assistance (Sub-part M), applies only if child under 6 is present</b>	Lead based paint requirements apply only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age, common areas servicing such dwelling units, and exterior painted surfaces associated with such dwelling units or common areas; If the designated party knows that the family includes a pregnant woman, the regulation applies
<b>Housing for the elderly or a residential property designated exclusively for persons with disabilities</b>	This exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of "housing for the elderly" and "expected to reside" in <a href="#">24 CFR 35.110</a> ).

Lead based paint requirements differ according to the type of assistance provided through HOPWA. The table below summarizes lead based paint compliance requirements by the key types of HOPWA support.

Lead Based Paint Compliance Requirements by Type of HOPWA Assistance	
HOPWA Assistance	Lead Based Paint Requirements
<b>Short Term Supported Housing, up to 60 days of assistance in a 6 month period</b>	Exempt from compliance – provided the 100 day limit is not exceeded. The 100 day period applies to the unit and not the household so if the same unit is used for multiple households and the use of the unit for HOPWA assistance will exceed 100 days, it would need to meet the requirements under <b>Sub-Part K</b>
<b>Short term rent mortgage and utility assistance (STRMU)</b>	Provided the assistance does not exceed 100 days, it is exempt as ‘ <b>emergency rent or mortgage</b> ’ assistance. The requirement is linked to the unit so if the household will be receiving assistance that will extend for longer than 100 days, the <b>Sub-Part K</b> requirements must be met. The 100 day period is cumulative so if the same housing unit will receive STRMU assistance in multiple program years so that over 100 days of assistance is received, then <b>Sub-Part K</b> requirements apply.

## Lead Based Paint Compliance Requirements by Type of HOPWA Assistance

<b>Permanent Housing Placement Assistance</b>	This provides security deposits and other assistance for units where on-going residency is expected. Since the residency would be expected to exceed 100 days, the <b>Sub-Part K</b> requirements apply.
<b>Operating support</b>	Projects providing operating support to housing through HOPWA must meet the <b>Sub-Part K</b> requirements.
<b>Supportive Services</b>	Programs that provide services such as medical care, education, or food service are not considered housing assistance programs and are not covered by the regulation. HUD recommends that efforts be made to assure that facilities providing these types of support services are lead-safe, if they are frequented by children less than six years of age.
<b>Tenant based rental assistance</b>	If the assisted household contains <b>children less than six years of age</b> , then the <b>Sub-Part M</b> requirements must be met
<b>Project based rental assistance</b>	<b>Sub-Part H</b> applies; note there are differing requirements based on the amount of annual support; <b>less than \$5,000/unit/year</b> and <b>greater than \$5,000/unit/year</b> .
<b>Rehabilitation assistance</b>	<b>Sub-Part J</b> applies; requirements vary depending on dollar amount of rehabilitation support: under \$5,000/unit, between \$5,000 and \$25,000/unit and over \$25,000/unit. The higher the amount of rehab support, the more stringent the lead based paint requirements are.

### Review of lead based paint compliance requirements based on type of HOPWA assistance received

As noted above, the lead based paint compliance requirements are based on the type and amount of assistance provided through HOPWA. In addition to specifying how lead based paint is to be inspected for and remediated, the requirements also include providing notifications to affected households, following up and coordinating with public health agencies when housing is provided to children who have elevated levels of lead in their bloodstream. The requirements associated with the different sub-parts of the lead based paint regulations, along with the HOPWA program components to which they apply are presented in the table below. The steps that must be taken to comply with the requirements are discussed after the table. [Note if using this in electronic format (recommended) the included links will bring you to the source documents.]

Part 35 Regulations Sub-Part	Applies to HOPWA Activity:	Compliance for Housing Constructed Prior to 1978 Requires
<b>K</b>	<p><b>Operating support</b> to facility based projects;  <b>STRMU</b> assistance in excess of 100 days;  <b>Permanent housing placement</b> if the housing is expected to be occupied in excess of 100 days</p>	<p>Provision of <u>Pamphlet</u>  <u>Visual Assessment</u>  <u>Paint Stabilization</u> using <u>safe work practices</u> (before occupancy of a vacant unit, or if occupied, upon receipt of federal assistance)  <u>Clearance</u>  Provision of <u>Notice</u> of hazard reduction activity and clearance results to occupants  Ongoing Lead-Based Paint <u>Maintenance</u></p>
<b>M</b>	<p><b>Tenant Based Rental Assistance</b>  <b>ONLY APPLIES IF A CHILD UNDER 6 YEARS WILL OCCUPY UNIT</b></p> <p><b>ADDITIONAL TBRA REQUIREMENT TO COMMUNICATE WITH DEPARTMENT OF HEALTH WITH REGARD TO CHILDREN WITH ELEVATED BLOOD LEAD LEVEL</b></p>	<p><b>Units Occupied/To Be Occupied By A Family With a Child Under Age Six:</b>  Provision of <u>Pamphlet</u> by the <u>owner</u>  <u>Visual Assessment</u> by the <u>designated party</u> during initial and periodic inspections  <u>Paint Stabilization</u> using <u>safe work practices</u> before occupancy or, if unit is already occupied, within 30 days after Visual Assessment report  <u>Clearance</u> by the <u>designated party</u>  Provision of <u>Notice</u> of hazard reduction activity, including clearance results, to occupants  Ongoing Lead-Based Paint <u>Maintenance</u></p> <p><b>Ongoing Requirement of Tenant-Based Rental Assistance Programs:</b>  Report to the <u>public health department</u> an updated list of the addresses of units receiving assistance (at least quarterly)  At least quarterly, attempt to obtain from the <u>public health department</u> a list of the names and/or addresses of children under the age of six with an identified <u>EIBLL</u>; match the <u>EIBLL</u> list with the rental assistance program's list (unless the public health department makes this comparison), and respond to the matches of any <u>EIBLL</u> children who live in units receiving assistance.</p> <p><b>Note: designated party = HOPWA grantee</b></p>
<b>H</b>	<p><b>Project Based Rental Assistance</b> – Annual federal assistance per year is <u>less than \$5,000/unit/year</u></p>	<p>Provision of <u>Pamphlet</u>  <u>Visual Assessment</u> (during initial and periodic inspections)  <u>Paint Stabilization</u> using <u>safe work practices</u>  <u>Clearance</u>  Provision of <u>Notice</u> of hazard reduction activity and results to occupants  Ongoing Lead-Based Paint <u>Maintenance</u></p>

Part 35 Regulations Sub-Part	Applies to HOPWA Activity:	Compliance for Housing Constructed Prior to 1978 Requires
<b>H</b>	<b>Project Based Rental Assistance – Annual federal assistance <u>in excess of</u> <u>\$5,000/unit/year</u></b>	Provision of <a href="#">Pamphlet</a> Ongoing Lead-Based Paint <a href="#">Maintenance</a> between September 15, 2000 and the completion of a risk assessment <a href="#">Risk Assessment</a> (must be completed in pre-1960 construction by September 17, 2001, and in 1960-1978 construction by September 15, 2003) Provision of <a href="#">Notice</a> of the results of the risk assessment to occupants <a href="#">Interim Controls</a> using <a href="#">safe work practices</a> to treat hazards identified in the risk assessment <a href="#">Clearance</a> Provision of <a href="#">Notice</a> of hazard reduction activity and results to occupants Ongoing Lead-Based Paint <a href="#">Maintenance</a> immediately subsequent to risk assessment unless all lead-based paint has been removed <a href="#">Reevaluation</a>
<b>J</b>	<b>Rehabilitation of existing structures \$5,000/unit or less in Federal rehab expenditures</b>	Provision of <a href="#">Pamphlet</a> Determine Whether to Evaluate or <a href="#">Presume</a>  <b><i>If Evaluate:</i></b> <a href="#">Test</a> paint on all surfaces to be disturbed by rehab Provision of <a href="#">Notice</a> to occupants of the results of the paint test Use <a href="#">safe work practices</a> while working on surfaces which contain lead-based paint <a href="#">Repair</a> paint on surfaces where lead-based paint has been identified and was disturbed during rehab <a href="#">Clearance</a> of the work area  <b><i>If Presume:</i></b> <a href="#">Presume</a> lead-based paint present Provision of <a href="#">Notice</a> to occupants of presumption of the presence of lead-based paint and LBP hazards Use <a href="#">safe work practices</a> on all surfaces disturbed by rehab work <a href="#">Repair</a> paint on all surfaces disturbed by rehab <a href="#">Clearance</a> of the work area Provision of <a href="#">Notice</a> of hazard reduction activity, including clearance results, to occupants Ongoing Lead-Based Paint <a href="#">Maintenance</a> required after rehab of a rental property using HOME or CILP funds <a href="#">Record Keeping</a>

Part 35 Regulations Sub-Part	Applies to HOPWA Activity:	Compliance for Housing Constructed Prior to 1978 Requires
<b>J</b>	<b>Rehabilitation of existing structures, more than \$5,000/unit in Federal rehab assistance but less than \$25,000</b>	<p>Provision of <a href="#">Pamphlet</a> Determine Whether to Evaluate or <a href="#">Presume</a></p> <p><b>Evaluate</b> <a href="#">Test</a> paint on all surfaces to be disturbed by rehab <a href="#">Risk Assessment</a> in assisted unit, in common areas, and on exterior surfaces Provision of <a href="#">Notice</a> to occupants of the results of the paint test and risk assessment <a href="#">Interim Controls</a> on identified hazards and hazards created by rehab, using <a href="#">safe work practices</a> <a href="#">Clearance</a> of the unit</p> <p><b>Presume</b> <a href="#">Presume</a> lead-based paint and lead-based paint hazards Provision of <a href="#">Notice</a> to occupants of presumption of the presence of lead-based paint and LBP hazards <a href="#">Standard Treatments</a> throughout the unit, using <a href="#">safe work practices</a> <a href="#">Clearance</a> of the unit</p> <p>Provision of <a href="#">Notice</a> of hazard reduction activity, including clearance results, to occupants <a href="#">Record Keeping</a></p>
<b>J</b>	<b>Rehabilitation of existing structures with more than \$25,000/unit in federal rehab assistance</b>	<p>Provision of <a href="#">Pamphlet</a> Determine Whether to Evaluate or <a href="#">Presume</a></p> <p><b>Evaluate</b> <a href="#">Test</a> Paint on all surfaces to be disturbed by rehab Provision of <a href="#">Notice</a> to occupants of the results of the paint test and risk assessment <a href="#">Risk Assessment</a> in assisted unit, in common areas, and on exterior surfaces <a href="#">Abatement</a> of identified lead-based paint hazards and hazards created by rehab <a href="#">Interim Controls</a> using <a href="#">safe work practices</a> permitted on exterior surfaces not disturbed by rehab <a href="#">Clearance</a> of the unit, including an abatement report</p> <p><b>Presume</b> <a href="#">Presume</a> lead-based paint Provision of <a href="#">Notice</a> to occupants of presumption of the presence of lead-based paint and LBP hazards <a href="#">Abatement</a> of the surfaces disturbed by rehab and deteriorated, friction, impact, and chewable surfaces <a href="#">Interim Controls</a> using <a href="#">safe work practices</a> permitted on exterior surfaces not disturbed by rehab</p>

Part 35 Regulations Sub-Part	Applies to HOPWA Activity:	Compliance for Housing Constructed Prior to 1978 Requires
		<p><u>Clearance</u> of the unit, including an abatement report</p> <p>Provision of <u>Notice</u> of hazard reduction activity, including clearance results, to occupants</p> <p><u>Record Keeping</u></p>

The most common requirements, if a HOPWA assisted unit is found to be subject to the lead based paint requirements, are:

- **Visual Assessment which means looking for:**

- (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.*

A self-training module to acquire the skills necessary to conduct a visual assessment is available online at the HUD website; the course can be completed in less than one hour.

Individuals who conduct housing quality inspections for HOPWA assisted units should, at a minimum, complete the self-training module.

- **Provision of pamphlet**

- Provided to tenants in each occupied unit that is subject to the requirements under Part 35
- Download pamphlet from: [www.hud.gov/lea/leadhelp.html](http://www.hud.gov/lea/leadhelp.html)
- A printed, color version of the pamphlet, "Protect Your Family From Lead In Your Home," can be purchased from the U.S. Government Printing Office (\$24.00 for packages of 50) by calling 1-202-512-1800 (this is a toll call). The GPO stock number is 055-000-00507-9. [Check for the Spanish version stock number.] Individual copies of the printed, color version, in either English or Spanish ("Proteja a Su Familia del Plomo en Su Casa"), can be obtained at no cost from the National Lead Information Center at 1-800-424-LEAD. The Center also has a black and white version that can be photocopied.

- **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 stabilization must be performed using 'safe work practices'.

- **Safe Work Practices**  new requirement in 9-15-2000 regulations
  - Includes occupant protection, worksite containment, using specialized cleaning methods, products and devices, and not using prohibited methods.
  - 24CFR 35.1350 [Safe work practices](#).
  
- **Clearance**  new requirement in 9-15-2000 regulations
  - 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. Dust-lead standards for clearance are found at [Sec. 35.1320](#).
  - 24 CFR 35.1340 [Clearance](#).
  
- **Notice**
  - Communicates the results of the evaluation of paint and/or hazards, a decision to presume the presence of lead-based paint or LBP hazards, or the completion of lead hazard reduction, including the results of clearance.
  - Only required where paint stabilization or other hazard reduction has been undertaken. If assessment does not determine need for stabilization, then notice is not required.
  
- **Ongoing Lead Based Paint Maintenance**
  - Conducting a visual assessment for deteriorated paint, bare soil, and the failure of any previous hazard reduction measures at unit turnover and every twelve months thereafter; [paint stabilization](#); treatment of contaminated [bare soil](#); [safe work practices](#) when work disturbs [lead-based paint](#) greater than [de minimis](#); repair of failed lead hazard control measures; clearance testing after all repairs, [abatement](#), or hazard control activities; and the solicitation of occupant reports of [deteriorated paint](#) or failed lead hazard control work.
  - Ongoing lead-based paint maintenance is required only when there is a continuing, active programmatic relationship for more than one year between the property and the federally funded program, such as continuing financial assistance, ownership, or periodic inspections or certifications.
  
- **Responsibilities of owners and grantees under Tenant Based Rental Assistance**
  - Grantee responsibilities (may be delegated to project sponsors):
    - Conducting a visual assessment prior to initial occupancy and at annual re-inspections of TBRA assisted units
    - If paint stabilization or other hazard reduction activity has taken place, conducting a clearance inspection
  - Owner's responsibilities:
    - Performing paint stabilization or other hazard reduction activity

- Providing notice of clearance if the activity has taken place

**Additional Requirements for HOPWA Grantees:**

**24 CFR 35.170 Noncompliance with the requirements of subparts B through R of 24 CFR Part 35.** A designated party (HOPWA grantee) who fails to comply with any requirement of subparts B, C, D, F through M, and R of Part 35 shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.

**Sec. 35.175 Records.**

The Grantee shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of Part 35 for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

For more information regarding HOPWA and lead based paint requirements, please visit:

- The On-Line Guide to HUD's Lead Based Paint Regulation:  
<http://www.centerforhealthyhousing.org/1012/index.htm>
- The on-line resource for HOPWA information: <http://hudhre.info/>
- HOPWA's home page on the HUD Website:  
<http://www.hud.gov/offices/cpd/aidshousing/index.cfm>