

## **Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in VA-Acquired Properties**

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

2. Background. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992, to address the need to control exposure to LBP hazards. This Circular updates and implements changes that have occurred since the rescission of Circular 26-04-02.

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 authoritative and comprehensive document available to understand the procedures and technology involved in implementing these requirements is the “*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.*” Copies of this document can be downloaded from HUD’s website:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/lbp/hudguidelines](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines).

a. Target Housing. In accordance with HUD guidelines that identify “target housing” as any housing constructed prior to 1978, VA implemented the following requirements to eliminate, as far as practical, LBP hazards prior to the sale of a residential property that is owned by VA:

- (1) Visual assessment report of all painted surfaces
- (2) Paint stabilization of all deteriorated paint
- (3) Clearance examination report
- (4) Notification/Disclosure

b. Exempted Properties and Actions. The following properties and actions are exempt from these regulations:

(1) Emergency actions required to immediately safeguard against imminent danger to human life, health, 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 LBP activities in target housing outlined in this Circular must then be met.

(2) Performance of the evaluation and the LBP 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, the service provider will complete the required LBP activities prior to any sale as soon as the weather permits.

(3) 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 LBP. 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 including evaluation, reduction, and notification.

a. Evaluation. Evaluate the condition of all interior and exterior painted surfaces of a property. A visual assessment 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 the 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 must include the following information:

(a) Date the home was built

(b) Estimated Costs

(c) Provide complete repair specifications and cost estimates for stabilizing deteriorated paint

(d) 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) Visual Assessment Report. A visual assessment report 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 LBP inspection, on deteriorated paint surfaces to determine the presence of LBP. When using this option, paint stabilization and clearance examinations are only required on those deteriorated surfaces that are reported to contain LBP. The service provider shall consider ordering LBP inspection on a case-by-case basis. The LBP inspection can only be performed by an EPA certified (licensed) LBP inspector or risk assessor. A sample of a LBP inspection report for a

single-family residence may be found in “[\*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.\*](#)”

b. Reduction. 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 LBP present as reported in a LBP inspection. Deterioration limited to hairline cracks, small nicks, scratches or nail holes is not considered deteriorated paint.

(1) Paint Stabilization. The repair of any defect in the substrate, or any defect in a building component, that is causing 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, windows causing abrasion, etc. A detailed summary of how to treat friction and impact surfaces can be found in the “[\*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.\*](#)” In these circumstances, 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.

(3) Safe work practices are required. Safe work practices are required for paint stabilization. See the “[\*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.\*](#)” which defines these practices.

(4) Clearance Examination Report. The clearance examination shall certify that the deteriorated paint surfaces have been eliminated and that no soil-lead or settled dust-lead hazards exist in the dwelling or unit. Clearance examinations must be completed by a person who was not involved in the paint stabilization, and who is certified as LBP inspector, risk assessor, or a clearance technician. Uncertified, but trained clearance technicians may perform clearances, as long as their clearance report is signed by a certified LBP inspector or risk assessor. Samples of clearance forms for a single-family dwelling are located in Chapter 15 of the “[\*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.\*](#)” Chapter 15 can be found here: [http://portal.hud.gov/hudportal/documents/huddoc?id=ch15\\_clearance\\_121212.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=ch15_clearance_121212.pdf).

c. Special Exemption to Stabilization Requirements. Properties may be exempt from paint stabilization and clearance requirements with clear documentation that the property meets all of the following conditions:

- (1) Uninhabitable due to severe damage
- (2) The deteriorated paint surfaces will need to be opened or removed so that structural or utility system repairs can be completed

(3) The major renovation costs cannot be recovered

(4) Cash offers only, no vendee financing

d. The property sales listing must specify that the property is uninhabitable, severely damaged with deteriorated paint surfaces that will not be treated by VA or which will need to be opened or removed so that structural or utility system repairs can be completed prior to occupancy. The service provider will ensure that special exemption case purchasers sign and return the “VA Disclosure Form: Notice of Possible Lead-Based Paint and/or Lead-based Paint Hazards.” VA Form 26-6705 can be found here: <https://vrms.vrmco.com/AMS/Templates/LBPDisclosure.pdf>

e. Notification. The service provider must comply with the requirements of the Lead Disclosure Rule at 24 C.F.R. Part 35, Subpart A with respect to the disposition of all properties constructed prior to 1978.

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

(a) Provide notice of the presence of known LBP and/or LBP hazards in the housing to purchasers, lessees, and agents.

(b) Provide purchasers and lessees with copies of all available known records or reports pertaining to the presence of LBP and/or LBP hazards. The private sector service provider will provide a copy of the clearance examination report to purchasers.

(c) Provide purchasers and lessees with EPA approved pamphlet 747-K-97-001, “Protect Your Family from Lead in Your Home” or equivalent pamphlet that has been approved for use in that State by the EPA. EPA Pamphlet 747-K-97-001 can be found here: [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11876.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11876.pdf)

(d) 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 LBP and/or LBP hazards before being obligated under a purchase contract.

(2) Property Listings. All sales listings for properties built before 1978, must state the house was built prior to 1978, and LBP potentially exists. Each contract to sell target housing shall include an attachment containing the following element, in the language of the contract (e.g., English, Spanish):

(a) Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from LBP. The seller of any interest in residential real property is required to provide the buyer with any information on LBP hazards from risk assessments or inspections in the seller’s possession and

notify the buyer of any known LBP hazards. A risk assessment or inspection for possible LBP hazards is recommended prior to purchase.

(b) 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, he/she is still obligated to acknowledge receipt of the full LBP notification and document the decision to waive the evaluation opportunity in writing. A verbal waiver will not be accepted.

5. Sales Prior to Listing. In target housing that is being sold prior to listing, the service provider must comply with the requirements of Title X. However, paint stabilization and clearance shall not be conducted while a property is occupied. If the target housing has deteriorated paint, the service provider shall notify all occupants approved for purchase by certified mail of VA 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.

a. In target housing with reported deteriorated paint surfaces which 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 the presence of deteriorated paint surfaces.

b. The service provider is required to provide full disclosure to all purchasers. In addition to providing copies of "[\*Protect Your Family from Lead in Your Home\*](#)," or equivalent pamphlet and the "[\*VA Disclosure Form: Notice of Possible Lead-Based Paint and/or Lead-based Paint Hazards\*](#)," the service provider shall also provide a copy of the certified letter previously sent to the HOA which identified deteriorated paint surfaces the HOA is responsible for repairing. The service provider shall also obtain a specific hold-harmless acknowledgment letter signed by all purchasers in these cases to ensure purchasers have been sufficiently notified about all reported deteriorated paint surfaces.

7. Training and Resources.

a. Training. The service provider shall conduct on-going LBP 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 representative, to review and understand VA 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 LBP requirements of this Circular:

(1) For technical information regarding LBP activities, call the HUD Office of Lead Hazard Control and Healthy Homes, at 202-755-1785, ext. 104 or email HUD at [LeadRegulations@hud.gov](mailto:LeadRegulations@hud.gov). A copy of the "*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*" is available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/lbp/hudguidelines](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/lbp/hudguidelines) and EPA's pamphlet 747-K-97-001 is available at [https://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_11876.pdf](https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11876.pdf).

(2) HUD's internet site is: [www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm](http://www.hud.gov/offices/lead/guidelines/hudguidelines/index.cfm) and EPA's internet site is: [www.epa.gov](http://www.epa.gov).

(3) The National Lead Information Clearinghouse may be reached at 1-800-424-LEAD (5323), and can provide publications and answers to specific lead-related questions.

(4) *The "EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil"* provides guidance, methods and protocols issued by states and Indian tribes authorized under 40 C.F.R. 745.324 and by the EPA to administer and enforce LBP programs. This document can be obtained from EPA's internet site: <https://nepis.epa.gov/Exe/ZyPDF.cgi/9100L91T.PDF?Dockey=9100L91T.PDF>.

(5) A copy of 40 C.F.R. 745.227, "*Work Practice Standards for Conducting Lead-based Paint Activities: Target housing and Child-Occupied Facilities*," can be downloaded from EPA's internet site: <https://www.gpo.gov/fdsys/pkg/CFR-1999-title40-vol23/pdf/CFR-1999-title40-vol23-sec745-227.pdf>.

8. **Record Keeping.** Under Title X, sellers and agents are required to retain a copy of the completed "[\*VA Disclosure Form; Notice of Possible Lead-Based Paint and/or Lead-based Paint Hazards\*](#)," and all other related LBP 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 a specific property should be addressed directly with the service provider. Other inquiries concerning this Circular or other LBP issues may be addressed with the VA Central Office Property Management staff by e-mail at [PM.VBACO@VA.GOV](mailto:PM.VBACO@VA.GOV) .

10. Rescission: This Circular is rescinded October 1, 2018.

By Direction of the Under Secretary for Benefits

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