

U.S. Department of Housing and Urban Development

Public and Indian Housing

Special Attention of:

Office Directors of Public Housing;
Secretary's Representatives; Public Housing
Agencies Administering Section 8 Programs,
Public Housing Agencies, Resident Groups

Notice PIH 2000-23 (HA)

Issued: June 29, 2000

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Cross References: 24 CFR Part 982.401
24 CFR Part 35

Attachments:

- PART 982--SECTION 8 TENANT-BASED ASSISTANCE

SUBJECT: Lead-based paint requirements for units occupied by children with elevated blood lead levels in the housing choice voucher program and the certificate program.

PURPOSE: This Notice is to remind public housing agencies (PHAs) administering the housing choice voucher program and the certificate program (herein referred to as the tenant-based assistance programs) of current regulatory requirements and inspection protocols in the tenant-based assistance programs regarding the protection of children with known elevated blood lead levels (EBL). Although new regulations will take effect on September 15, 2000, it is important to remind PHAs of the current requirements to ensure that present safeguards and requirements are met.

Lead poisoning can cause permanent damage to the brain and many other organs, and can result in reduced intelligence and behavioral problems. More than 800,000 children under the age of six living in the United States have lead in their blood that is above the level of concern set by the Centers for Disease Control and Prevention. A large number of these children are in low income families and are living in old homes containing lead-based paint hazards. The most common sources of lead hazards are deteriorated lead-based paint and the contaminated dust and soil it generates in the residential environment.

BACKGROUND: The tenant-based assistance programs are authorized by the U.S. Housing Act of 1937. The Department established the housing quality standards (HQS) to assure that housing leased under the tenant-based assistance programs is decent, safe and sanitary. The HQS have been in effect from the inception of the program. The standards for inspecting units for lead-based paint hazards are part of HQS. The inspection standards and abatement requirements for lead-based paint hazards are based on the Lead-Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4822), which is the basic law covering lead-based paint in federally assisted housing.

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GPO 871 902

The regulation requirements are in Title 24 of the Code of Federal Regulations at Section 982.401 (j), *Lead-based paint performance requirement* (attached), and further requirements are cross referenced at 24 CFR 35.

PROGRAM REQUIREMENTS FOR FAMILIES WITH EBL CHILDREN:

Inspection and Testing: The PHA must inspect units constructed before January 1, 1978, that will be occupied by children under the age of six to determine if there is deteriorated paint. All deteriorated paint must be made intact before the PHA enters into a housing assistance payment contract. If a child with an elevated blood lead level is a member of a family that will reside in the unit with assistance under the tenant-based assistance programs, the PHA must perform an inspection of the unit to determine whether there is lead-based paint on chewable surfaces or any deteriorated lead-based paint.

The Department has incorporated various lead-based paint requirements in the administrative procedures and forms for administration of the tenant-based assistance programs.

- The HQS unit inspection forms (Form HUD 52580 and Form HUD 52580A) identify the year the building was constructed and the number of children in the family under age six. The PHA must inform the HQS inspector if any family members are children under the age of six known to have an elevated blood lead level, so that the inspector knows that chewable surfaces must be tested with an XRF analyzer or by lab analysis of paint samples. Local or state health authorities have established procedures to be employed in identifying residential lead-based paint hazards. Only personnel certified by their authorized state agency or by the Environmental Protection Agency are permitted to conduct lead-based paint inspections and risk assessments, if required by local law.
- The owner and tenant must execute the owner's Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards.

The PHA is required by section 982.401(j)(3) to undertake a visual inspection for defective paint surfaces (a surface on which paint is cracking, scaling, chipping, peeling or loose) in all pre-1978 units that will be occupied by families with children under the age of six. If defective paint surfaces are found, the unit may not be approved unless surfaces have been treated in accordance with section 982.401(j)(6).

When inspecting a dwelling unit (both initial and annual inspections) that was constructed before January 1, 1978, and that will be occupied by a family with a child under the age of six with an identified EBL condition, the PHA must include:

- a visual inspection for deteriorated paint;
- a test for lead-based paint on chewable surfaces; and
- any other tests required by local or State laws.

Chewable surfaces include all painted chewable surfaces in the unit within reach of a six year old child (i.e., painted surfaces up to five feet from the floor).

Chewable surfaces must be tested using an X-ray fluorescence (XRF) analyzer or by lab analysis of paint samples. Testing of chewable surfaces is not required if previous testing of the chewable surfaces was negative for lead-based paint or if the chewable surfaces have already been treated. Where treatment is required, it must be done within 30 calendar days.

Cost of Inspection and Testing: The owner and the family are not responsible for paying the cost of lead-based paint testing required by the HQS, whether it is done by PHA staff, by a local agency, or otherwise contracted out. As for other costs of the HUD-required HQS inspection by the PHA, the owner and the family cannot be required to pay for the cost of lead-based paint inspection and testing. The PHA must pay for the lead-based paint testing if the local or state health agencies are unwilling or unable to do so.

Treatment of Defective Paint and Surfaces: The PHA must also inspect and, if applicable, have the owner treat exterior chewable surfaces within five feet from the ground. The inspection of exterior surfaces includes all chewable surfaces within five feet from the floor or ground that are readily accessible to children under six years of age (including walls, stairs, decks, porches, railings, windows and doors, but excluding outbuildings such as garages and sheds). In some instances, the local health agency or other State or local agency may inspect units occupied by families having a child under the age of 6 with an elevated blood lead level.

If the family is already residing in the unit with assistance under the tenant-based assistance programs, treatment of defective paint surfaces and chewable surfaces must be completed within 30 calendar days of PHA notification to the owner. When weather conditions prevent treatment of exterior surfaces within the 30-day period, required treatment may be delayed for a reasonable time.

The PHA must document that it requested from local and State health departments the addresses of families with EBL children assisted with housing choice vouchers in the tenant-based assistance programs.

Cost of Treatment: The PHA may not provide assistance under the tenant-based assistance programs for occupancy of a unit unless the defective paint surfaces and chewable surfaces have been treated. However, the PHA is not responsible for paying costs for such treatment, or for other repairs or abatement of lead-based paint hazards.

The PHA is not required to pay for the cost of any lead-based paint repairs or abatement required for compliance with the HQS, and may not use housing assistance or administrative fees for this purpose.

NEW LEAD-BASED PAINT REGULATIONS: This Notice is based on current regulations and will continue in effect until September 14, 2000. HUD published new regulations on September 15, 1999. The new regulations will be effective on September 15, 2000. The new regulations were forwarded under HUD Notice OLHC-99-1 and may be obtained from the HUD web site at www.hud.gov/lea.

_____/s/_____
Harold Lucas, Assistant Secretary
for Public and Indian Housing

Attachment