

Understanding the Lead-Based Paint Requirements: Guidance for ESG Grantees

About this Resource

Childhood lead poisoning is a major environmental health problem in the United States, especially for low-income families in poor living conditions. If not detected early, children with high levels of lead in their bodies can suffer from damage to the brain and nervous system, behavioral and learning problems (such as hyperactivity), slowed growth, hearing problems, and headaches. To prevent lead-poisoning in young children, ESG grantees must comply with the Lead-Based Paint Poisoning Prevention Act of 1973 and its applicable regulations found at 24 CFR 35, Parts A, B, M, and R. This document summarizes the lead-based paint requirements and provides guidance for carrying out each step.

SECTION I: OVERVIEW OF REQUIREMENTS & APPLICABILITY UNDER ESG

The lead-based paint requirements exist to protect vulnerable families from potential health hazards. To prevent lead-poisoning in young children, ESG grantees must comply with the Lead-Based Paint Poisoning Prevention Act of 1973 and its applicable regulations found at 24 CFR 35, Parts A, B, H, J, K, M, and R. As agencies that provide assistance to and advocate on behalf of disadvantaged populations, it is important to understand that the lead rule is a tool that helps you ensure the safety and well-being of your clients. This guidance was developed to assist grantees and subgrantees in understanding how the lead-based paint regulations apply to ESG. Please refer to the regulations for additional information.

Under ESG, the rule is that a lead-based paint visual assessment must be completed for all units that meet the three following conditions:

- The household living in the unit is being assisted with ESG financial assistance (rent assistance, utilities assistance, utility/security deposits, or arrears).
- The unit was constructed prior to 1978.
- A child under the age of six is or will be living in the unit.

Under ESG, the lead requirements apply regardless of whether a household is remaining in an existing unit or moving to a new unit. The visual assessment must be completed prior to ESG assistance being provided, and annually thereafter.

Grantees and subgrantees (ESG program staff) are responsible for ensuring that property owners and managers meet the lead-based paint requirements. It may be helpful for grantees to think about the requirements in two categories:

1. Disclosure requirements. Disclosure requirements are triggered for ALL properties constructed prior to 1978. These requirements require that lessors (property owners or managers) provide tenants with:

- HUD's disclosure form for rental properties disclosing the presence of known and unknown lead-based paint;

AND

- A copy of the "Protect Your Family from Lead in the Home" pamphlet.

Both the disclosure form and pamphlet are available at:

<http://www.hud.gov/offices/lead/enforcement/disclosure.cfm>

As explained, this requirement actually relates to property owners/managers, but sharing this information with your clients (or ensuring they have received it) is an easy thing to do and will make your job easier. ESG assessments are an important opportunity to educate clients about the potential hazards related to lead and their rights as tenants. Informed tenants are more likely to watch for potential problems in their home and proactively work with landlords to address any issues.

2. The Visual Assessment and Beyond.

¹ As explained in the ESG Notice, visual assessments for ESG funded units are only triggered under certain circumstances: ²

- The leased property was constructed before 1978;

AND

• A child under the age of six will be living in the unit occupied by the household receiving ESG assistance.

Depending on the results of the visual assessment, additional steps may be required before assistance can be provided for that unit. In Section 2, this guidance will take a step-by-step look at what happens during and after the visual assessment.

Exceptions to the Rule

There are certain exceptions to the rule. Visual assessments by ESG staff are **not** triggered under the following circumstances:

- It is a zero-bedroom or SRO-sized unit;
- X-ray or laboratory testing of all painted surfaces by certified personnel has been conducted in accordance with HUD regulations and the unit is officially certified to not contain lead-based paint;
- The property has had all lead-based paint identified and removed in accordance with HUD regulations;
- The client is receiving Federal assistance from another program, where the unit has already undergone a visual assessment within the past 12 months – e.g., if the client has a Section 8 voucher and is receiving ESG assistance for a security deposit or arrears (note, in such cases, ESG staff are required to obtain documentation that a visual assessment has been conducted from the agency administering the other form of assistance for the ESG case file); **or**
- It meets any of the other exemptions described in 24 CFR Part 35.115(a).

If any of the conditions outlined above are met, ESG program staff simply need to document the condition by completing the *ESG Lead Screening Worksheet* (available on the HUD HRE) and placing a copy in the case file.

(Note: While grantees are required to document compliance with the lead rule, they are not required to use this particular screening worksheet or any of the other templates mentioned in this paper. These tools were developed as samples to assist grantees who may be looking for resources to use in their local programs.) Remember, regardless of these exceptions, all properties are still subject to the disclosure requirements.

¹ Note that visual assessments are sometimes called inspections – though the terms should not be used interchangeably because they imply different levels of rigor, as explained later in this guidance.

² Note these requirements may be different for other HUD programs.

SECTION II: A STEP-BY-STEP GUIDE TO COMPLIANCE

As explained above, the lead-based paint regulations require certain responses to potential lead-based hazards. Some activities must be conducted by ESG program staff while others are generally conducted by property owners/managers. Regardless of who is the responsible party, ESG program staff should work closely with assisted households and property owners/manager to ensure that the activities described below have been conducted prior to approval of ESG assistance for that unit.

Program staff should consider sharing the following documents available on Homelessness Resource Exchange at www.hudhre.info with property owners/managers as well as residents to outline responsibilities and provide additional guidance:

- *Instructions for Property Owners Template*
- *Instructions for Residents Template*

ESG Program Staff Responsibilities

The following information outlines the steps that should be taken by ESG program staff:

1. Determine whether lead-based paint requirements are triggered. Prior to providing a household with ESG assistance, program staff must first determine whether lead-based paint requirements are triggered. To do this, they must determine whether the unit was built prior to 1978 and a child under the age of six is or will be residing in the unit. Program staff should complete the *ESG Lead Screening Worksheet* for the case file and document any exemptions.

If any exemptions are met, then lead-based paint requirements are not triggered and no further action is needed. A copy of the *ESG Lead Screening Worksheet* can be found on the Homelessness Resource Exchange at www.hudhre.info.

Determining the Age of the Unit

Program staff should use formal public records, such as tax assessment records, to establish the age of a unit. These records are typically maintained by the state or county and will include the year built or age of the property. In most areas, these records are available online. If you are uncertain where to find this information, a quick internet search should help you locate the data you need. In the search field, try combining your county name with one of the following phrases:

- "property tax records"
- "property tax database"
- "real property sales"

For example, if you enter "DC property tax records," the first search result is a public database that can be used to determine the age of a property located within the District of Columbia. Once you have found it, remember to bookmark the page for future reference!

Remember to print out a copy of the screenshot for the case file. If you have trouble finding this information online, contact your local Office of Tax and Revenue for assistance. If not available online, the information is public and can be requested from the local authorities. (Note, the taxing authority and the assessment entity may be separate governmental entities and office names vary by locality.)

2. Inform ESG client and property owner of the lead-based paint requirements and schedule visual assessment. Families living in poverty face many challenges, such as poor living conditions and

exposure to toxins such as lead-based paint. Since annual visual assessments are an ESG requirement, program staff should use the opportunity to educate families with young children about the dangers of lead-based paint. Program staff should ensure that clients know what to look for within their home (or as they are searching for a new unit).

Similarly, program staff should ensure that property owners/managers understand their responsibilities with regard to lead-based paint hazards so that they are also doing routine assessments to identify and repair deteriorated paint. Because HUD prohibits grantees and subgrantees from making payments directly to clients, program staff will have to be in touch with property owners/landlords to discuss payment and conditions related to payment, including lead-based paint requirements.

Because assistance cannot be provided until the visual assessment has been completed and the unit cleared, it is important for ESG staff to schedule the visual assessment as quickly as possible. The case manager should complete the screening worksheet (discussed above) upon determining household eligibility for ESG assistance and schedule the assessment immediately.

If subsequent conversations with the property owner reveal that the property meets an exception, than the assessment can be cancelled. However, it's better to get the assessment scheduled right away since lengthy delays could result in the loss of the unit (e.g., if the tenant is in arrears).

- 3. Conduct visual assessment.** A visual assessment must be conducted prior to providing ESG financial assistance to the unit, and on an annual basis thereafter (as long as assistance is provided). Visual assessments must be conducted by a HUD-Certified Visual Assessor. It is important to note that a HUD-Certified Visual Assessor is not equivalent to a Certified Clearance Examiner.

Anyone may become a HUD-Certified Visual Assessor by successfully completing a 20-minute online training on HUD's website at: <http://www.hud.gov/offices/lead/training/visualassessment/h00101.htm>.

The training teaches individuals how to identify deteriorated paint and how deteriorated paint must be treated. Grantees/subgrantees may choose to have their program staff complete the visual assessments, or they may procure services from a contractor. When determining how your agency will conduct the assessments, a primary consideration should be the availability of the staff/contractor to schedule and complete the assessments quickly. If program staff are being used to complete the visual assessments, your agency may find it helpful (i.e., less disruptive and more efficient) to identify specific days or blocks of time for completing visual assessments.

Note that if ESG financial assistance is being used to help a client move into a new unit, an inspection must also be conducted to ensure the unit meets the minimum habitability standards outlined on the ESG Notice.³ In cases where both a lead-based paint visual assessment and a habitability inspection are required, the most efficient and cost effective solution would be to have the same individual complete both at the same time. Note that the cost of conducting visual assessments and habitability inspections are an eligible ESG expense under the Financial Assistance category.

- 4. Identify risks and compare to "de minimis" level.** During a visual assessment, the assessor must determine the level of any identified problems with paint surfaces and compare it to the "de minimis" level.⁴ Under the Lead act, the de minimus level is as follows:
 - 20 square feet on exterior surfaces;
 - 2 square feet in any one interior room or space; or

- 10 percent of the total surface area on an interior or exterior component with a small surface area, like window sills, baseboards, and trim.

All deteriorated paint identified during the visual assessment must be repaired. However, if the area of paint to be stabilized exceeds the de minimis level, the use of lead safe work practices and clearance is required. If deteriorating paint exists but the area of paint to be stabilized does not exceed this level, then safe work practices and clearance are not required. If deteriorating paint is not identified, the unit can be cleared for assistance. Staff should document the level of identified problems with paint surfaces using the *Lead Safe Housing Requirements Screening Worksheet*.

5. Make assistance determination. If a visual assessment reveals problems with paint surfaces, program staff cannot approve the unit for assistance until the deteriorating paint has been repaired. At this point, program staff must make a decision: work with the property owner/manager to complete needed paint stabilization activities and clearance, work with the household to locate a different (lead-safe) unit, or refer the client to a different program if ESG assistance cannot be provided. Which option the grantee chooses will depend on a number of variables.

The following are some questions to consider when making this decision:

- Is ESG assistance being used to help the participant obtain a new unit or retain an existing unit? If the grantee is helping a household obtain new housing, there may be more flexibility with regard to the timeframe (i.e., there may be a few weeks between identification of the unit and the move-in date). Staff should conduct the visual assessment prior to the participant signing the lease so they can help negotiate any needed repairs.
- If ESG assistance is being used for prevention assistance, how much time is there to save the housing situation, and what is the relationship with the landlord? For participants that are housed but at imminent risk of homelessness (e.g., because they are several months behind on their rent), there may not be much time. If the landlord has already initiated eviction proceedings, he or she may or may not be willing to work with the household. Thus, it's important to contact the landlord directly and assess the situation.
- How appropriate is the current unit for the household? If the existing unit is not particularly suitable for the household – either because of cost, size, location, or some other reason – it may make more sense to focus on relocating the household.
- What is the condition of the local housing market? How expensive/difficult would it be to relocate the participant to a new unit? In contrast, how difficult would it be for the landlord to fill the unit if it was vacated? (Depending on the situation, you may have more or less leverage.)
- Are resources available to assist with the paint stabilization? ESG cannot be used for stabilization, so if the landlord is unwilling or unable to make the needed repairs, is there any other agency/program that can assist?

3 The minimum standards for housing unit inspections are the housing habitability standards described in Appendix C of the ESG Notice. These standards apply only when a program participant is receiving financial assistance and moving into a new unit. They do not apply to persons served with ESG prevention assistance in a unit in which the program participants were already residing. The habitability standards are different from the Housing Quality Standards (HQS) used for other HUD programs. In contrast to HQS inspections, the habitability standards do not require a certified inspector. For example, ESG project staff or staff from or hired by an agency of the grantee's local government can conduct the

habitability inspection.

4 De minimus is a Latin expression that, in the risk assessment world, refers to a level of risk that is too minimal to cause concern.

- 6. Confirm all identified deteriorated paint has been stabilized.** Program staff should work with property owners/managers to ensure that all deteriorated paint identified during the visual assessment has been stabilized. If the area of paint to be stabilized does not exceed the de minimus level, a clearance exam is not required. In these cases, the ESG program staff should confirm that the identified deteriorated paint has been repaired and document the case file.

If the area of paint to be stabilized exceeds the de minimus level, program staff should ensure that the clearance inspection is conducted by an independent certified lead professional. (A certified lead professional may go by various titles, including a certified paint inspector, risk assessor, or sampling/clearance technician.) Note, the clearance inspection cannot be conducted by the same firm that is repairing the deteriorated paint. Local community development, housing, or health departments are often able to provide this testing. As noted above, ESG funds cannot be used for the repair/stabilization of lead-based paint hazards.

However, one clearance inspection is considered an eligible ESG expense (under the Financial Assistance category). If the unit does not pass the initial clearance inspection, ESG funds may not be used to pay for additional inspections.

Locating a Certified Lead Professional

To locate a certified lead professional in your area:

- Call your state government (health department, lead poison prevention program, or housing authority).
- Call the National Lead Information Center at 1-800-424-LEAD (5323).
- Go to the US Environmental Protection Agency website at <http://cfpub.epa.gov/flpp/> and click on "certified abatement/inspection firms."

Program staff should also consider having the property owner/manager certify that all paint stabilization activities have been completed and ongoing maintenance will be conducted by filling out the *ESG Program-Owner Certification Template*, available on the Homelessness Resource Exchange at www.hudhre.info.

Response to a child with elevated blood lead levels. In cases where it is brought to the attention of program staff that a child under the age of six living in a ESG-assisted unit is found to have elevated blood lead levels, the response process established at 24 CFR 35.1225 takes effect, which includes a risk assessment and interim controls and information exchange with the health department.

Conduct ongoing lead-based paint monitoring. Program staff must conduct a visual assessment of the stability of painted surfaces on an annual basis during the assistance period.

Property Owner/Manager Responsibilities

The following information outlines the responsibilities of a property owner/manager:

- 1. Distribution of pamphlets and disclosure notice to occupants.** For ALL units built prior to 1978, property owners/managers are required to provide lessees (tenants signing the lease) with:
 - A copy of the “Protect Your Family from Lead in the Home” pamphlet; AND
 - HUD’s disclosure form for rental properties.

Program staff dealing with rental properties built prior to 1978 should ensure property owners/managers provide these documents to tenants. Program staff, in addition to owners/managers, may also choose to provide disclosure notices to the lessee (tenant signing the lease) on the potential existence of lead-based paint. Both the disclosure form and pamphlet are available at:

<http://www.hud.gov/offices/lead/enforcement/disclosure.cfm>

- 2. Perform paint stabilization.** If a visual assessment reveals problems with paint surfaces, the property owner will be notified of the need for paint stabilization and assistance cannot be approved until corrective actions have been taken and the unit has achieved clearance (as appropriate per the identified de minimus level).

It is the responsibility of any property owner participating in the program to:

- Protect the residents and their belongings
- Repair the paint
- Conduct cleanup
- Address other lead-based paint-related concerns
- Obtain clearance (if deteriorated surface is more than the de minimis)

Failure by the property owner to fulfill their responsibilities on their own or with the assistance of the program prohibits the program from assisting a tenant in that unit.

- 3. Use safe work practices.** If the area is larger than the de minimus level, safe work practices must be used. Examples of safe work practices include:
 - Wet sanding or wet scraping;
 - Protection of the worksite to keep lead dust from leaving the worksite or getting onto the resident's belongings; and
 - Cleaning of the worksite with HEPA vacuuming and detergents.

If the area is smaller than the de minimus level, safe work practices do not have to be used. It is recommended, however, that all practices include:

- Surface preparation to minimize the amount of dust released (wet sanding or scraping is still recommended to minimize the release of dust); and
- Cleanup using conventional cleaning methods.

- 4. Obtain clearance.** Property owners/managers must ensure that all deteriorated paint identified during the visual assessment has been stabilized. If the area of paint to be stabilized does not exceed the de minimus level, a clearance exam is not required. In these cases, the ESG program staff should confirm that the identified deteriorated paint has been repaired and document this in the case file.

If the area of paint to be stabilized exceeds the de minimus level, clearance by an independent, certified lead professional, such as a certified paint inspector, risk assessor, or sampling/clearance technician, is required. The clearance inspection cannot be conducted by the same firm that is repairing the deteriorated paint. Local community development, housing, or health departments are often able to provide this testing.

It is the property owners/managers' responsibility to obtain clearance. However, they may work closely with ESG program staff throughout this process. Specifically, ESG program staff can pay for the first clearance inspection using ESG funds. If the unit does not pass the initial clearance inspection, ESG funds may not be used to pay for additional inspections.

- 5. Provide Notice of Lead Hazard Reduction to tenants.** Within 15 days of completion of the Lead Hazard Reduction activities, including paint stabilization, the property owner/manager must provide a Notice of Lead Hazard Reduction to tenants or post the notice in a common area where the tenants will see it. If applicable, the notice must contain the clearance results.
- 6. Conduct ongoing lead-based paint maintenance.** The property owner/manager should assess the stability of painted surfaces periodically to ensure there are no lead-based paint hazards in the assisted unit, repairing any deteriorating paint as soon as it is identified.

SECTION III: RESOURCES

- Lead professionals, training providers, and HUD-sponsored Lead Safe Work Practices training listings can be accessed at www.leadlisting.org or 1-888-LEADLIST.
- For more information on the Federal training and certification program for lead professionals, contact the National Lead Information Center (NLIC) at: <http://www.epa.gov/lead/pubs/nlic.htm> or 1-800-424-LEAD to speak with an information specialist.
- The Lead Safe Housing Rule as well as a HUD training module to help recipients of CPD administered funds effectively implement the requirements of the Lead Safe Housing Rule in their programs can be accessed at: <http://www.hud.gov/offices/cpd/affordablehousing/training/web/leadsafe/>