



October 4, 2022

To: The Honorable Adrienne Todman  
*Deputy Secretary, SD*

From: The Honorable Rae Oliver Davis *Rae Oliver Davis*  
*Inspector General, G*

Subject: Management Alert (2023-IG-001): Action Needed to Ensure That Assisted Property Owners, Including Public Housing Agencies, Comply with the Lead Safe Housing Rule

While conducting an ongoing audit of the Philadelphia Housing Authority's (Authority) management of lead-based paint hazards in its public housing units, my office identified a significant gap in HUD's program requirements related to safe work practices, which we believe requires immediate action.

We identified that the Authority determined a substantial percentage of maintenance and hazard reduction work performed on surfaces with lead-based paint in its public housing units was "*de minimis*" or minor. The Authority's determinations exempted the work from HUD's rules requiring safe work practices. However, when reviewing the Authority's maintenance work files, we were unable to determine whether this exemption had been properly applied because HUD does not require assisted property owners like public housing agencies (PHAs) to maintain evidence supporting that the work was minor. In some cases, the documentation in the Authority's maintenance files indicated the work might have been labeled improperly as minor or "*de minimis*."

The lack of a requirement for assisted property owners to maintain such documentation impedes HUD's ability to conduct meaningful oversight of property owners' compliance with HUD's requirements for safe work practices. The lack of a requirement also limits HUD's and OIG's ability to verify that the *de minimis* exemption is being properly applied. We believe HUD should take immediate steps to mitigate the risk that the exemption is being applied too broadly and thereby increasing the potential for residents and maintenance staff to be exposed to lead-based paint hazards.

While this risk became apparent during our ongoing audit of a PHA, we believe this risk extends beyond HUD's public housing program to all HUD-assisted programs where the *de minimis* exemption may apply. We recommend HUD require assisted property owners, including PHAs, to maintain evidence to support determinations that maintenance and hazard reduction work

that disturbs lead-based paint in target housing are minor such that they can be properly exempted from HUD's safe work requirements.

**HUD's Lead Safe Housing Rule Created a Framework  
to Protect Residents in Units with Lead-Based Paint Hazards**

Lead-based paint and lead-contaminated dust<sup>1</sup> are the most hazardous sources of lead for U.S. children, and no safe blood lead level in children has been identified. Lead exposure can cause adverse effects, such as damage to the brain and nervous system, slowed growth and development, and learning and behavioral problems. Even low levels of lead in the blood have been shown to affect intelligence, the ability to pay attention, and academic achievement. The effects of lead exposure cannot be corrected or reversed.

The Residential Lead Based Paint Hazard Reduction Act of 1992 established the national goal to eliminate lead-based paint hazards in housing as quickly as possible, and required HUD to establish procedures to eliminate, as far as practicable, the hazards of lead-based paint. In 1999, HUD published the Lead Safe Housing Rule to implement the requirements of the Lead Based Paint Poisoning Act, as amended, and the Lead Based Paint Hazard Reduction Act of 1992 to eliminate lead-based paint hazards, as far as practicable in certain HUD-assisted properties. These procedures require property owners, including PHAs who own properties receiving HUD assistance to make certain notifications to residents of lead-based paint in their unit. Depending on the HUD program, requirements might include performing certain assessments or evaluations of lead-based paint as well as performing certain remediation activities to abate, reduce, and control lead-based paint hazards.

Nationwide, there are almost one million households residing in public housing developments that are managed by about 3,300 PHAs. Additionally, there are approximately 2.36 million multifamily housing units at approximately 29,000 properties assisted and overseen by HUD. Of the 2.36 million multifamily units, 949,000 units receive rental assistance, 893,000 units are assisted through HUD's Federal Housing Administration (FHA) multifamily mortgage insurance, and 523,000 units are both assisted and insured.

Importantly, the Lead Safe Housing Rule provides requirements for ensuring work performed that disturbs lead-based paint in target housing is performed safely for the protection of workers and residents of HUD-assisted units. These special methods used to protect workers and residents are referred to as "safe work practices."<sup>2</sup> For example, interim control activities must be conducted under the supervision of an individual certified as a lead-based paint abatement supervisor or the person conducting the activities have completed specific training related to lead-safe work practices.<sup>3</sup> Examples of safe work practices are wet scraping

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<sup>1</sup> Lead-contaminated dust can be created from deteriorated lead-based paint, lead-based paint on friction surfaces, and during remediation activities that disturb deteriorated lead-based paint.

<sup>2</sup> 24 CFR 35.1350

<sup>3</sup> 24 CFR 35.1330(a)(4) and 24 CFR 35.1335(a).

deteriorated painted surfaces, removing objects in the work area, or covering objects or the floor in the work area with plastic sheeting. The Lead Safe Housing Rule requires that worksites undergo specialized cleaning<sup>4</sup> and lead dust clearance testing,<sup>5</sup> and requires tenants be relocated in some instances.<sup>6</sup>

**The *De Minimis* Exemption Allows Property Owners to Perform Maintenance and Hazard Reduction Work the Owner Deems Minor Without Using Lead-Safe Practices**

HUD established a *de minimis* threshold to exempt small maintenance and hazard reduction projects that disturb lead-based paint in target housing from the requirement to use lead-safe work practices. This exemption reduces the financial and operational burden on property owners. According to 24 CFR 35.1350(d), a project falls under the *de minimis* level when maintenance or hazard reduction activities do not disturb painted surfaces that total more than: (1) 20 square feet on exterior surfaces; (2) 2 square feet in any interior room or space; or (3) 10 percent of the total surface area on any interior or exterior type component with a small surface area.<sup>7</sup> In such cases, safe work practices are not required. In addition to exempting the *de minimis* projects from lead-safe work practices, the projects also do not require clearance testing<sup>8</sup> and the work is not required to be performed or supervised by persons trained in lead-safe work practices.<sup>9</sup>

Although HUD requires assisted property owners to identify deteriorated painted surfaces through visual and risk assessments, it does not have a requirement that the size of the area of deteriorated painted surfaces be documented in those assessments or during maintenance and hazard reduction activities. HUD also does not require property owners to maintain evidence, such as a picture of the area with a measurement or a written description of the location and severity of the deterioration, showing that work performed on deteriorated surfaces with lead-based paint was *de minimis*.

In our ongoing audit of the Authority, we found that a lack of sufficient documentation consistently prevented us from assessing whether the Authority's determinations regarding the work performed on surfaces with lead-based paint that had been disturbed or would be disturbed was *de minimis*. We identified work performed 43 units where a *de minimis* determination would have been necessary<sup>10</sup>, and found that the Authority labeled the work *de minimis* in 41 of the 43<sup>11</sup> units (95 percent). However, in all 41 units, the Authority's files did

<sup>4</sup> 24 CFR 35.1350(c)

<sup>5</sup> 24 CFR 35.1330(a)(3) and 24 CFR 35.1340(b)

<sup>6</sup> 24 CFR 35.1345(a)(2)

<sup>7</sup> Examples include windowsills, baseboards, and trim.

<sup>8</sup> 24 CFR 35.1340(b)

<sup>9</sup> 24 CFR 35.1330(a)(4)

<sup>10</sup> A *de minimis* determination would be necessary before lead-based paint hazards are remediated.

<sup>11</sup> For the remaining two units, although the Authority lacked sufficient documentation of its determination that the identified hazards were above the *de minimis* threshold, the hazards were treated using lead-safe work practices.

not contain documentation that HUD OIG could examine to assess whether the *de minimis* exemption was applied appropriately. Further, when reviewing the work orders and other support documentation related to the maintenance or repairs performed, we were unable to determine the work performed to address the hazards.

We also identified several instances in which the Authority's records contained conflicting information regarding the *de minimis* determination. In some of the properties that underwent hazard reduction activities, the Authority's contracted, third party, certified lead-based paint inspector indicated on the lead inspection and risk assessment reports that the work needed was significant enough to require lead-safe work practices.<sup>12</sup> However, on the Authority's service work orders generated to capture the activities performed to address the inspection and assessment results, the work needed was identified as *de minimis*.

In one instance, shortly after a lead-based paint inspection and risk assessment identified a deteriorated painted surface as exceeding the *de minimis* threshold, the Authority classified work in the same area as *de minimis* but spent approximately 38.5 maintenance staff hours on lead hazard reduction work over five days during a two-month period. Although the amount and duration of the work call into question the *de minimis* determination, the Authority's documentation was insufficient to determine whether the Authority's use of the *de minimis* exemption was appropriate.

**HUD Needs More Information from Assisted Property Owners, Including PHAs, to Assess Whether the *De Minimis* Exemption is Being Applied Properly to Ensure Residents Are Not Unnecessarily Exposed to Lead-Based Paint Hazards**

HUD's stated purpose for creating the *de minimis* exemption was to focus resources on highest priority hazards and to maintain effectiveness in hazard reduction.<sup>13</sup> HUD needs more information from assisted property owners including PHAs to assess how frequently the *de minimis* exemption is applied, whether it is being used appropriately, and whether the exemption is achieving its intended results. In light of the significant risk that lead exposure poses to residents, HUD needs to take immediate action to close the gap in its regulatory framework for ensuring compliance with the Lead Safe Housing Rule.

Complying with HUD's lead-safe work requirements can be costly for property owners and disruptive for tenants; however, HUD cannot achieve meaningful oversight of lead-safe work practices if it does not maintain the ability to oversee assisted property owners' determinations that maintenance and hazard reduction work is exempt from the rule. We do not believe the

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<sup>12</sup> The lead-based paint inspection and risk assessment reports noted that the size of deteriorated painted surfaces with lead-based paint exceeded the very small size identified by HUD as the *de minimis* threshold.

<sup>13</sup> Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 64 Fed. Reg. 50140 (September 15, 1999).

documentation burden on assisted property owners outweighs the health risk presented by HUD being unable to ensure that assisted property owners are performing work that disturbs painted surfaces in a safe manner.

HUD should require that assisted property owners, including PHAs, maintain adequate documentation to support a *de minimis* determination. Without such a requirement, HUD will be unable to ensure that applications of the *de minimis* exemption are appropriate or that appropriate protections were in place during maintenance and hazard reduction that disturbs surfaces with lead-based paint. Implementing such a requirement could mitigate potential health risks to HUD's beneficiaries and the workers performing maintenance and hazard reduction activities that currently may go undetected.

### **Recommendation**

We recommend that HUD:

- 1A. Update applicable requirements to require assisted property owners, including PHAs, to maintain adequate documentation to support their determinations that maintenance and hazard reduction activities that disturbs surfaces with lead-based painted qualify for the *de minimis* exemption from lead-safe work practices under the Lead Safe Housing Rule.

### **OIG Evaluation of HUD's Response**

In response to a draft of this management alert, HUD acknowledged our concerns about the potential for misapplication of the Lead Safe Housing Rule's *de minimis* exemption but did not commit to creating a requirement that property owners document *de minimis* determinations for maintenance and hazard reduction activities. HUD's position is that changes to the requirements for property owners implementing the Lead Safe House Rule should be based on "significantly more information than can be gleaned from a single audit of a small number of target housing units that has been extrapolated to all HUD-assisted housing."

As an alternative to our recommended action, HUD proposed that it would (1) provide a Lead Safe Housing Rule notice on the *de minimis* exemption, that will include details about the regulatory requirements and best practices for implementing those requirements, to all assisted target housing owners and public housing agencies and (2) collect additional data regarding on how HUD-assisted property owners determine how much paint will be disturbed during a maintenance or rehabilitation project de minimis threshold.

We disagree with HUD's position that more information is needed before HUD can decide whether to require HUD-assisted owners of pre-1978 housing to document their determinations that lead-safe work practices are not required for maintenance or rehabilitation activities. This management alert highlights the risk posed by a gap in HUD's requirements for lead-safe work practices. Gathering more information through additional review of PHAs or housing units will not change the fact that without a requirement for property owners to document their decisions not to use lead-safe work practices, neither HUD nor the OIG can properly oversee compliance with the Lead Safe Housing Rule. We believe HUD can act now to require property owners to make simple additions to their files to support *de minimis* determinations. Doing so can be accomplished with minimal burden to property owners while at the same time offering a substantial enhancement to HUD's ability to protect beneficiaries from exposure to dangerous lead hazards.

We appreciate HUD's willingness to provide a notice to HUD-assisted property owners about their obligation to appropriately apply the *de minimis* exemption, which will include best practices. We strongly encourage HUD to identify in the notice that maintaining documentation to support *de minimis* determinations is the best practice that property owners can implement to show they are meeting their obligations under the Lead Safe Housing Rule. Documenting *de minimis* determinations would (1) provide reasonable assurance that the recipients of its notice understand how to appropriately apply the requirement, (2) assist HUD in ensuring the proper application of the *de minimis* exemption as it seeks to collect additional information on the use of the exemption, and (3) aid HUD and OIG in conducting regular oversight activities related to safe work practices.

We urge HUD to prioritize its intended data-collection efforts regarding property owners' processes for making *de minimis* determinations so that HUD can expedite its decision on whether to create new requirements. My office will continue examining the use of the *de minimis* exemption by property owners in ongoing and future OIG oversight of PHAs and other property owners, using a risk-based approach.

We look forward to working with HUD during the audit resolution process to review the specific details that it will take in implementing its proposed actions.

The information contained in this management alert was developed during an audit conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions.





**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**  
**THE DEPUTY SECRETARY**  
WASHINGTON, DC 20410-0050

September 29, 2022

MEMORANDUM FOR: Rae Oliver Davis, Inspector General, G

FROM: Adrienne Todman, Deputy Secretary, SD

SUBJECT: HUD Management Response to OIG Management Alert Entitled  
"Action Needed to Ensure That Assisted Property Owners, Including  
Public Housing Agencies, Comply with the Lead Safe Housing Rule"

The Department appreciates the information presented by the Office of Inspector General (OIG) in this Management Alert. HUD takes the issues of lead-based paint and the Lead Safe Housing Rule extremely seriously as evidenced by the department's historic levels of funding for mitigation, technical assistance, and public visibility on the impacts of lead hazards.

The "*de minimis* threshold" that is the subject of this management alert is designed to allow the thousands of small repairs and tasks - performed by HUD-assisted property owners and PHAs at the request of tenants or as part of routine maintenance - to be accomplished without undue burden or delay, while maintaining effectiveness in lead hazard reduction and minimizing risk to the tenants. This important rule is based on the Environmental Protection Agency's Lead-Based Paint Activities Rule that permits dry scraping, during lead abatement, of lead-based paint in amounts similar to those in HUD's Lead Safe Housing Rule.

While we acknowledge the OIG's concerns, we believe that changes to implementation of the Lead Safe Housing Rule would benefit from significantly more information than can be gleaned from a single audit of a small number of target housing units that has been extrapolated to all HUD-assisted housing units. We believe that more information and evidence on how housing providers apply the *de minimis* threshold is warranted. Additionally, we need to ensure that small tasks, such as the changing of an electrical outlet cover plate, installation of a smoke detector, etc., does not increase burden without a corresponding benefit to tenants. In addition, the Department will need to determine whether current staffing levels and contracts allow for adequate review and monitoring of any new or enhanced regulatory requirements.

Based on the Department's experience with the Lead Safe Housing Rule, and the important concerns raised by this Alert, HUD will take the following steps:

1. Provide a Lead Safe Housing Rule notice on the *de minimis* exemption to all assisted target housing owners and public housing agencies.

During FY 2023, HUD will notify owners of pre-1978 (“target”) housing that is assisted by the Department about their obligation to appropriately determine applicability of the *de minimis* threshold requirements. The notice will include details about the regulatory requirements and best practices for implementing those requirements, such as the correct application of the *de minimis* threshold.

In addition, this notice will provide examples of projects that typically involve *de minimis* disturbances and remind owners that maintenance or lead hazard reduction projects that disturb significant areas of painted surfaces, *i.e.*, areas greater than *de minimis* areas, are covered by the lead safety requirements of the Lead Safe Housing Rule.

2. Collect additional data regarding the use of the *de minimis* threshold

HUD will also collect information on how HUD-assisted housing owners and public housing agencies determine how much paint will be disturbed during a maintenance or rehabilitation project. The findings will inform the next steps taken by the Department.

We are grateful for the work of the OIG and look forward to working collaboratively together to address these and similar issues in the future.