APPENDIX D: LEAD BASED PAINT REQUIREMENTS

National Housing Trust Fund, HOME Investment Partnerships Program, Multi-Family Tax Exempt Bond Program and SC Housing Trust Fund Awarded Developments

When Federal funds, such as HOME, NHTF, and NSP are used to assist housing built prior to 1978, HUD requires that steps are taken to address lead hazards. The requirements listed below must be followed for projects to be compliant. The regulations apply to all housing assisted with HOME, NHTF, and NSP funds, including single and multi-family units, whether privately or publicly owned. The requirements differ, depending in the amount of assistance and the type of activity being undertaken, rehabilitation or acquisition.
All units in projects assisted with HOME, NHTF, and NSP funds must comply with the following Lead-Based Paint regulations:

- 24 CFR 92.355
- Lead-Based Paint Poisoning Prevention Act of 1971 – 42 U.S.C. 4821 et. Seq.
- 24 CFR 982.401(i) (except paragraph 982.401(j)(1)(i)
- EPA's Renovation, Repair, and Painting Rule – 40 CFR Part 745
- 24 CFR Part 35 - The regulation is divided into subparts, of which the following apply:
  Subpart A: Disclosure
  Subpart B: General Requirements and Definitions
  Subpart J: Rehabilitation
  Subpart K: Acquisition, Leasing, Support Services, and Operations
  Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

Types of Housing Subject to LBP Regulations:
All units constructed prior to January 1, 1978 to be acquired, rehabilitated, or converted that do not meet any of the exemption criteria listed below.

Types of Housing Exempt from LBP Regulations:

- Housing built on or after January 1, 1978, when lead paint was banned for residential use.
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there for prolonged periods of time.
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks.
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector.
- Property where all lead-based paint has been removed and clearance has been achieved.
- Unoccupied housing that will remain vacant until it is demolished.
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface.

Requirements for Rehabilitation Projects:
When federal funds are used to rehabilitate properties constructed prior to 1978, the Lead Safe Housing Rule applies. The requirements differ based on the amount of assistance provided to the property. Provided below is a description of how to calculate the level of assistance to determine what projects are required to follow based on the level of assistance.

Calculating the Level of Assistance:
The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

- Per unit rehabilitation hard costs (regardless of source of funds); or
- Per unit Federal assistance (regardless of the use of the funds).

To make this determination, it helps to understand several terms:

- **Rehabilitation Hard Costs:** The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.
- **Lead Hazard Evaluation and Reduction Costs:** Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
- **Federal Assistance:** Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal funds.

Requirements for Rehabilitation Projects Receiving over $25,000 per Unit:
Projects where the level of rehabilitation assistance is over $25,000 per unit must meet the following requirements.

The goal is to "identify and eliminate lead hazards:" A risk assessment is required to identify hazards and any identified hazards must be abated by an EPA certified abatement professional.

Lead Hazard Evaluation Requirements: A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or grantees may assume that lead-based paint hazards exist.

Lead Hazard Reduction Requirements: To address hazards identified, abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by an EPA certified abatement contractor. If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards. Clearance is required when lead hazard reduction activities are complete.

Options There are two options, as follows:

1. The recipient is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The recipient must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
2. The recipient is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the recipient must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)

Clearance Requirements: Clearance is required by an EPA certified clearance examiner.

Notification Requirements: The following notices must be provided to owners and tenants:

- The Lead Hazard Information pamphlet;
- The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted); and
- The Notice of Lead Hazard Reduction

In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

Required Qualifications for Hazard Evaluation Professionals:

Paint inspectors and risk assessors must be certified by the EPA to conduct evaluations. Rehabilitation specialists and other program staff may have the experience and educational qualifications needed to pursue lead-based paint inspector or risk assessor training and certification. The following specific certification requirements apply to these evaluators (from 40 CFR 745.226):

Certified paint inspectors must:

- Successfully complete an EPA or state-accredited training program;
- Pass the exam required by the certifying authority; and
- Apply for and be certified by the state or EPA.

Risk assessors must:

- Successfully complete an EPA or state-accredited training program;
- Pass the exam required by the certifying authority; and
- Apply for and be certified by the state or EPA;

or

- Be certified as an industrial hygienist, engineer, architect, or related field;

or

- Have a high school diploma and at least three years' experience with lead, asbestos, environmental remediation work, or construction.

Clearance must be performed by the following:

- Certified risk assessor;
- Certified lead-based paint inspector; or
- Certified lead sampling technician (called a clearance technician in the HUD regulation).
- Sampling technicians are currently not authorized by EPA to perform clearance examinations after abatement, but HUD regulations permit them to perform clearance after interim controls or maintenance or renovation activities.

Required Qualifications for Lead Hazard Reduction Contractors:

Qualifications for Abatement Contractors

Abatement contractors consist of:

- Trained and EPA-certified abatement supervisor(s); and
- Workers who have successfully completed accredited lead abatement worker training.

Qualifications to Perform Interim Controls or Standard Treatments

To perform interim controls or standard treatments, a worker must be supervised by an EPA certified abatement supervisor or have successfully completed one of the following courses:

- An accredited lead-based paint abatement supervisor course;
- An accredited lead-based paint worker course;
- The lead-based paint course: "Work Smart, Work Wet, and Work Clean," prepared by the National Environmental Training Association for the EPA and HUD;
- The Remodeler's and Renovator's Lead-Based Paint Training Program prepared by HUD and the National Association of the Remodeling Industry (NARI); or
- A similar course recognized by HUD and EPA. (See HUD's website, www.hud.gov/offices/lead, for list of approved courses.)

Qualifications for Safe Work Practices
There are no specific qualifications for safe work practices, however, the following courses are useful general courses for all workers who want to work safely with lead.

- Remodeler's and Renovator's Lead-Based Paint Training Program developed by HUD and the National Association for the Remodeling Industry (NARI); and
- Lead-Based Paint Maintenance Training Program developed by HUD/EPA and the National Educational Training Association (NETA).
- The booklet, "Lead Paint Safety: A Field Guide for Painting, Home Maintenance, and Renovation Work," is an excellent illustrated guide. Available on www.hud.gov/offices/lead or from the National Lead Information Center at 1-800-424-LEAD or www.epa.gov/lead/pubs/nlic.htm.

Lead-Based Paint Definitions and Terms:

Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Permanent means an expected design life of at least 20 years.

Abatement includes:

- The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and
- All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Certified means licensed or certified to perform such activities as risk assessment, lead-based inspection, or abatement supervision by the State with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA).

Clearance Examination means 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 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 35.1320.

Containment means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Deteriorated Paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dust-Lead Hazard means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act or the standards in 35.1320.

Encapsulation means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designated and performed so as to be permanent.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designated to be permanent.

Evaluation means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Hazard Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

Interim Controls means a set of measures designated to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Lead-Based Paint Hazard means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.
Lead-Based Paint Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Paint Stabilization means 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.

Painted Surface to be Disturbed means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

Risk Assessment means:

- An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and
- The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Safe Work Practices means hazard reduction using approved methods of paint stabilization, occupant protection and specialized cleaning.

Standard Treatments means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Visual Assessment means looking for, as applicable:

- Deteriorated paint

- Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or
- The completion or failure of a hazard reduction measure.