

Veterans Benefits Administration
Department of Veterans Affairs
Washington, DC 20420

Circular 26-01-1
Change 3
January 29, 2003

REQUIREMENTS FOR NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED
HAZARDS IN VA-ACQUIRED PROPERTIES

1. **Purpose**: The purpose of this change is to extend the rescission date of the basic circular so that stations can continue to ensure that VA complies with Department of Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) final rules governing the notification, evaluation, and reduction of lead-based paint and/or lead-based paint hazards in federally owned residential housing.

2. Circular 26-01-1 is changed as follows:

Page 13, paragraph 18: Delete "January 1, 2003" and insert January 1, 2004".

3. **Rescission**: Change 2 to the basic circular is hereby rescinded.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

Distribution: CO: 2025
SS(26A1) FLD: VBAFS, 1 each (Reproduce and distribute based on RPC 2025)

Veterans Benefits Administration
Department of Veterans Affairs
Washington, DC 20420

Circular 26-01-1
Change 2
January 7, 2002

REQUIREMENTS FOR NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED
HAZARDS IN VA-ACQUIRED PROPERTIES

1. **Purpose:** The purpose of this change is to extend the rescission date of the basic circular so that stations continue to ensure that VA complies with Department of Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) final rules governing the notification, evaluation, and reduction of lead-based paint and/or lead-based paint hazards in federally owned housing.

2. Therefore, Circular 26-01-1 is changed as follows:

Page 13, paragraph 18: Delete “January 1, 2002” and insert “January 1, 2003”.

By Direction of the Acting Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

Distribution: CO: RPC 2025
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LOCAL REPRODUCTION AUTHORIZED

REQUIREMENTS FOR NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED
PAINT HAZARDS IN VA-ACQUIRED PROPERTIES

1. **PURPOSE.** To provide additional information regarding lead-based paint procedure requirements for target housing in areas of the country with an inadequate supply of contractors and to rescind the requirement that only non-owner occupants may purchase investor specials.

2. **BACKGROUND**

a. Our ultimate objective is to fully implement the new lead-based paint procedures in Circular 26-01-1. The Department of Housing and Urban Development (HUD) has acknowledged that there are many areas of the country that do not yet have adequate numbers of contractors who are qualified to perform paint stabilization or to conduct clearance examinations. Nor are there sufficient numbers of contractors who are currently willing or able to bid on our solicitations. Therefore, we must balance our efforts during the implementation phase of the new procedures with our primary mission of disposing of properties in the shortest time possible with the highest return on sale.

b. Based upon HUD's policy for properties sold without FHA mortgage insurance, the cash sale of VA-owned properties listed as "investor special" should not be limited to non-owner occupants. Effective immediately, your next sales listing must state that any property listed for sale as an "investor special" is available for purchase by owner-occupants and investors.

3. **CHANGE OF TEXT.** Effective immediately, Circular 26-01-1 is changed as follows:

Page 6, paragraph 7f,

Line 10 (5th bullet): Delete "Investors only...offers."

Lines 14 through 16: Delete "The cash sale of such 'investor special' properties...the property on the sales contract."

Page 10, paragraph 12:

After the subheading "**Localities without resources**" delete "." and insert "a."
(Paragraph 12 is being divided into two subparagraphs.)

Below subparagraph "a" insert subparagraph "b" as follows:

LOCAL REPRODUCTION AUTHORIZED

March 15, 2001

“b. During the implementation period of the new lead-based paint procedures you should make an effort to complete the procedures detailed in Circular 26-01-1 for each target property. However, there may be properties located in jurisdictions that are not yet listed in a transition waiver area by HUD for which you are still unable to locate lead-service providers willing to perform the new procedures. In these cases you should:

(1) Fully document your efforts to implement the new procedures in each file by listing qualified paint stabilization contractors to whom you send out the solicitation. If you do not receive an acceptable bid, document the file with VA Form 26-6701, Property Analysis and Recommendations. This form must be annotated in section I, item 5 with the statement “that due to the lack of lead-service providers to perform paint stabilization deteriorated paint surfaces will be treated using VA’s previous lead-based paint procedures.” In addition, the Chief of Property Management or higher authority must sign the form.

(2) Perform the VA deteriorated paint procedures that were in effect prior to Circular 26-01-1.

- We wish to emphasize that the objective is to fully comply with the new lead-based paint procedures outlined in Circular 26-01-1 as soon as practicable.
- Stations should not interpret the disposition instructions above as a waiver of the requirement to aggressively proceed to implement the new lead-based paint requirements. The new requirements must first be attempted on each target property. We expect these guidelines will assist in your efforts in establishing sufficient numbers of contractors and help with the implementation of the new requirements.
- Stations are requested to keep a list of the sold cases on which you were unable to implement the new procedures. You should record the case number, property address, and date sold. In the near future, this information will be requested by Central office.”

4. **RESCISSION**: This circular is rescinded January 1, 2002.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

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REQUIREMENTS FOR NOTIFICATION, EVALUATION AND REDUCTION OF LEAD-BASED PAINT HAZARDS IN VA-ACQUIRED PROPERTIES

1. **Purpose.** To implement Department of Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) final rules governing the notification, evaluation, and reduction of lead-based paint and/or lead-based paint hazards in federally owned residential housing.

2. **Background.** These final rules, dated September 15, 1999, implement sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.

3. **Title X Requirements.** In accordance with the final rule which identifies “target housing” as any housing constructed prior to 1978, VA will implement the following requirements to eliminate, as far as practicable, lead-based paint hazards prior to the sale of a residential property that is owned by VA:

a. **Properties Constructed prior to 1978**

- Visual assessment report of all painted surfaces
- Paint stabilization of all deteriorated paint
- Clearance examination report
- Notification/Disclosure

b. **Definitions.** Lead-based paint, lead-based paint hazard and other terms related to this subject are defined in the HUD regulations and provided as exhibit A.

4. **Impact.** Due to the new procedures and reports, there is currently little data available on estimated costs and timeliness factors. Loan Guaranty Service will provide training on the requirements of the rule. Additional training will be available through HUD and EPA that is explained in paragraph 12. Initially the new requirements may result in fewer than needed certified lead service providers being available for stations to perform the required activities. The long-term impact will not be as significant because stations will rely on management brokers to assist with lead-based paint activities.

5. **Implementation.** Implementation is a three-step process known as evaluation, reduction, and notification. The procedures explained in this circular supersede those found in Manual M26-5, paragraph 3.13a(5), and Service Director Memorandum dated July 6, 2000, is no longer applicable. Stations should begin implementing these new requirements upon receipt of this circular. Stations in redemption states must develop local procedures for implementing the lead-based paint requirements of the final rule in accordance with their local laws regarding redemption rights and vacancy.

a. HUD Guidelines. 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 effective and comprehensive document available to understand the procedures and technology involved in implementing these requirements is printed in “*HUD Guidelines For the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997 Revision).*” If a copy is not on station, this document can be downloaded from HUD’s website at www.hud.gov/lea/.

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

- Emergency actions required to immediately safeguard against imminent danger to human life, health or safety, 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 lead-based paint activities in target housing outlined in this circular must then be met.
- Performance of the evaluation and the lead-based paint 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, stations are to complete the required lead-based paint activities prior to any sale as soon as the weather permits.
- 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 should 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 lead-based paint. 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.

6. Evaluation. Lead hazard control efforts begin with an evaluation of the condition of all interior and exterior painted surfaces of a property. This evaluation is called a visual assessment, and will be performed on all target housing to determine if there is deteriorated paint. A visual assessment must be performed by someone who has been trained properly. The training only requires a few hours, and is explained below. Management brokers should perform the visual assessment during the preparation of VA Form 26-0595v, Property Inspection Report and Market Analysis (PIR). Stations should ensure that the construction date is properly identified, and that the visual assessment is an accurate report of all deteriorated paint surfaces.

a. Determining Year of Construction. In order to prevent unnecessary lead-based paint activities stations will ask that management brokers appropriately identify the year of construction, and that construction dates are derived from accurate sources. The primary method of obtaining the construction date should be management broker reports. Stations should establish local policies on acceptable sources of construction year data and should instruct management brokers on the

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requirement to use these sources. Exhibit B is a sample of a release letter to Management brokers, and has underlined space for stations to insert the wording they wish to use to advise their management brokers of the acceptable data sources.

b. Visual Assessment Report. The final rule requires that a visual assessment report of all exterior and interior painted surfaces be completed by a person who has completed a visual assessment training course. Management brokers will be the primary source for performing the visual assessment during the completion of the initial Property Inspection Report. In conjunction with the release of exhibit B, stations should immediately require management brokers to access HUD's internet site to complete the free, on-line, training course entitled "*HUD Visual Assessment Training Course*." The course will only take a few hours. At the end of the course, there is a short test on-line. Upon successfully completing the course and the test questions, the management broker can print a notice of completion. Stations should ask all management brokers to forward a copy of their notice of course completion as quickly as possible for insertion into their management broker file. In addition, stations should provide the following guidance to management brokers on the new lead-based paint reporting requirements on the PIR.

- Enter the date the home was built in section 8.
- Fully complete section 15 of the PIR.
- In Section 26: "Special Regional Office Requirements" enter the data source from where the construction date was obtained. Report results of the visual assessment of all painted surfaces, identifying the size and exact location of any deteriorated paint.
- Provide complete repair specifications and cost estimates for stabilizing deteriorated paint in section 18.

c. Option for Further Evaluation: Stations have the option to order a lead-based paint inspection (see below), on deteriorated paint surfaces to determine the presence of lead-based paint. When using this option, paint stabilization and clearance examinations are only required on those deteriorated surfaces that are reported to contain lead-based paint. Stations should always consider ordering a lead-based paint inspection on a case by case basis. For example, if the visual assessment report indicates deteriorated paint surfaces, and the construction year is after 1960, there may not be lead-based paint present. The lead-based paint inspection can only be performed by a qualified, EPA certified lead-based paint inspector.

- Lead-Based Paint Inspection. A lead-based paint inspection is a surface-to-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation. Lead-based paint inspections measure the concentration of lead in paint on a surface-by-surface investigation of all painted surfaces (interior and exterior) using portable x-ray fluorescence paint analyzers and/or laboratory analysis of paint samples to determine the presence of lead-based paint, and a written report is provided on the results. Inspection reports identify only the presence of lead-based paint, and they do not establish the location of lead-based paint hazards. While very technical in nature, the report should clearly identify whether lead is present.

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A sample of a lead-based paint inspection report for a single-family residence is found in “*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997 Revision)*” Chapter 7, pages 7-35 and 7-36. A list of addendums, that are included with the report, are located on page 7-v.

7. **Reduction.** In compliance with HUD’s final rule VA will reduce potential hazards by stabilizing all deteriorated paint in housing built prior to 1978 unless the property is exempt, or there is no lead-based paint present as reported in a lead-based paint inspection from a certified inspector. Deterioration limited to hairline cracks, small nicks, scratches or nail holes is not considered deteriorated paint.

a. **Paint Stabilization:** This method for treating deteriorated paint surfaces means to:

- Repair any defect in the substrate, or any defect in a building component, that is causing the 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, stuck windows causing abrasion, etc. A detailed summary of how to treat friction and impact surfaces is on page 11-25 of the *1997 Revised, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*.
- Remove all loose paint and other loose material from the surface to be treated and apply a new protective coating, or paint.

b. **Paint stabilization requirements.** The final rule specifies who can perform paint stabilization of deteriorated surfaces. The repair contractor must: either be supervised by a certified lead paint abatement supervisor, or successfully complete one of several courses approved by HUD. A list of contractors who are under the supervision of a certified lead paint abatement supervisor can be located from the state or EPA lead control office. Contractors who are also eligible to perform the work must be able to document that they have successfully completed a qualifying course. Examples of such courses follow:

- (1) An accredited abatement supervisor course;
- (2) An accredited lead-based paint worker course;
- (3) “The Lead-Based Paint Maintenance Training Program,” developed by the National Environmental Training Association for EPA and HUD;
- (4) “The Remodeler’s and Renovator’s Lead-Based Paint Training Program,” prepared by HUD and the National Association of the Remodeling Industry (NARI); and
- (5) Any course approved by HUD after consultation with EPA for this purpose.

Stations and management brokers should ensure that the contractors who are retained to perform paint stabilization provide evidence, as cited above, are qualified to perform this lead-

based paint activity.

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c. Safe work practices are required. Safe work practices are required for paint stabilization activities. Safe work practices for all lead-based paint activities are found in the *1997 Revised, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*. Chapters 8 through 15 discuss in detail the preparation for the project, hazard control, cleaning, and clearance.

d. Soliciting Bids for Paint Stabilization

(1) Stations should prepare paint stabilization specifications on VA Form 26-6724, *Invitation, Bid and/or Acceptance or Authorization* for all reported deteriorated paint surfaces and solicit a sufficient number of qualified contractors in accordance with M26-5 paragraph 4.06. The specifications should detail the location and repair work needed to prepare the deteriorated paint surfaces prior to the surface treatment, and also include comprehensive instructions on the contractor's responsibility to comply with the requirements for carrying out lead-related activities. Exhibit C provides a sample of the minimum protective language for pre-1978 deteriorated paint stabilization repairs. Stations are responsible for ensuring that these specifications are augmented in accordance with the lead-based paint requirements of the jurisdiction where a property is located.

(2) Select the certified contractor using a qualified bidder according to M26-5, paragraph 4.06.

- Since payment of the paint stabilization work is not due until the entire project has passed a clearance examination, stations should instruct the management brokers to ensure that the clearance examination is completed immediately after the completion of the paint stabilization work. It is recommended that the clearance contractor be obtained in advance so that the examination can be ordered at once.
- Once the work has obtained clearance, the management broker should also inspect to ensure that the repairs were completed properly.
- Contractor invoices must be expedited to VA for payment as soon as clearance has been obtained.

e. Clearance Examination Report. Clearance examination is an activity conducted following lead-based paint stabilization. Clearance activities include a visual evaluation of surfaces in the subject area and collection and analysis of dust and/or soil samples. It should be determined that the deteriorated paint surfaces have been eliminated and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling or unit. Clearance examinations must be done by a person who was not involved in performing the paint stabilization, and who is certified as a lead-based paint inspector, risk assessor, or a clearance technician. Uncertified, but trained clearance technicians can also perform clearances, as long as their clearance report is signed by a certified lead-based paint inspector or risk assessor.

- It is vital that the clearance examination contractor maintain communications with the management broker and the paint stabilization contractor to ensure the timely completion of the

project. For example, if the clearance contractor determines that paint stabilization has not been

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completed as planned, or that lead clearance levels have been exceeded, the management broker must be notified as soon as possible to ensure that the paint stabilization contractor completes the project according to project specifications and clearance requirements.

- Clearance can always be achieved. If clearance is not achieved at first, you should require the contractor to re-clean the spaces represented by the dust samples that failed and then take new samples.

Samples of clearance forms for a single-family dwelling are located in Chapter 15 of “*HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997 Revision)*.”

- f. Sale of Properties Listed as “Investor Specials”. Properties constructed prior to 1978 that contain deteriorated paint surfaces can be exempt from paint stabilization and clearance requirements if VA Form 26-6701, Property Analysis and Recommendations clearly documents that the property meets all of the following conditions:
- Severely damaged as to be uninhabitable.
 - The deteriorated paint surfaces will need to be opened or removed so that structural or utility systems repairs can be completed.
 - The major renovation costs cannot be recovered.
 - Cash offers only, no vendee financing.

The Chief of Property Management or higher authority must countersign the analysis. The sales listing offering these properties must specify that they are uninhabitable, severely damaged with deteriorated paint surfaces that will not be treated by VA and which will need to be opened or removed so that structural or utility systems repairs can be completed prior occupancy. Investor specials cannot be offered or sold with vendee financing. Stations will ensure that investor special purchasers sign and return VA Form 26-6705e, Notice of Possible Lead-Based Paint.

8. **Notification**. The final rule requires slight modification of the notification and disclosure requirements VA implemented in 1996. Stations will continue to use VA Form 26-6705e, Notice of Possible Lead-Based Paint, and provide notification and disclosure as follows:

- a. Outline of Notification Requirements. All purchasers whose offers have been selected for processing will be provided with full lead-based paint notification in accordance with subpart A of the final rule. The detailed procedures for notification and disclosure are as follows:
- Provide notice of the presence of known lead-based paint and/or lead-based paint hazards in the housing to purchasers, lessees and agents using VA Form 26-6705e.

- Provide purchasers and lessees with copies of all available known records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards. Although VA has no knowledge of lead-based paint, and has stabilized deteriorated paint, VA will provide a copy of the clearance examination report to purchasers.
- Provide purchasers and lessees with EPA Pamphlet 747-K-99-001, Protect Your Family From Lead in Your Home.
- 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 lead-based paint and/or lead-based paint hazards before they are obligated under any purchase contract.

b. Property Listings. All sales listings which include properties built before 1978, whether by newspaper, broadcast fax, Internet, hard copy or other medium must identify these properties and contain the following statement or comparable language approved by the station regional counsel:

A VA Form 26-6705, Offer to Purchase and Contract of Sale, submitted on a property built before 1978, is contingent upon a risk assessment or property inspection for the presence of lead-based paint and/or lead-based paint hazards. The purchaser may remove the contingency at any time without cause, or the duration of the contingency may be modified by agreement between the purchaser and VA; otherwise, the contingency lasts for 10 days after the date the offer is selected by VA. The ending date will be stated in VA Form 26-6705e, which will be sent to the purchaser or the purchaser's agent when the offer is selected. The purchaser is responsible for ordering, and will bear the expense of, any risk assessment or inspection obtained under this contingency.

c. Preparation of VA Form 26-6705e. Notification will be provided in VA Form 26-6705e, with a copy of the clearance report attached if paint stabilization was conducted. This form must be completed for all offers accepted for processing on target housing. Field stations will complete items 1 through 4, 5B, 10A and 10B of the form and will enter a date in item 5C(1), which is 11 days later than the date in item 1. (The additional day is intended to allow for time between release of the form by VA and receipt by the purchaser.) For seller's disclosure, VA will have one of two methods for filling out section 5B of the form.

(1) In sales of target housing that have had deteriorated paint repairs completed and a Clearance examination obtained:

- In Block **B2** VA personnel should insert their initials.
- In Block **B3** VA personnel should insert their initials, and attach a copy of the clearance report for all purchasers.

(2) In sales of target housing that have no deteriorated paint and no clearance examination obtained:

- In Blocks **B2 and B4** VA personnel should insert their initials.

d. Release of VA Form 26-6705e. This form, with all required attachments, together with EPA Pamphlet 747-K-99-001, should be forwarded to all purchasers on the selected offer along with the offer acknowledgment or acceptance letter for target housing. Stations that hold public bid openings or public bid announcements may furnish the notification form and any attachments to the purchaser(s), or the purchaser's agent, at the opening or announcement. Stations that mail notification forms after the final mail pick-up will show the next business day in item 1, Date Prepared. The purchaser, or the purchaser's agent, will be expected to return the completed notification form to VA to be received within 3 business days after the end of the 10-day opportunity period. In completing the form, the purchaser cannot date it before the end of the 10-day opportunity period unless the period is being waived. **EXCEPTION:** A purchaser may want to shorten the opportunity period, possibly because an inspection has been completed in less than 10 days. To do so, the purchaser must cross out the date in item 5C(1) and enter the earlier date chosen. VA Form 26-6705e can then be signed and dated as of the adjusted end of the opportunity period. VA will accept all such adjustments shortening the period.

(1) Offer Acknowledgment. Field stations should insure that term offer acknowledgment and cash offer acceptance letters advise prospective purchasers of target housing that their offer is contingent upon VA receiving the completed notification form in a timely manner. Field stations that use vendee loan packagers must advise purchasers that they should submit the notification form before paying the loan packaging fee and beginning the underwriting process; cash offerors must likewise be advised that they should submit the notification form before incurring any expense. However, purchasers who so choose may proceed before submitting the notification form, with the understanding that VA will not reimburse expenses incurred should they later choose to withdraw because of lead-paint issues or fail to submit the completed notification form.

(2) Absence of Notification Form. Brokers and purchasers must be advised that failure to submit a completed VA Form 26-6705e will result in the offer being rejected once the deadline for submission has passed. This notification form must be on file prior to closing the sale of a VA-owned property built prior to 1978 and no offer should be processed in its absence. Before rejecting an offer because of the absence of the form, reasonable efforts should be made to obtain it. The form may be missing due to an oversight, rather than any intention on the part of the purchaser to withdraw the offer. Reasonable efforts include contacting the broker and, if possible, the purchaser by telephone and/or fax. Faxed copies of VA Form 26-6705e may be accepted. If the purchaser requests extra time to complete a risk assessment and/or inspection, a reasonable extension of the 10-day opportunity period should be granted.

(3) 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 opportunity, he/she is still obligated to acknowledge receipt of the evaluation opportunity on VA Form 26-6705e, documenting the voluntary decision to waive the opportunity. Verbal waivers will not be accepted.

(4) Withdrawn Offers. When an offer is withdrawn because of lead-based paint issues, the withdrawal should be in writing; however, VA cannot compel a purchaser who has not executed VA Form 26-6705e to complete a written withdrawal. The absence of the form dictates that VA reject the offer, therefore, it has the same effect as a withdrawal. Accordingly, whether the offer is withdrawn during the 10-day opportunity period because of lead-based paint issues or rejected for lack of a completed notification form, any earnest money deposit will be returned to the purchaser. If an offer is withdrawn after acceptance by VA (which, for term offers, includes completion of underwriting and qualification of the purchaser for vendee loan financing) and completion of VA Form 26-6705e, the earnest money deposit will be retained as provided in M26-5, paragraph 3.13f. A purchaser who withdraws an offer after obtaining a lead hazard risk assessment and/or inspection will be asked to give VA a copy of the report; however, VA will not pay for this service. When VA receives a copy of such an evaluation report indicating the continuing existence of lead-based paint hazards, it will be necessary to reconcile any discrepancies with the lead-based paint service providers VA originally employed to obtain clearance again.

9. Sales To Tenant and Former Owners. In target housing that is occupied by tenants or former owners who have been approved for purchase, VA must comply with the requirements of Title X. However, paint stabilization and clearance should not be conducted while a property is occupied. All occupied properties under consideration for purchase should have a complete PIR completed by the management broker. If there is deteriorated paint in a target house, VA should notify all occupants approved for purchase by certified mail of our requirements under Title X. If the occupants wish to exercise their option to purchase, the property should be vacated in order to complete the deteriorated paint repairs and the clearance examination obtained. Stations have the discretion to assist with relocation. Those occupants previously approved for purchase should be notified when clearance has been obtained for first priority to purchase the property.

10. Condominiums. In target housing that has reported deteriorated paint surfaces which VA is prevented from repairing, and are the responsibility of the Homeowner's Association (HOA), VA should notify the HOA by certified mail of the needed repairs under Title X requirements. If the HOA does not complete the required repairs within a reasonable time, no less than thirty days, the station should list the property for sale with a notice disclosing deteriorated paint surfaces. The station is required to provide full disclosure to all purchasers. In addition to providing the pamphlet and VA Form 6705e, stations should also provide a copy of the certified letter previously sent to the HOA which identified deteriorated paint surfaces the HOA is responsible for repairing. VA should also obtain a specific hold-harmless acknowledgement letter signed by all purchasers on these cases to ensure that the purchasers have been sufficiently notified about all reported deteriorated paint surfaces.

11. **Lease Offers Homeless Providers**. For target housing on those leases to homeless providers VA is required to stabilize deteriorated paint and obtain clearance. If paint stabilization is required for a property currently under lease, the property should be vacated. However, in cases of leases to homeless shelter providers, stations should work closely with the homeless provider in coordinating these activities on a case by case basis. If such a property has to be vacated to complete the work, VA should notify the provider of the expected time the property will again be eligible for habitation under the homeless program.

a. **Processing Lease Offers**. In processing lease offers on target housing, field stations are not required to provide lessees with a 10-day opportunity to have the property evaluated, and VA Form 6705e is not required in connection with a lease agreement. However, VA must provide lessees with all related lead-based paint documentation required in connection with the lease of target housing. VA's actions must be documented in an addendum to the rental agreement signed by all parties. The addendum must contain the following statement:

"Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must provide notification of the presence of lead-based paint and/or lead-based paint hazards in the dwelling, along with copies of all related lead-based paint documents. Lessees must also receive a federally approved pamphlet on lead poisoning prevention."

b. **Acknowledgement**. VA must receive acknowledgement within 10 days by the lessees that all statements, records and reports, including a copy of EPA Pamphlet 747-K-99-001, listed in the addendum pursuant to subparagraph 13(a) above, have been received.

c. **Lessees' Responsibilities**. Lessees under VA's homeless program should be advised that they are responsible for providing their tenants with all notifications and lead-based paint reports required under Title X. In addition, since these lessees may be undertaking substantial property repairs involving painted surfaces, they must be provided with a copy of EPA Pamphlet 747-K-97-001, Reducing Lead Hazards When Remodeling Your Home.

12. **Localities without resources**

a. There may be some areas of the country with an inadequate supply of contractors, trained workers and certified testers. In response, HUD has developed a transition assistance policy to help those jurisdictions achieve full compliance with the new rule. For the purposes of this transition policy, if the chief elected official of the jurisdiction or a designated senior official of a city, county, or Indian tribe, submits a request for transition assistance to HUD by November 15, 2000, HUD will provide special training and technical assistance. A jurisdiction is a community development block grant entitlement community, or for non-entitlement areas, either the state or an Indian tribe. For these jurisdictions the requirements of the new rule will be delayed until March 15, 2001. Stations must first attempt to obtain lead service providers to implement the new requirements. If unsuccessful in obtaining lead service providers, the station should then determine if

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the property is located in a jurisdiction that qualifies for transition assistance. Contact HUD at 1-888-HUD-1012, or appropriate State or EPA Office of Lead Control. If so, the station may then perform the VA defective paint procedures and notification requirements that were in effect prior to the final rule. However, for a property that is sold in an area which qualifies for transition assistance the station must clearly document in the file that the jurisdiction qualifies for transition assistance, and what defective paint procedures were implemented. Stations are responsible for monitoring the continuing transition assistance status of all jurisdictions within their area of management. As soon as a jurisdiction is no longer eligible for transition assistance, stations are required to implement the new lead-based paint activities listed in this circular for properties located in their jurisdiction.

b. During the implementation period of the new lead-based paint procedures you should make an effort to complete the procedures detailed in Circular 26-01-1 for each target property. However, there may be properties located in jurisdictions that are not yet listed in a transition waiver area by HUD for which you are still unable to locate lead-service providers willing to perform the new procedures. In these cases you should:

(1) Fully document your efforts to implement the new procedures in each file by listing qualified paint stabilization contractors to whom you send out the solicitation. If you do not receive an acceptable bid, document the file with VA Form 26-6701, Property Analysis and Recommendations. This form must be annotated in section I, item 5 with the statement “that due to the lack of lead-service providers to perform paint stabilization deteriorated paint surfaces will be treated using VA’s previous lead-based paint procedures.” In addition, the Chief of Property Management or higher authority must sign the form.

(2) Perform the VA deteriorated paint procedures that were in effect prior to Circular 26-01-1.

- We wish to emphasize that the objective is to fully comply with the new lead-based paint procedures outlined in Circular 26-01-1 as soon as practicable.
- Stations should not interpret the disposition instructions above as a waiver of the requirement to aggressively proceed to implement the new lead-based paint requirements. The new requirements must first be attempted on each target property. We expect these guidelines will assist in your efforts in establishing sufficient numbers of contractors and help with the implementation of the new requirements.

Stations are requested to keep a list of the sold cases on which you were unable to implement the new procedures. You should record the case number, property address, and date sold. In the near future, this information will be requested by Central office. 13. **Training and Resources.**

a. **Training.** Due to the new requirements of the final rule, stations should conduct on-going lead-based paint activity training utilizing the guides and resources listed below for all property management employees and management brokers.

(1) **Regional Office Training.** Stations should conduct an initial training session for PM employees and management brokers, to review and understand VA’s policies on the requirements of the final rule.

Realty specialists, Property Management supervisors, and other PM staff personnel should complete the on-line HUD course in visual assessment. In addition, stations should conduct on-going, in-house training sessions of “*HUD Guidelines For The Evaluation and Control of Lead Based Paint Hazards in Housing (1997 Revision)*” which is available at www.gov/lea/, and EPA’s pamphlet 747-K-97-001 available at www.epa.gov/.

(2) HUD Training Courses. HUD's Office of Lead Hazard Control is sponsoring several on-going training programs throughout the country in cooperation with a variety of organizations both public and private. Most of this training is free. Sources to contact for this training are listed below in the resources section.

(3) Lead Sampling Technician. EPA and HUD are in the process of establishing a new discipline known as a Lead Sampling Technician. The purpose of the course is to make lead dust testing, and clearance examination more available and affordable. In the near future HUD will announce the dates and locations for the new EPA/HUD Sampling Technician curriculum. Stations can refer interested contractors to HUD’s web site www.hud.gov/lea/ for course listings and updates.

(4) Central Office Training. In conjunction with the release of this circular, VA Central Office will conduct a hotline discussion on the requirements of the final rule.

b. Resources. The following is a list of resources to assist stations to implement the new lead-based paint requirements of this circular:

- For technical information on lead-based paint activities you can call the HUD Office of Lead Hazard Control, at 202-755-1785, ext. 104, or e-mail HUD at lead_regulations@hud.gov.

- HUD's internet site www.hud.gov/lea/ and EPA's internet site www.epa.gov/lea/ provide a great deal of information on lead-based paint issues, including the full text of the final rule.
- A good source to find lead service providers is on the internet at www.leadlisting.com/. Stations should confirm with their State Office of Lead Control that a provider listed on this website is properly certified to perform in the area of jurisdiction in accordance with HUD/EPA regulations.
- National Lead Information Clearinghouse, at 1-800-424-LEAD (5323), will provide publications and answers to specific lead-related questions.
- *EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil* provides guidance, as well as, methods or protocols issued by states and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs can be obtained from EPA's internet site.
- A copy of 40 CFR 745.227, *Work Practice Standards for Conducting Lead-based Paint Activities: Target Housing and Child-Occupied Facilities*, can also be downloaded from EPA's internet site.
- EPA and State contacts are listed on HUD's website at www.hud.gov/lea/.

14. **Record Keeping.** Under Title X, sellers and agents are required to retain a copy of the completed VA Form 26-6705e (notification) and all other related lead-based paint documents for three years. To comply with this requirement, the notification form and attachments will be maintained in the Loan Guaranty folder and the agent's copy will be included in the closing package. These documents should be transferred with the new vendee file if the loan is sold.

15. **Reporting Requirements.** Central Office will be establishing DOOR WIDS to allow for automated reporting each fiscal year. Instructions will be released to the field in the near future.

16. **Release.** Field stations will prepare and release exhibit B to all management brokers advising them of the new HUD/EPA requirements. Copies of these releases need not be submitted to Central Office.

17. **Contact.** Inquiries concerning this circular or other lead-based paint issues should be made to George King (263) Central Office Property Management staff at (202) 273-7362 or by e-mail.

18. **Exhibits.**

- a. **Exhibit A.** Definitions of frequently used terms.
- b. **Exhibit B.** Sample of a release letter to management brokers.
- c. **Exhibit C.** Sample of minimum protective language for paint stabilization repairs.

January 16, 2001

Circular 26-01-1

18. **Rescission:**

This circular is rescinded January 1, 2004.

By Direction of the Under Secretary for Benefits

Keith Pedigo, Director
Loan Guaranty Service

Distribution: CO: RPC 2025
SS(26A1B) FLD: VBAFS, 1 each (Reproduce and distribute based on RPC 2025)

DEFINITIONS

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

Clearance Examination. 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, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples.

Deteriorated Paint. 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.

Dry Sanding. Sanding without moisture and includes both hand and machine sanding.

Dust-Lead Hazard. Surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA.

Enclosure. 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 designed to be permanent.

Friction Surface. An interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

HEPA Vacuum. A vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Impact Surface. An interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Lead-Based Paint. Paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-Based Paint Hazard. 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. A surface-to-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Lead-Contaminated Dust. Any surface dust in residential dwellings, or child occupied facilities that contains an area or mass concentration of lead at or in excess of levels identified by HUD.

Lead-Contaminated Soil. Bare soil on residential real property, and on the property of a child-occupied facility that contains lead at or in excess of levels identified by HUD.

Paint Stabilization. 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.

Paint Testing. The process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated surfaces or painted surfaces to be disturbed or replaced.

Residential Property. A dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land, not including paint on the pavement of parking lots, garages, or roadways.

Safe Work Practices. Contractors performing paint stabilization must be properly trained in safe work practices. The minimum requirements are: (1) Prohibited methods of paint removal shall not be used, (2) Proper worker protection, (3) Worksite preparation to prevent the release of any leaded debris or dust, (4) Warning Signs are properly posted, (5) Specialized cleaning after paint stabilization.

Substrate. The material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Target Housing. Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

Visual Assessment. Looking for, as applicable: (1) Deteriorated paint; (2) Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or (3) The completion or failure of a hazard reduction measure.

January 16, 2001

TO: All Participating Management Brokers

FROM: Loan Guaranty Officer (26)

SUBJ: Revised management broker responsibilities under HUD's final rule on the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) in the Sale of Department of Veterans Affairs (VA) Owned Properties in accordance with HUD's Final Rule

BACKGROUND

a. The Department of Housing and Urban Development (HUD) has issued final regulations mandated by Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X). The final rule provides the regulations on the evaluation, reduction, and notification of any known lead-based paint or lead-based paint hazards in target housing (residential housing constructed prior to 1978).

b. The final rule now applies to all VA-owned target housing, and will change the inspection and reporting requirements of VA management brokers.

WHAT THE REGULATIONS REQUIRE

a. Under these regulations, The Title X final rule identifies "target housing" as housing constructed prior to 1978, and requires the following activities to eliminate, as far as practicable, lead-based paint hazards prior to the sale of a residential property that is owned by VA.

Properties Constructed prior to 1978:

- A Visual assessment of all painted surfaces
- Paint stabilization of all deteriorated paint
- Clearance examination
- Notification/Disclosure

b. Effective Date. Effective upon receipt of this letter, management brokers will assist VA in the implementation of the above requirements in the course of their regular duties on all target housing, which is any VA-acquired property constructed prior to 1978.

RESPONSIBILITIES OF THE MANAGEMENT BROKER

a. Management broker responsibilities are revised to ensure that all target housing is appropriately identified, and that construction dates are derived from accurate sources. The (regional office) has determined that the source you should use to obtain construction date information on subject properties is:

January 16, 2001

Circular 26-01-1
Exhibit B

- Perform a visual assessment report on all interior and exterior paint surfaces to accurately identify any deteriorated paint. Please immediately complete the free, HUD training course to learn the procedures for conducting and reporting the visual assessment. The course is free and is located on HUD's internet site www.hud.gov/lea/. The course is entitled *HUD Visual Assessment Training Course*. Once you have completed the course, you can print out the notice of completion. Please forward a copy of the notice of completion to the regional office as soon as possible.
- If paint stabilization is to be performed, order a clearance examination from a qualified clearance examiner. In order to facilitate the timely completion of the work, you should coordinate the clearance examiner and the repair contractor's work. Please expedite the submission of invoices the same day they are approved for payment.

b. The following information provides guidance on the new way in which you complete VA Form 26-0595v, Property Inspection Report and Market Analysis (PIR):

- Enter the date the home was built in Section 8 "Property Description."
- Enter detailed data in Section 15 "Environmental Hazards."
- Enter the data source from where the construction date was obtained in Section 26. Provide the visual assessment report results on all painted surfaces.
- Enter detailed paint stabilization repair specifications and estimated costs in the repair section of the property inspection report.

A copy of circular **26-01-1** is attached for your reference. For further information, management brokers should contact their VA regional office of jurisdiction.

Sample of Minimum Protective Language for Paint Stabilization Repairs

The contractor shall assume full responsibility and liability for compliance with all applicable Federal, State, Tribal, and local laws, codes, ordinances regulations, and standards governing all lead-based paint activities. This includes safe work practices, hauling, disposing, protection of workers, visitors to the site, and persons occupying areas adjacent to the site. The contractor is responsible for obtaining all required permits, licenses, inspections, releases, and to provide all utilities needed to complete the work including water and electricity.

Payment is not due until the full paint stabilization project has passed a clearance examination.

Any physical defect in the substrate of a painted surface, or building component that is causing deterioration of the surface shall be repaired in accordance with the enclosed specifications before treating the surface or component. Possible defective substrate conditions include: dry rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened. Before applying a new protective coating or paint, all loose paint and other loose material shall be removed. Paint stabilization must be performed utilizing safe work practices. **The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface is prohibited.** The following methods shall not be used to remove paint that is, or may be, lead-based paint:

- (a) Open flame burning or torching.
- (b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.
- (c) Abrasive blasting or sandblasting without HEPA local exhaust control.
- (d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.
- (e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m) of electrical outlets; or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space; or totaling not more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.
- (f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with the regulation of the Consumer Product Safety Commission 16 CFR 1500.3, and/or a hazardous chemical in

18. accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.