

COMMUNITY AFFAIRS

DIVISION OF COMMUNITY RESOURCES

Lead Hazard Control Assistance Fund

Proposed New Rule: N.J.A.C. 5:48

Proposed: June 7, 2004 at 36 N.J.R. 6(l).

Adopted: October 18, 2004 by Susan Bass Levin, Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-437.6

Effective Date: October 18, 2004.

Expiration Date: October 18, 2009

SUSAN BASS LEVIN, Commissioner

Summary of public comments and agency responses: **Comments were received** from Anne Phelps, Staff Attorney, Alliance for Healthy Homes and Jeanne Gorman, PhD, Executive Director of the New Jersey Apartment Association.

Jobs Impact

1. **COMMENT:** DCA correctly states that the new rules may stimulate employment in the lead hazard abatement industry. The new rules would also affect the lead hazard assessment industry.

RESPONSE: Language has been added to include the lead hazard assessment industry

Smart Growth Impact

2. **COMMENT:** DCA states that the proposed regulations would have no impact upon the achievement of smart growth. The commenter respectfully suggests that the proposed regulations could positively impact smart growth if carefully implemented. Equitable enforcement and compliance assistance for lead safety will result in improved maintenance and greater durability in affected properties. Because affected properties are typically older and disproportionately located in places settled many decades ago, this can serve to maintain existing population densities along major transportation corridors, thus preventing sprawl and reducing the need for new residential infrastructure in undeveloped locales.

RESPONSE: The Department agrees with the commenter and has amended the proposed rule to reflect the positive impact lead hazard control will have upon smart growth.

Subchapter I – General Provisions

5:48-1.1 Purpose.

3. **COMMENT:** The commenter supports the emphasis on rental housing and urges the Department to stress this emphases in the Funding Priorities section where presently there is no priority expressed for rental housing.

RESPONSE: See response to Comment #13 and #25

C. 5:48-1.2 Definitions

4. **COMMENT:** Abatement Project. The definition should include “performed by a certified contractor.”

RESPONSE: This definition serves to describe how the fund classifies projects into one of two types, either an abatement project or an interim control project. Project typing is necessary to determine which additional eligibility criteria shall apply to the project (see N.J.A.C. 5:48-2.7 or 5:48-2.8). No changes shall be made to the rule, as adding information identifying who must perform the work does not serve to clarify how DCA shall classify projects. The rule does require that abatement work be performed by a certified contractor when defining eligible project activities and costs at 5:48-2.9(a)5.

5. **COMMENT:** Interim controls. The definition should specifically require lead safe work practices.

RESPONSE: The definition in the proposed rule was taken directly from the Lead Hazard Control Assistance Act PL2003 c.311 and cannot be changed by these rules. However, specifying how interim control work must be performed in order to be considered an eligible activity under the LHCA Fund has been added at N.J.A.C. 5:48-2.9(a)(4).

6. **COMMENT:** Lead Evaluation. The definition should state that the requisite evaluation is actually a combination lead-based paint inspection and risk assessment in accordance with 40 C.F.R. 745, as the draft rules explain in 5:48-2.9(p.24).

RESPONSE: The definition in the proposed rule was taken from N.J.A.C. 5:17 Lead Hazard Evaluation and Abatement Code and shall not be changed. A portion of the LHCA Fund will provide assistance to property owners to control lead-based paint hazards and a portion shall provide assistance to relocate occupants due to immediate risk of continuing exposure to lead hazards as proposed at 5:48-2.14. The LHCA Fund will accept a variety of types of lead evaluations to determine eligibility; but a combined inspection/risk assessment shall be used when funds are approved to control lead-based paint hazards.

7. **COMMENT:** Lead Safe Housing. The definition references “housing that is lead-free” but the definitions section does not include a definition of “lead-free.” Also, “lead-safe housing” should include housing that has been checked and found to be free of hazards.

RESPONSE: A definition for Lead-free has been added to the proposed rule. The definition used was taken from the proposed rule changes to N.J.A.C. 5:17 Lead Hazard Evaluation and Abatement Code.

The definition of lead-safe housing was taken directly from the Lead Hazard Control Assistance Act PL2003 c.311 and cannot be amended by these rules. Housing which has been evaluated and found to be free from lead-based paint hazards by an inspector/risk assessor shall be included on the Lead Safe Housing Registry as “lead hazard controlled.” Multi-family housing which is in compliance with the lead-safe maintenance requirements for multiple dwellings N.J.A.C. 5:10-6.6 may also be included on the registry as lead hazard controlled.

8. **COMMENT:** Low-income household. The draft rules reference U.S. Department of Housing and Urban Development provisions in the “Low-income household” definition, but then depart from the corresponding HUD definition provisions, which is confusing and potentially misleading. The draft definition of low income is equivalent to HUD’s statutory provisions related to Public Housing and Rental Assistance programs’ income limits for “very low-income” families, rather than the HUD provision for “low-income” families. Under HUD provisions, “low-income” is defined as 80 percent of the median family income for the area. The Commenter urges DCA to either adopt HUD’s definition of “low-income,” expanding eligibility to households with

51-80% of median income, or re-title the income level at 50% of median “very low income.”

RESPONSE: The Department acknowledges that the proposed definition does not conform to the U.S. Department of Housing and Urban Development’s definition; rather it was taken from N.J.A.C. 5:43. No change will be made as the definition conforms to other comparable State programs within the Department.

9. **COMMENT:** Median income. This type of definition is usually called “Area Median Income.”

RESPONSE: A cross reference has been added to the rule.

10. **COMMENT:** Missing definitions: Lead-free housing and Risk assessment

RESPONSE: A definition for Lead-free housing has been added to the proposed rule.

The term risk assessment is used only once in the proposed rule at 5:48-2.9(a)1 in the description of which type of lead hazard evaluation is eligible under the LHCA Fund. The description refers to a combined lead-based paint inspection/risk assessment in accordance with 40 CFR 745 Lead-Based Paint Poisoning Prevention in Certain

Residential Structures. Detailed descriptions of both an inspection and risk assessment can be found in the EPA regulation.

Subchapter II – Lead Hazard Control Assistance Fund

5:48-2.1 Purpose and program objectives.

11. **COMMENT:** Subsection (b)(6) states that the LHCA Fund shall also be used to “provide educational opportunities.” The Commenter urges the state to instead emphasize the importance of training by replacing this provision with “provide training to build technical capacity in lead-safe work practices, dust testing and the certified lead services disciplines.”

RESPONSE: The proposed rule has been changed to clarify that the provisions of training opportunities which build technical capacity in creating lead-safe housing is an eligible use of funds.

5:48-2.2 Allocation of Funds.

12. **COMMENT:** DCA states that the Administrator shall determine the amount of funds that shall be allocated for “education/outreach/training.” As these activities do not offer the same potential to achieve lead-safe housing, the Commenter objects to

categorizing them together for funding purposes. Education and outreach typically encompass activities aimed at raising awareness or changing parents' day-to-day behavior, neither of which directly contributes to lead-safe housing. In contrast, providing training in LSWP, dust sampling, and the certified disciplines builds technical capacity that is essential to expanding the supply of lead-safe housing. The Commenter questions the rationale for using LCHA for education and outreach, but strongly supports using the funds for training.

RESPONSE: With regard to rationale for using LHCA funds for education and outreach, the Department refers the commenter to the Lead Hazard Control Assistance Act which states that one of the three ways in which moneys in the fund shall be used is for public education for the prevention of lead poisoning. The Department acknowledges its obligation under the Act to develop training courses for persons engaged in lead-safe maintenance or lead hazard control work and increasing skill sets in the general public which directly reduce lead-based paint hazards.

5:48-2.3 Forms of financial assistance.

13. **COMMENT:** The Commenter expresses concerns with what they perceive as the draft regulations' emphasis on low-income owner-occupied buildings. Although the law does limit forgivable loans to owners of multiple dwellings of four units or less, it does not include an income or occupancy restriction. The Commenter does not see the reasoning behind a requirement for owner-occupancy. With a dedicated funding source

expected to bring in \$7 million per year for hazard control loans and grants, it would seem that a significant proportion of the loans could be forgivable without jeopardizing the availability of funding for future applicants. Currently, the draft regulations extend a preference to non-rental properties, while national data show that rental units are more likely to have lead-based paint hazards.

A second commenter states: In the proposal, financial assistance is sometimes limited to “owner-occupants.” In the statute that created the fund there is no requirement that an owner occupy the property. Children’s exposure to lead should be the determining factor. The statute clearly directs that priority may be given to housing with children under the age of six. Children often live in properties where the owner is not an occupant yet the proposed regulations would not allow the owner of their building to receive a deferred payment loan with provisions for forgiveness. The Commenter believes that the proposed requirement that one needs to be an “owner occupant” to receive this funding is not supported by the statute.

RESPONSE: The Department agrees that specific language is not found in the Lead Hazard Control Assistance Act which limits grants (meaning loans with provisions for forgiveness) through the use of occupancy or income restrictions. However, the Act does contain the requirement that financial assistance in the form of a loan may be provided to an eligible owner of multifamily housing, a single-family home or a two-family home based on the owner's ability to repay the loan as determined by the Department. The Department has interpreted this to mean that it should limit grants to

owners who cannot repay a loan. The Department believes that most property owners will have the ability to repay a loan provided the rates and terms are favorable. For this reason, the Department defers payments, charges a very low interest rate, considers loans up to 125% of property value and specifically offers a 20-year loan term for properties containing one to four housing units regardless of the type of occupancy. Given these favorable lending conditions, the Department has no data to suggest that responsible investor owners will be unable to qualify. The Department does however recognize the particular vulnerability of owner-occupants with very-low incomes through its significant history of administration of publicly funded housing programs. The Department does not view the program design as having an emphasis on owner-occupied housing but rather as a way to include this population in a program for which they would otherwise not qualify.

5:48-2.4 Limitations on financial assistance.

14. **COMMENT:** The Commenter states that they recognize that the \$150,000 maximum figure is included in the law, but believe that a \$25,000 maximum would serve almost all situations. The \$150,000 maximum amount per unit is much higher than needed and might encourage abuse or excessive spending, such as using state LHCA funds to perform renovations that are not critical to lead safety. In fact, applicants should be encouraged to avoid full abatement unless absolutely urgent. Furthermore, with this high maximum amount, a few expensive jobs could deplete the fund relatively quickly – while hundreds or thousands of other units with serious lead hazards go unattended.

RESPONSE: The Department agrees with the commenter in that it is difficult to conceive of a situation where lead hazard control work and rehabilitation critical to lead safety (which we refer to in the proposed rule as concurrent rehabilitation) would approach the \$150,000 maximum per housing unit included in the law. The Department believes that it has clearly described in the proposed rule what the LHCA Fund considers eligible work. Scopes of work and independent cost estimates will be prepared by inspector/risk assessors or project designers and reviewed by the Department to ensure all proposed activities meet the stated eligibility criteria. This method allows for flexibility in project funding yet still insures containment of costs as opposed to a method which imposes caps based upon statistical probabilities.

The LHCA Fund program design does not encourage full abatement. Participants choose whether they will treat the lead hazards in their housing through interim controls or abatement. If the applicant does choose abatement, the LHCA Fund lead-based paint abatement criteria found at 5:48-2.9(b) apply. These criteria do not require full abatement; however, after treating all lead hazards, the owner may elect to treat any remaining lead-based paint in their property provided funding remains and they are otherwise qualified for the additional funds. The option to treat lead-based painted surfaces or components which are not identified as hazards is not available to grant recipients.

15. **COMMENT:** Additionally, subsection (b) is confusing: “[t]he minimum amount of financial assistance shall be an average of \$5,000 per dwelling unit.” Presumably, “average” only applies to multiple dwelling units. The Alliance does not see the necessity for a minimum amount, but if one is required, \$5,000 seems too high. For example, an owner who only needs to replace windows, or stabilize some paint and patch a leak, may need only \$3,000 per unit. The national average cost of lead hazard control, according to the President’s Task Force on Environmental Health Risks and Safety Risks to Children, is \$2500.

RESPONSE: The proposed rule has been changed to clarify the requirement of a \$5,000 minimum in single-family housing and an average of \$5,000 per housing unit for two-family or multi-family dwellings.

The \$5,000 minimum includes costs associated with applying for assistance and loan processing such as credit reports, appraisals, title insurance and other title services and escrow services as well as a combined inspection/risk assessment and clearance testing. These costs are estimated at approximately \$2,000 per housing unit; therefore, the \$5,000 minimum is in line with the commenter’s suggested minimum.

5:48-2.6 Basic eligibility criteria.

16. **COMMENT:** The commenter states that at paragraph c) in two places the phrase “the written evidence shall establish whether the building was constructed prior to

19###” is used. To remove all ambiguity, the word “whether” should be replaced with “that.”

RESPONSE: The word “whether” has been replaced with the word “that.”

17. **COMMENT:** The commenter states that at paragraph (i) allowing a single owner to receive up to 20% of the funds available for the year seems excessive, creates an opening for abuse, and seems to encourage running through funds quickly. A more appropriate figure would be one to two percent.

RESPONSE: The proposed rule states that no single applicant shall be eligible for funds in excess of 20% of the applicable allocation for lead hazard control work for the year. In developing a budget for the LHCA Fund, the Department has set aside funds for loans, grants, public education, administration, lead inspection/risk assessment, clearance testing and other project related costs each with its own budget line item. Therefore, the applicable allocation mentioned in the proposed rules relates to a specific budgetary line item and not the entire amount of funds made available to the overall LHCA Fund. Based upon our estimated initial proposed budget, the maximum loan to a property owner would be \$700,000. The one or two percent suggested would provide a cap of \$35,000-\$70,000 per applicant which is not viable.

18. **COMMENT:** The commenter states that in paragraph (m), the nondiscrimination clause should include two items on the list of characteristics for which discrimination is

prohibited: source of income (to prevent discrimination against people receiving TANF or Social Security/SSI, etc.) and source of rental payment (to prevent discrimination against people using rental subsidy programs like housing choice vouchers).

RESPONSE: The paragraph was changed to include language which prohibits discrimination against tenants due to source of income and source of rental payment.

5:48-2.8 Additional eligibility criteria – interim control projects.

19. **COMMENT:** The commenter makes reference to paragraph 5:48-2.8(a).1 which states that “Interim control projects shall not use abatement methods in the treatment of lead-based paint hazards.” The commenter believes this type of artificial separation does nothing to further lead safety and the prevention of lead poisoning. The full spectrum of lead hazard controls should be encouraged and subsidized; conditions in many units may call for a mix of strategies.

RESPONSE: The proposed rule reflects the State Uniform Construction Code (U.C.C.) which regulates lead abatement but not interim controls. The U.C.C. requires that only licensed lead abatement firms who employ certified lead supervisors and lead workers can perform lead abatement with few exceptions. The LHCA Fund does employ a mixture of abatement and interim controls in abatement projects, see 5:48-2.9(b). To insure compliance with State codes, interim control projects are limited to treatments that are not subject to the U.C.C.

5:48-2.9 Eligible project activities.

20. **COMMENT:** The commenter believes the definition of lead evaluation should be changed to clarify the type of lead evaluation which is required by the Lead Hazard Control Assistance Fund, a combined lead inspection/risk assessment.

RESPONSE: The definition in the proposed rule was taken from N.J.A.C. 5:17 Lead Hazard Evaluation and Abatement Code and shall not be changed. A portion of the LHCA Fund will provide assistance to property owners to control lead-based paint hazards and a portion shall provide assistance to relocate occupants due to immediate risk of continuing exposure to lead hazards. The LHCA Fund will accept a variety of types of lead evaluations to determine eligibility; but a combined inspection/risk assessment shall be used when funds are approved to control lead-based paint hazards.

21. **COMMENT:** The commenter states at 5:48-2.9(a).7 that the proposed rules do not provide any mechanism that ensures the non-displacement of tenants such as a specific requirement to notify tenants about this prohibition and how they can exercise their right to it. Moreover, the rules do not attempt to ensure long-term affordability of units benefiting from the LHCA funds. HUD's lead hazard control grants program tries to preserve long-term affordability by requiring grantees to ensure continued availability of units to low-income families by keeping track of the units and ensuring that they are

affirmatively marketed to low-income families with children under six. DCA should consider these kinds of provisions.

RESPONSE: Language has been added to clarify that written notification to tenants of non-displacement protections will be required and that the non-displacement provisions shall be enforced through contract documents.

The statute does not require long-term affordability as a condition for LHCA funding. In fact, the fund when provided in the form of a repayable, deferred payment loan is available to any owner of a New Jersey residential dwelling regardless of the owner's or source or amount of income. The proposed program design does seek to insure a low-income benefit when LHCA funds are provided as a deferred payment loan with forgiveness by requiring a low-income owner-occupant to remain in residence as a condition for forgiveness.

22. **COMMENT:** The commenter believes at 5:48-2.9(a)(9)(i) that "is maintained in intact condition" is more descriptive than "is not deteriorating." The commenter also contends that at 5:48-2.9(a)(9)(iv), owners ensure "that dust levels have not risen above applicable standards" would seem to create a vague requirement for ongoing dust testing. Instead, the commenter believes maintenance plans should require property owners to guard against the generation or accumulation of lead dust hazards by checking for peeling paint or other hazards, correcting problems, using lead-safe work practices, and conducting annual visual assessments. If subsequent dust testing is viewed as critical,

such as in pre-1950 rental units, passing a single subsequent dust test at 12 or 24 months post-work would provide a finite and protective safeguard.

RESPONSE: The Department has provided general guidance for the contents of a maintenance plan that is acceptable for the purposes of LHCA Fund rule making. Specific requirements for maintenance plans for multi-family dwellings are proposed at N.J.A.C. 5:10-6.6(d). Individualized requirements for one and two-family dwellings will be designed by the inspector/risk assessor.

23. **COMMENT:** The commenter believes at 5:48-2.9(b).7, the words “Lead-based paint reduction” should be replaced with “lead-based paint hazard control.”

RESPONSE: The language in criteria 7 will not be changed. The activities are lead-based paint reduction activities, as all lead-based paint hazards should have been addressed in previous criteria 1-6.

24. **COMMENT:** The commenter believes that at 5:48-2.9(d)2 the language “temporary barriers” is too vague and would allow nonsensical responses, such as covering chewable surfaces with duct tape or contact paper instead of more appropriate coverings.

RESPONSE: An inspector/risk assessor or project designer in consultation with the property owner will prepare scopes of work for lead hazard control work. The

presumption is good construction practices will be utilized in the design of the scope of work. The LHCA Fund wishes to remain flexible on the types of temporary barriers that can be used; however, language was added to the proposed rule to insure they will be of a sufficient durability to prevent abrasion of the painted surface.

5:48-2.10 Funding priorities.

25. **COMMENT:** The Commenter supports setting priorities for funding. However, they have some concerns with how the draft regulations implement priorities.

- In terms of housing age, the Alliance recommends changing the priority to the following:
 - (a) Pre-1950 properties with children under six
 - (b) 1950-1978 properties with children under six
 - (c) Other pre-1950 properties (i.e. those without children under six)
 - (d) 1950-1978 properties without children under six

- Because the law specifically states there should be an emphasis on rental housing the Alliance urges that rental properties be given first priority in each of the categories above.

- As a technical drafting point, the rules as proposed exclude buildings constructed during 1950 entirely.

A second commenter states statistically, pre-1950 homes have more lead-based paint than post-1950 homes so when testing is not required, a priority for funding should be given to controlling hazards in pre-1950 homes as they are more likely to contain lead. However, since DCA will require lead evaluations for all applicants the use of statistics is no longer relevant. Priority should be given to the homes that are found to have the most serious lead hazards regardless of their date of construction.

RESPONSE: The Act acknowledges the particular vulnerability of children living in rental housing because tenants do not have the requisite control of the property to treat lead-based paint hazards. The Act seeks to address this vulnerable population in a significant way by empowering the Department and units of local government to include requirements for the control of lead-based paint hazards in housing in their property maintenance codes. The Department has published proposed rules intended to carry out this mandate for the maintenance of hotels and multiple dwellings, shelters for the homeless, rooming and boarding homes and the state housing code. It is anticipated that the majority of applications for assistance from the LHCA Fund will be from rental property owners desiring funds to help them meet these new requirements; therefore, funding priorities were designed to prioritize child-occupied housing, particularly child-occupied, older housing.

Language was corrected in the rule to allow for the inclusion of housing constructed in 1950.

5:48-2.11 Non-displacement controls.

26. **COMMENT:** The commenter states that “protections” is a more apt word than “controls.”

RESPONSE: Language in the proposed rule has been changed from “controls” to “protections.”

5:48-2.12 Lead Safe Housing Registry.

27. **COMMENT:** The commenter supports the concept of a housing registry. However, subsection (b) should include documentation concerning LHCA projects, such as the lead-safe status of the housing following the completion of the lead hazard control work. Additionally, the registry should differentiate between lead-safe units that are in compliance with ongoing maintenance plans and those that are not.

RESPONSE: A new paragraph (c) has been added to the proposed rule which identifies the classifications that shall be used for housing on the Registry. They are: lead-free, lead-abated, lead-hazard controlled and lead-free interior. The classifications and their definitions are taken from the Act. The projects assisted with LHCA Fund shall be categorized either as lead-hazard controlled or lead-abated, depending upon the treatment method selected by the property owner.

The Department is currently developing a management system to insure the Registry is routinely updated to reflect the status of compliance with ongoing maintenance plans.

5:48-2.15 Lead education/outreach and training.

28. **COMMENT:** As mentioned above under Allocation of Funds, the Alliance objects to categorizing these three activities together. Education and outreach typically encompass a range of activities aimed at raising awareness or changing parents' day-to-day behavior, neither of which directly contribute to lead-safe housing. In contrast, providing training in lead-safe work practices, dust sampling, and the certified disciplines builds technical capacity that is essential to expanding the supply of lead-safe housing. The Alliance questions the justifications of using LCHA for education and outreach, but strongly supports using the funds for training.

RESPONSE: See our response to Comment #12.

Subchapter III – Emergency Lead Poisoning Relocation Fund

5:48-3.3 Basic eligibility criteria.

29. **COMMENT:** The commenter believes that 5:48-3.3(a) basic eligibility criteria for ELPR funds appear inconsistent with the law. The law states that “whenever a child

who has tested positive for lead poisoning is removed from his dwelling unit in connection with an order to abate a lead-based paint hazard from a local or State health official, **or** upon the order of the Commissioner of Community Affairs, payments from the fund created pursuant to this section shall be authorized for the purpose of providing emergency relocation assistance to that child and the child's family.” [emphasis added](52:27D-437.9). Following this construction, the first requirement is that a child test positive for lead poisoning. Once an elevated blood level has been established (see below) there are two distinct ways that occupants can be removed from the dwelling and qualify for the funds: (1) in connection with an order to abate a lead-based paint hazard, issued by a local or State health official **or** (2) upon the order of the Commissioner of Community Affairs. Instead of adhering to the construction in the law, the draft rules use the conjunction “and” between subsection (a)(2) and (a)(3); thus the draft rules require both types of orders, instead of just one. Additionally, the descriptions of the types of orders are somewhat confusing. The Alliance urges DCA to rewrite the eligibility section to clearly and accurately reflect the law's intention and directive.

RESPONSE: The intention of the statute is to provide assistance to a lead poisoned child and his or her family to relocate. The statute does not extend this assistance to all lead poisoned children, but rather limits it to those who are removed in connection with an order issued by the health official to abate a lead-based paint hazard. As an alternative, the statute authorizes the Commissioner to issue “the order” and authorize payment from the fund.

The Department believes that it is the intention of the statute to base eligibility for ELPR funding on a specific adverse health condition. Further, the Department believes that the Department of Health and Senior Services is qualified and tasked with the identification of adverse health conditions related to lead ingestion; therefore, the Department of Health and Senior Services should provide the requisite documentation to qualify an applicant for ELPR funding.

30. **COMMENT:** 5:48-3.3(a)1 New Jersey Administrative Code has an existing provision allowing the local board of health to conduct an environmental intervention if a child has a persistent blood lead level of 15 ug/dL or greater. If lead hazards are identified, the local board of health must issue an order to abate. This EBL standard, rather than the draft rules' requirement of 20 ug/dL or greater, should be the qualifying criteria."

RESPONSE: The proposed rule has been amended to include persistent blood lead level of 15 ug/dL to 19 ug/dL.

31. **COMMENT:** The regulations reference the HUD Guidelines. The commenter recommends that DCA discuss the wisdom of this approach with the NJ Department of Health staff that has overseen lead hazard control work funded by HUD under Title X. Incorporating the practical lessons learned from the lead hazard control work done via these federal grants and areas in which these Guidelines are not productive will allow the Department to spend the state grant funds in the most effective manner.

RESPONSE: The HUD Guidelines are referenced 6 times in the proposed rule. The Guidelines were used as the source of a protocol for cleaning following lead hazard control work and serve as a resource for further information on the performance of paint stabilization. The Department finds these uses of the HUD Guidelines acceptable.

Full text of the adopted new rule follows (additions indicated in boldface with asterisks **thus**; deletions indicated in brackets with asterisks *[thus]*).

Summary

The proposed new rules would implement the provisions of the “Lead Hazard Control Assistance Act,” P.L. 2003, c.311 (N.J.S.A. 52:27D-437.1 et seq.) under which the Department of Community Affairs is authorized to provide deferred payment loans with forgiveness and deferred payment loans without forgiveness for lead hazard control work and relocation of families with young children who are at risk of exposure to lead hazards.

The chapter includes three subchapters.

Subchapter 1, General Provisions, includes the scope of the rules and definitions of words and terms used throughout.

Subchapter 2, Lead Hazard Control Assistance Fund, contains sections on the Fund's purpose and the program objectives; allocation of funds; forms of financial assistance; limitations on financial assistance; release of funds; basic eligibility criteria;

additional eligibility criteria – abatement projects; additional eligibility criteria - interim control projects; eligible project activities/costs; funding priorities; non-displacement controls; Lead Safe Housing Registry; public inspection of the Lead Safe Housing Registry; relocation due to immediate risk; and lead education/outreach and training.

Subchapter 3, Emergency Lead Poisoning Relocation Fund, contains sections on the Fund's purpose and objectives; forms of financial assistance; basic eligibility criteria; eligible activities/costs; reimbursement of the Fund; and liability for relocation costs.

The Division of Community Resources would administer all of these programs.

Chapter 11, 12 and 14 of the United States Department of Housing and Urban Development's "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," published in June 1995 have been incorporated by reference herein.

Chapter 11 titled Interim Controls provides guidance on the performance of paint stabilization as a method of Interim Control of lead-based paint hazards. Chapter 11 identifies the typical lead coatings, causes for their failure, substrate treatment, new coating application, paint removal methods, surface cleaning, priming, topcoats, cleaning and clearance of the work area and ongoing monitoring of the treated areas.

Chapter 12 titled Abatement provides guidance on the steps to be taken to perform lead-based paint abatement including the appropriate time to perform cleaning for each abatement treatment method.

Chapter 14 provides detailed information on how to clean following the performance of lead-based paint hazard treatments including; step-by-step procedures for pre-cleaning, cleaning during the job, and daily and final cleanings.

24 CFR 35.1330(b) titled Paint Stabilization of the United States Department of Housing and Urban Development's "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," are incorporated by reference herein. This section provides direction on the performance of paint stabilization as a method of Interim Control. It includes the requirement to treat any physical defect in the substrate of a painted surface or components that is causing the paint to deteriorate, acceptable methods for removing loose paint and other loose materials, the requirement to use safe work practices and the application of a new coating.

A 60-day comment period has been provided for this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a) 5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules would implement a statute intended to protect the health and safety of young children by ensuring that they have a lead-safe environment.

Economic Impact

Under the programs established by these proposed new rules, the Department would administer financial assistance in an amount of \$7 million annually. Deferred payment loans with provisions for forgiveness would be available only to low-income owners of one-to-four family residential dwellings when they occupy one of the units as their principal residence at the time of application and agree to remain in occupancy following completion of the lead hazard control work for the period described at N.J.A.C. 5:48-2.3. Deferred payment repayable loans are available to all other applicants.

The specific costs associated with applying and receiving assistance under the LHCA Fund will vary from case to case. It is anticipated that in the majority of cases where the applicant is an owner-occupant of a one-to-four family dwelling who qualifies as low income, costs associated with applying for assistance and loan processing shall be nominal and/or shall be eligible costs for LHCA Funding. All other applicants may expect to incur the costs normally charged by lenders and loan processors such as: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services. It may be necessary for applicants who are self-employed, corporations, limited liability companies or partnership entities to obtain professional

services in the preparation of financial reports to verify income or for debt coverage ratio analysis when any applicant is requesting assistance for work being performed upon a multi-family dwelling.

All applicants for LHCA Funds must establish the presence of lead-based paint hazards. The per-unit costs of a lead hazard evaluation are estimated to be between \$150.00 to \$300.00. These costs will be borne by the LHCA Fund or become part of the loan amount for owner-occupants of a one-to-four family dwelling who qualify as low-income.

There shall be no application or loan processing costs to applicants for ELPR Funds; however, owners of the rental housing unit from which the tenant-applicant was moved may be required to reimburse the ELPR Fund in accordance with N.J.A.C. 5:48-3.6.

The cost benefit of implementing the Lead Hazard Control Assistance Act may not be precisely quantifiable but it is possible to put forward some modest estimates of the significant potential savings that can be realized. Medical costs associated with treatment of children who are exposed to high levels of lead, special education costs and decreased lifetime earnings associated with reduced cognitive abilities are all costs directly related to allowing our children's continued exposure to lead-based paint hazards in their living environment. Medical costs for children with high blood lead levels include physician visits, laboratory testing, chelation therapy, neuropsychological testing, and follow-up testing. The Centers for Disease Control estimated a reduction in such medical costs of \$1,800 (1994 dollars) per child by preventing childhood elevated blood

lead levels above 25 ug/dL. This same group of children is also more likely to require special education. The Centers for Disease Control estimated that preventing a child's blood lead level from rising above 25 ug/dL saves, on average, approximately \$4,000 (1994 dollars) per child. Every year about 600 New Jersey children under the age of six are found with a blood lead level above 25 ug/dL. Preventing 600 children from exposure could potentially reduce medical and special education costs over \$3 million each year. Understanding that these figures are based on 10-year old estimates, it is presumed actual costs are substantially higher. The Center for Disease Control estimates that for each IQ point a child loses, their lifetime earning potential drops between \$2,220 and \$9,663. They also estimate that a child's IQ drops about one IQ point for each four ug/dL increase in blood lead levels. Using this formula, New Jersey children are losing tens of millions of dollars.

Federal Standards Statement

The proposed new rules would implement a State statute that incorporates the definitions under Federal law of "lead-safe housing" and "lead-hazard control work." However, no Federal standards analysis is required because these rules are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under, Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements, other than as has been indicated.

Jobs Impact

Insofar as the proposed new rules would implement a funding program for lead hazard control work, it may stimulate employment in the lead hazard abatement

*[industry] **and lead evaluation industries.***

Agriculture Industry Impact

The proposed new rules would have no impact upon the agriculture industry.

Regulatory Flexibility Analysis

All owners of buildings subject to the “Lead Hazard Control Assistance Act,” P.L. 2003, c.311, be they “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or otherwise, would be equally subject to reporting and recordkeeping requirements inherent in the financial assistance process and to requirements of compliance with the terms of the loan agreement. As with any agreement, loan applicants may require legal and accounting assistance, as well as the assistance of persons performing the actual work.

Basic compliance records shall include documents that prove the assisted property continues to be used as the original loan applicant’s principal residence (if the applicant applied as an owner-occupant), evidence of payment of real estate taxes, water and sewer assessments, evidence of hazard insurance and nondiscrimination in accordance with 5:48-2.6(m).

There are no capital costs of compliance. The specific costs associated with applying and receiving assistance under the LHCA Fund will vary from case to case. It is anticipated that in the majority of cases where the applicant is an owner-occupant of a one-to-four family dwelling who qualifies as low income, costs associated with applying for assistance and loan processing shall be nominal and/or shall be eligible costs for LHCA Funding. All other applicants may expect to incur the costs normally charged by lenders and loan processors such as: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services. It may be necessary for applicants who are self-employed, corporations, limited liability companies or partnership entities to obtain professional services in the preparation of financial reports to verify income or for debt coverage ratio analysis when any applicant is requesting assistance for work being performed upon a multi-family dwelling.

All applicants for LHCA Funds must establish the presence of lead-based paint hazards. The per-unit costs of a lead hazard evaluation are estimated to be between \$150.00 to \$300.00. These costs will be borne by the LHCA Fund or become part of the loan amount for owner-occupants of a one-to-four family dwelling who qualify as low-income.

There shall be no application or loan processing costs to applicants for ELPR Funds; however, owners of the rental housing unit from which the tenant-applicant was moved may be required to reimburse the ELPR Fund in accordance with N.J.A.C. 5:48-3.6.

The application and compliance requirements set forth would not have a significant economic impact on small businesses and are the minimum necessary to insure the eligibility of the applicant and to insure the work is performed in such a way as to protect public health and safety.

Smart Growth Impact

The proposed new rules would *[not affect the achievement of smart growth or implementation of the State Development and Redevelopment Plan]* ***have a positive impact on Smart Growth by facilitating the safe continued use and potential re-use of existing residential buildings particularly those located in older urban and suburban neighborhoods within the State. The proposed new rule provides a financial resource with flexible rates and terms to property owners who may not otherwise qualify for assistance. Because affected properties are typically older and disproportionately located in places settled many decades ago, the Lead Hazard Control Assistance Fund can serve to maintain existing population densities along major transportation corridors, thus preventing sprawl and reducing the need for new residential infrastructure in less developed locales.***

CHAPTER 48

LEAD HAZARD ASSISTANCE CONTROL FUND

SUBCHAPTER 1. GENERAL PROVISIONS

5:48-1.1 Purpose

The purpose of the Lead Hazard Control Assistance Act is to provide a comprehensive program to identify lead hazards in residential housing and also to identify housing which is safe from exposure to lead hazards in order to eradicate the major source of lead exposure of our State's children. These rules are intended as part of a comprehensive program intended to safeguard children with emphasis upon rental housing and require the State to track the progress of making all of New Jersey's housing stock lead hazard controlled.

5:48-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Abatement project” means a project which utilizes abatement as the method or primary method of controlling lead-based paint hazards.

“Area median income” see Median income

“Commissioner” means the Commissioner of Community Affairs

“Concurrent rehabilitation” means work undertaken to correct a housing condition considered to be a “causative factor” immediately prior to or simultaneous with the lead hazard control work being funded with LHCA funds.

“Causative factor” means any housing condition that contributes to the deterioration of paint or the significant accumulation of household dust, such as: the failure of a system designed to prevent moisture infiltration (roof, siding, windows), leaks or other deficiencies in household plumbing or heating, horizontal surfaces which are damaged, worn and/or not washable (floors, window wells, stair treads).

"Department" means the Department of Community Affairs.

“Division” means the Division of Community Resources.

“ELPR” means Emergency Lead Poisoning Relocation.

"Eligible loan" means a loan made in accordance with the provisions of this chapter for the purpose of financing lead hazard control work in housing located in the State.

"Financial assistance" means loans and deferred payment loans with provisions for forgiveness.

“Gross annual income” means the total calculated amount of a household’s income from all sources including, but not limited to, salary, wages, regular overtime, interest, dividends, alimony, child support, pensions, social security, unemployment, disability, business income and capital gains, tips, welfare

benefits and imputed income from assets. Income is calculated based upon a weekly, bi-weekly, semi-monthly or monthly figure that is effective at the time of the income certification interview and estimated for a 12-month period.

“Household” means one or more persons occupying a dwelling unit

“Interim controls” means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it is defined under 42 U.S.C. 4851b.

“Interim control project” means a project which uses solely interim controls to reduce or temporarily control lead-based paint hazards.

“LCHA” means Lead Hazard Control Assistance.

"Lead abatement" means a set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner at N.J.A.C. 5:17 provided that such standards shall be consistent with applicable Federal standards. The term includes:

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

"Lead-based paint" means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight, or such other level as may be established by Federal law.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces, that would result in adverse human health effects.

"Lead evaluation" means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards found and recommendations for abatement.

"Lead-free" means having no lead-based paint on any surface within a dwelling unit, common area or building.

"Lead hazard control work" means work to make housing lead-safe, or to mitigate, through the use of interim controls as permitted under Federal law and as defined in 42 U.S.C. 4851b, or to eliminate permanently lead-based paint hazards on a premises by a business firm or person certified to perform lead abatement work pursuant to sections 1 through 12 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-1 et seq.) and sections 14 through 24 of P.L. 1993, c.288, (N.J.S.A. 52:27D-427 et seq.) and the costs of temporary relocation, as prescribed at N.J.A.C. 5:48-2.9(a)7, while lead hazard control work is being performed. The determination of the Commissioner shall be subject to review and appeal pursuant to the Administrative Procedure Act, P.L. 1968, c.410 (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

"Lead-safe housing" means housing in which a lead-based paint hazard risk has been significantly reduced through the use of interim controls as permitted under Federal law and as defined in 42 U.S.C. 4851b, housing that is lead-free or housing in which lead abatement has been performed.

"Low-income household" means a household whose gross annual income is equal to 50 percent or less of the median gross income established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the

US Department of Housing and Urban Development and approved for use by the Council on Affordable Housing.

“Multifamily housing” means a dwelling unit in a multiple dwelling as defined in section 3 of P.L.1967, c.76 (N.J.S.A. 55:13A-3).

“Median income” means gross annual incomes established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the US Department of Housing and Urban Development.

“Primary residence” means the dwelling unit wherein a household maintains continuing residence for no less than nine months each calendar year

“Project” means a site or an entire building or two or more buildings together with the site or sites on which the building or buildings are located that are under common ownership, management and financing and are to be assisted with LHCA funds under a commitment by the owner as a single undertaking.

“Qualified contractor” means a firm that uses individuals trained in lead-safe work practices when performing interim controls or rehabilitation funded in whole or in part with LHCA funds.

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, doorframe, windowsill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

SUBCHAPTER 2. LEAD HAZARD CONTROL ASSISTANCE FUND

5:48-2.1 Purpose and program objectives

(a) The purpose of the Lead Hazard Control Assistance Fund is to provide financial assistance in the form of deferred payment loans with provision for forgiveness and deferred payment loans without forgiveness to eligible property owners.

(b) The LHCA Fund shall be used to:

1. Identify lead-based paint hazards in residential housing;
2. Eradicate lead hazards to the greatest extent feasible through the performance of lead hazard control work (interim controls or lead abatement) and the correction of conditions creating lead-based paint hazards;
3. Relocate tenant households when they are living in conditions which pose an immediate risk of continuing exposure to lead hazards for any of their children;
4. Identify housing in which people are safe from ongoing exposure to lead-based paint hazards and create a registry of that housing;
5. Increase public awareness of the dangers of lead-based paint; and
6. *[Provide educational opportunities]* ***Provide public education for the prevention of lead poisoning and training opportunities that build**

technical capacity in creating lead-safe housing such as: lead-safe work practices, dust testing and certified lead services disciplines*.

5:48-2.2 Allocation of funds

The Administrator of the LHCA Fund shall determine on an annual basis the amount of funds that shall be allocated for administration, education/outreach/training, lead hazard control, and lead safe housing registry. The Lead Hazard Control allocation shall be further apportioned between two property types: properties containing one to four housing units and properties containing five or more units.

5:48-2.3 Forms of financial assistance

(a) Except as otherwise provided in (b) below, financial assistance to eligible owners shall be repayable loans. The Administrator of the LHCA fund shall determine on an annual basis the rate of interest that loans shall bear. The initial interest rate shall be three percent. All loans shall be secured by a lien upon the property upon which work is performed. Payments shall be deferred and loans shall become due and payable upon refinance, transfer, sale of the property, and/or expiration of the mortgage term. Applicants must establish their ability to repay the loan using their equity in the subject property or equity in their personal residence or other real property or through other such guarantees as approved by the Division Director. Loans may be made up to 125 percent of value of the subject property; however, loan to value shall not exceed 75 percent of value when alternative real estate is offered as additional security for the loan. Value

shall be determined by an appraisal. For properties containing one to four housing units, the loan term shall be 20 years. For properties containing five or more housing units, the debt coverage ratio shall be 1.25 with a flexible loan term tied to net operating income. Properties containing five or more housing units will also be required to establish a repayment reserve account. If a repayment reserve account is not feasible, the owner shall provide additional real estate as security.

(b) Financial assistance in the form of deferred payment loans with provisions for forgiveness is available upon the basis of property type, occupancy and income. The LHCA fund shall consider owner-occupants of a one-to-four family dwelling for a deferred payment loan with forgiveness provided they qualify as a low-income household. The Administrator of the LHCA fund shall determine on an annual basis the rate of interest that loans shall bear. The initial interest rate shall be three percent. The term of the loan shall be established according to the principal loan amount. For every \$10,000 increment or portion thereof, the loan term shall be five years, up to a maximum loan term of 20 years. Therefore: a property owner wishing to borrow from \$1.00 to \$10,000 shall have a five-year loan term; from \$10,001 to \$20,000 shall have a 10-year loan term; from \$20,001 to \$30,000 shall have a 15-year loan term; and from \$30,001 and higher shall have a 20-year loan term

(c) The Department shall forgive a portion of the deferred payment loan each year when the loan qualifies for forgiveness under (b) above. The portion shall be determined by dividing the principal loan amount plus interest by the loan term.

Owners must provide evidence on an annual basis of their compliance with the terms of the LHCA loan agreement, Mortgage, and Mortgage Note. This evidence shall be delivered to the Department on or before the anniversary date of the loan in a form acceptable to the Department. Basic compliance shall include, but is not limited to: proof that the assisted property continues to be used as the original loan applicant's principal residence; evidence of payment of real estate taxes, water and sewer assessments; and evidence of hazard insurance and nondiscrimination in accordance with N.J.A.C. 5:48-2.6(m).

5:48-2.4 Limitations on financial assistance

(a) The maximum amount of financial assistance shall be \$150,000 per dwelling unit;

(b) The minimum amount of financial assistance shall be *[an average of \$5,000 per dwelling unit.]* ***\$5,000 for single-family housing and an average of \$5,000 per housing unit for two-family or multi-family housing.***

5:48-2.5 Release of LHCA funds

LHCA loan funds shall be deposited into an escrow account. The escrow agent shall make payments only when authorized by the Department. The escrow agent shall issue payments to contractors on behalf of property owners, except that a property owner may elect to make payments to contractors and request reimbursement from the escrow account. An escrow agreement shall be executed that reflects, to the extent feasible, the

anticipated frequency, amounts and dates of draws against funds held in escrow. The escrow agreement shall stipulate that releases shall be made only upon written authorization from the Department. Any interest which accrues on funds held in escrow shall be paid to the owner upon written approval from the Department.

5:48-2.6 Basic eligibility criteria

(a) The applicant must be the property owner. A property owner means the titleholder of record as reflected in the most recently dated and recorded deed for the particular dwelling unit. The applicant must provide a complete copy of the recorded deed showing himself or herself as the owner. The recording information must be legible. If ownership is vested in more than one person, all owners must sign as applicants and execute all loan documents. When the ownership entity is a corporation, the applicant must provide a copy of the certificate of incorporation, and copy of the corporate resolution authorizing the rehabilitation and abatement activities and designating an individual who will be acting on the corporation's behalf. A list of corporate principals is also required. When the applicant is a limited liability company, the applicant must provide a copy of the company's Certificate of Formation and Operating Agreement and any documents establishing the authority of the member making application. When the applicant is a trustee, the applicant must provide a copy of the documents which established the trust, named the trustee and established the authorities that have been granted to the trustee. The trustee must have the authority to execute the required loan documents.

(b) The owner must provide evidence of lead-based paint hazards. Evidence shall be in the form of a lead hazard evaluation performed by a New Jersey licensed lead evaluation firm or a hazard assessment performed by the Local Board of Health in accordance with N.J.A.C. 8:51.

(c) The housing must have been constructed prior to 1978. Written evidence shall be obtained from public records such as a statement from the tax assessor. The written evidence shall establish the year the building was constructed. If the exact year is not known, the written evidence shall, at a minimum, establish **[whether]* **that** the building was constructed prior to 1978. If the applicant wishes priority consideration under N.J.A.C. 5:48-2.8, the written evidence shall establish **[whether]* **that** the building was constructed prior to 1950.**

(d) Real estate taxes, water and sewer assessments must be paid current. Written evidence shall be provided at the time of application.

(e) Multiple dwellings must be registered in accordance with N.J.A.C. 5:10. Proof of registration of multi-family dwellings is required for buildings containing three or more residential units. If a building is not registered at the time of application, owners must make application and provide evidence of it. A copy of the latest Bureau of Housing Inspection Report must be provided.

(f) The owner must maintain hazard insurance on the property. This insurance must cover loss or damage caused by fire and other hazards, normally included under “extended coverage” insurance. The amount of coverage shall be the greater of: the total of the principal secured by the mortgage and the principal secured by the senior

mortgage (if any) or the current replacement value of the buildings and improvements to the extent available. Coverage must be in effect at the time of application and must remain in force throughout lead hazard control work and loan term. The owner must agree that all payments from the insurance company must be payable to the LHCA fund under a standard mortgage clause in the insurance policy. In the event of loss, the LHCA may use any proceeds to repair and restore the property or to reduce the amount due under the mortgage.

(g) Properties located within a Federal or State Special Flood Hazard Area (that is area designated “A” or “V” Zone by the Federal Emergency Management Agency) must be insured by flood insurance for the life of the loan

(h) Properties previously assisted with LHCA funds may reapply only if the previous LHCA assistance (deferred payment loan with or without forgiveness) has been repaid together with any interest.

(i) No single applicant shall be eligible for LHCA funds in excess of 20 percent of the applicable allocation for lead hazard control work for the year, see N.J.A.C. 5:48-2.2.

(j) LHCA funds shall not be used to fund lead hazard control work in a building undergoing a change of use, addition or reconstruction as defined at N.J.A.C. 5:23-6.3.

(k) Ownership entities other than individuals are not eligible for deferred payment loans with provisions for forgiveness or preferred interest rate loans.

(l) Applicants requesting deferred payment loans with provisions for forgiveness must verify gross annual income by providing source documents such as copies of pay stubs, benefit award letters, net income from rents, net income from operation of a business or profession, interest, or dividends. Earned income from household members 18 years of age or older must be included in calculating gross annual income. Earned income of minors (household members 17 and under) shall not be counted.

(m) Owners of rental units to be assisted with LHCA funds shall give equal treatment in the rental of housing regardless of race, creed, color, national origin, nationality, ancestry, sex, marital status, familial status, affectional or sexual orientation, *[or]* mental and physical disability ***or source of income and shall not refuse to rent to individuals because of the source of any lawful rental payment.***

5:48-2.7 Additional eligibility criteria – abatement projects

(a) Abatement projects must also meet the following criteria in addition to the basic eligibility criteria at N.J.A.C. 5:48-2.6:

1. Occupants must be willing and able to relocate during the performance of the abatement work when required under N.J.A.C. 5:17
2. Projects must achieve the LHCA Fund lead-based paint abatement criteria at N.J.A.C. 5:48-2.9(b) upon completion of work; and

3. Projects must achieve the LHCA Fund causative factors criteria at N.J.A.C. 5:48-2.9(c) upon completion of work

5:48-2.8 Additional eligibility criteria – interim control projects

(a) Interim control projects must also meet the following criteria in addition to the basic eligibility criteria at N.J.A.C. 5:48-2.6:

1. Interim control projects shall not use abatement methods in the treatment of lead-based paint hazards:
2. Property must not be cited under N.J.A.C. 8:51; and
3. Property must achieve the LHCA Fund interim controls criteria at N.J.A.C. 5:48-2.9(d) upon completion of work.

5:48-2.9 Eligible project activities/costs

- (a) The following project activities/costs shall be eligible for funding:
1. Lead hazard evaluation; The LHCA Fund shall obtain a lead hazard evaluation of the applicant's property as a part of the application process. The evaluation shall be a combined lead-based paint inspection/risk assessment in accordance with 40 CFR 745.

2. Scope of work preparation/cost estimation: The LHCA Fund shall obtain lead hazard control and concurrent rehabilitation scopes of work which shall contain the following key elements:

- i. Qualifications of contractor and persons performing work;
- ii. General Requirements;
- iii. Location and identity of component or surface and treatment method; and
- iv. Minimum specifications – that is new components, quality of materials.

3. Building permits: Costs associated with the application and issuance of a building permit from the local Construction Official in accordance with the Uniform Construction Code, N.J.A.C. 5:23 are eligible for LHCA funding when the permit is for work which is an eligible activity. All permits must be properly closed out, with the appropriate Certificate (that is Clearance, Approval, Occupancy) being issued.

4. Interim controls: Interim controls are eligible activities and costs are eligible for LHCA funding when the work is performed by qualified contractors ***using lead safe work practices*** and the work is necessary to achieve the LHCA Fund interim controls criteria at (d) below.

5. Lead hazard abatement: Lead hazard abatement is an eligible activity and costs are eligible for funding when the abatement is performed in accordance with N.J.A.C.

5:17, Lead Hazard Evaluation and Abatement Code, and the work performed conforms with the LHCA Fund lead-based paint abatement criteria at (b) below.

When abatement work is performed to address hazards cited in a local board of health lead abatement order in accordance with N.J.A.C. 8:51-6, Abatement of Lead Hazards, the work must be approved by the local board of health prior to performance in order for the associated costs to be eligible under the LHCA Fund. In all cases, lead abatement work must be performed by a licensed lead abatement contractor and must conform to the requirements at N.J.A.C. 5:17 to be considered eligible.

6. Concurrent rehabilitation: Concurrent rehabilitation is an eligible activity and costs are eligible for LHCA funding when performed by qualified contractors and the work is required to achieve the LHCA Fund causative factors criteria at (c) below. Concurrent rehabilitation work may be performed prior to abatement or following abatement depending upon the nature of the work; however, work which must be performed to insure abatement treatments do not fail must be performed prior to abatement (that is roof repair, repair of plumbing leaks).

7. Relocation during performance of work: Relocation is an eligible activity when the relocation is temporary (tenants shall not be permanently displaced as a result of LHCA Funded activities) and necessary to protect occupants during the performance of lead-based paint hazard control work. Temporary relocation during the performance of rehabilitation work is eligible for LHCA funding when the nature of the rehabilitation work makes occupancy of the housing unit hazardous or renders

the housing uninhabitable (as defined by State and/or local habitability codes) during the performance of the work. Relocation costs for services/activities shall comply with the temporary relocation requirements of N.J.A.C. 5:11 Relocation Assistance and Eviction. Tenants must be notified of the owner's intention to apply for LHCA funds for the purposes of lead hazard control work and the effect the activity will have upon them ***Tenants shall also be notified of the Non-displacement protections provided at 5:48-2.11.*** The owner is responsible for insuring household furnishings and personal belongings are removed from the work areas in accordance with the requirements of N.J.A.C. 5:17 and 24 CFR 35.1345, Occupant Protection and Worksite Preparation. Eligible costs include expenses for those families in place prior to application to the LHCA Fund. Owners must be notified that tenants moving into rental units after he or she has applied for LHCA assistance are not eligible for relocation assistance.

8. Clearance testing/reporting: Clearance testing is an eligible activity and must be performed following abatement, interim controls and rehabilitation. Clearance following abatement must conform to 40 CFR Part 745, Environmental Protection Agency regulations on Lead; Identification of Dangerous Levels of Lead; Final Rule, except that dust wipe samples shall be single surface samples. Clearance following Interim Controls or Rehabilitation shall conform to 24 CFR 35.1340(c) Lead Safe Housing Rule.

9. Maintenance plans: A maintenance plan shall be prepared following completion of lead hazard control work that includes a monitoring schedule together with a written description of the monitoring or surveillance that an owner will perform to insure:

- i. That known or suspected lead-based paint is not deteriorating;
- ii. That lead-based paint hazard controls, such as paint stabilizations; enclosure, or encapsulation have not failed;
- iii. That structural problems do not threaten the integrity of lead hazard control measures or treatments or of known or suspected lead-based paint;
- iv. That dust lead levels have not risen above applicable standards; and
- v. A listing and schedule of any work that must be periodically performed to maintain the integrity of lead-based paint and/or lead-based paint hazard controls.

10. Application and loan processing: The Department may incorporate the costs of application and loan processing into the loan amount at its sole discretion. Costs may include, but are not limited to: the cost of a credit report, appraisal, loan processing fees, title insurance and other title services and escrow services.

(b) LHCA Fund lead-based paint abatement criteria are as follows:

1. For all projects: Replace windows in habitable rooms when window components which are friction surfaces (sash, jamb, interior stop, blind stop and parting bead) test positive for lead-based paint (an XRF reading of 1.0mg/cm² or greater);

2. For all projects: Provide an acceptable treatment in habitable rooms when friction, impact, chewable or mouthable surfaces test positive for lead-based paint (an XRF reading of 1.0 mg/cm² or greater) and show visible signs of serious paint deterioration and/or are identified by a risk assessor as a lead-based paint hazard. Acceptable forms of treatment are: replacement of components, enclosure, or paint removal;

3. For all projects: Provide an acceptable treatment in habitable rooms for any other surface and/or component not covered under (b) 1 or 2 above when the surface/component tests positive for lead-based paint and the surface/component is identified by an inspector/risk assessor as a lead-based paint hazard. Acceptable forms of treatment are: replacement of components, enclosure, encapsulation, or paint removal;

4. For all projects: Replace or enclose or encapsulate (subject to N.J.A.C. 5:17-6.4(b)1) with a washable floor surface all floors that test positive for lead-based paint;

5. For all projects: Clean all treated rooms and all untreated habitable rooms. In all cases, cleaning shall be in accordance with N.J.A.C. 5:17, Lead Hazard Evaluation and Abatement Code, and Chapters 12 and 14 of the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in

Housing,” published in June 1995 by the United States Department of Housing and Urban Development, incorporated herein by reference, as amended and supplemented, hereinafter referred to as the “HUD Guidelines,” must be performed. A copy of the “HUD Guidelines” may be obtained for \$45.00 from: HUD User, P.O. Box 23268, Washington, DC 20026-3268, or may be obtained in the internet at: <http://www.hud.gov>. An area is considered satisfactorily cleaned when a visual inspection is conducted and there is no visible evidence of dust and post-cleaning dust wipe results achieve the clearance standards defined at N.J.A.C. 5:17- 9, Final Inspection and Clearance Testing. Carpeting may be replaced with a washable floor surface when it is identified as a lead hazard. Carpeting must be dry vacuumed prior to using a low-moisture cleaning method;

6. For all projects: For lead-based paint, dust or soil hazards identified on a lead hazard evaluation, which are not covered in (b) 1 through 5 above, the LHCA Fund shall use the recommendations of the inspector/risk assessor performing the lead hazard evaluation; and

7. As funding permits: Other lead-based paint reduction or abatement treatments. Priority consideration will be given as follows:

i. First priority: Any remaining lead-based paint whether or not it is currently a hazard on friction, impact, and chewable or mouthable surfaces. Acceptable treatments are: replacement, enclosure or paint

removal. All first priority surfaces must be treated before second priority surfaces can be treated.

ii. Second priority: any remaining lead-based paint on other surfaces. Acceptable treatments are: replacement, removal, encapsulation, enclosure or stabilization.

(c) The LHCA Fund causative factors criteria are:

1. For all projects: All systems designed to prevent moisture infiltration (that is roof, siding, windows, gutter systems) must be functional prior to performing lead hazard control work;

2. For all projects: All plumbing must be inspected for leaks and deficiencies must be corrected;

3. For all projects with steam or hot water heating: The heating system must be inspected for leaks and deficiencies must be corrected;

4. For all projects: Moisture venting systems must be inspected and deficiencies must be corrected (that is bathrooms, dryers); and

5. For all projects: Floors which have tested negative for lead-based paint must be repaired or sealed and thoroughly cleaned. If the existing floor covering is carpeting, carpet must be dry vacuumed and, if soiled, additional cleaning shall be performed using a low-moisture cleaning method. Dry vacuuming must be performed prior to low-moisture cleaning.

(d) The LHCA Fund interim controls criteria are:

1. For components/surfaces which are NOT friction, impact, or chewable surfaces at a minimum, paint shall be stabilized in accordance with the United States Department of Housing and Urban Development's Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, 24 CFR 1330(b), and Chapter 11 of the United States Department of Housing and Urban Development's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, published in June 1995, incorporated herein by reference, as amended and supplemented;

2. For components/surfaces which are friction, impact, or chewable surfaces: Paint must be removed from contact areas or temporary barriers shall be installed. ***Barriers shall be of a sufficient durability to prevent abrasion of the painted surface;***

3. All habitable rooms shall be cleaned in accordance with HUD Guidelines, Chapter 11. For soiled carpets, use low moisture cleaning method only after dry vacuuming; and

4. Provide an ongoing maintenance plan to property owners and tenants.

(e) Application for funding shall be made on forms prescribed/supplied by the Department. Information to be provided includes: The name of owner-applicant; contact information – address and telephone numbers, social security number, and applicant income information; general property information such as the year of construction, type of building, use of building, and number of residential dwelling units in the structure; building financial information such as the rental income produced, and the operating and other expenses; the location and extent of lead-based paint hazards; and demographic information on the applicant and occupants of the housing unit for which assistance is requested.

5:48-2.10 Funding priorities

(a) First priority for funding shall be given to housing constructed *[prior to 1950]* ***in 1950 or earlier*** and occupied by families with children under the age of six.

(b) Second priority for funding shall be given to housing constructed *[prior to]* **between** 1978 and *[after]* 1950 and occupied by families with children under the age of six.

(c) Third priority for funding shall be given to housing not identified in (a) or (b) above.

(d) No priority funding consideration shall be given to any application on the basis of the location of the housing.

5:48-2.11 Non-displacement *[controls]* **protections***

Existing tenants in occupied units shall not be permanently displaced as a result of any activity funded in whole or in part by the LHCA Fund except in the case of a tenant household when it has been determined that they are living in conditions which pose an immediate risk of continuing exposure to lead hazards for any of their children. Whenever possible, relocation shall be temporary in nature to allow the property owner the opportunity to correct unsafe conditions.

Tenants shall be notified in writing by the property owner of these non-displacement protections and shall be given information on how they can report any violations of the protections. Enforcement of the non-displacement protections shall be through written agreement between the Department and the property owner.

5:48-2.12 Lead Safe Housing Registry

(a) The purpose of the Lead Safe Housing Registry is to supply a list from which lead-safe housing can be easily identified, and through which the State's progress in rendering housing lead hazard controlled can be tracked.

(b) At a minimum, the Department shall enter onto the Lead Safe Housing Registry the following dwelling units:

1. Any dwelling unit assisted with LHCA Funds;
2. All residential dwellings constructed after 1977; and
3. All multiple dwellings in accordance with N.J.A.C. 5:10.

***(c) Properties included on the Lead Safe Housing Registry shall be categorized as:**

1. Lead-free, which shall include any housing constructed after 1977 and housing certified to be free of lead-based paint by a certified inspector;

2. Lead-abated, including housing where lead-based paint hazards have been permanently abated;

3. Lead-hazard controlled, including housing in which preventative maintenance practices and interim controls have been implemented; or

4. Lead-free interior, which shall include housing certified to have a lead-free interior by a certified inspector.*

5:48-2.13 Public inspection of Lead Safe Housing Registry

The Lead Safe Housing Registry shall be a governmental record open to public inspection and copying.

5:48-2.14 Relocation due to immediate risk

(a) The LHCA Fund shall consider applications for relocation payments to remove a tenant family from housing where a lead hazard exists and which poses an immediate risk of continuing exposure to lead hazards for any children living in the housing.

(b) Immediate risk is defined as a child having a health indicator of exposure to lead at levels greater than the Center for Disease Control recommended level of 10 micrograms of lead per deciliter of blood combined with the existence of lead-based paint hazards in that child's residence.

(c) Eligibility criteria for payments under this section shall be:

1. The applicant shall be the head of household;
2. The applicant's primary residence must be a rental residential dwelling;

3. The applicant's household must include a qualifying child. A qualifying child means: a member of the applicant's household who is a child under the age of 18 with a blood lead level of 10 micrograms of lead per deciliter of blood who resides with the applicant at least nine months of the year;

4. The applicant must provide evidence of the existence of a lead-based paint hazard in their primary residence. Acceptable forms of evidence include: lead evaluation performed by a certified inspector/risk assessor or a hazard assessment performed by a local board of health; and

5. The applicant must provide evidence of immediate risk. Acceptable forms of evidence include a written determination from a local board of health or primary care provider that the affected child(ren) is at immediate risk due to continuing exposure to a lead hazard.

(d) Relocation payments made for tenant households under this section are subject to the reimbursement provisions of N.J.A.C. 5:48-3.

5:48-2.15 Lead education/outreach and training

(a) The Department shall set aside a minimum of five percent of the total budget allocated to lead hazard control or \$1,000,000 whichever is greater for the purpose of increasing public awareness of the dangers of lead-based paint and to provide

opportunities for training in lead related disciplines. Lead related disciplines include, but are not limited to: abatement supervisor, abatement worker, inspector/risk assessor, dust wipe technician, project designer, lead-safe work practices, and lead-safe maintenance practices.

(b) Statewide, regional and local education/outreach and training efforts shall be coordinated with the Inter-Agency Task Force on the Prevention of Lead Poisoning. The Division may elect to enter into contracts with other State agencies, regional providers of services, regional coalitions and/or local boards of health for implementation of this section.

SUBCHAPTER 3. EMERGENCY LEAD POISONING RELOCATION FUND

5:48-3.1 Purpose and program objectives

The purpose of the Emergency Lead Poisoning Relocation Fund (ELPR Fund) is to provide financial assistance to relocate a child and his or her family when that child has tested positive for lead poisoning and that child is removed from his or her dwelling unit in connection with an order to abate a lead-based paint hazard. The relocation may be temporary or permanent and the child and family must be relocated to a lead safe housing unit.

5:48-3.2 Forms of financial assistance

The ELPR Fund shall make relocation payments in accordance with N.J.A.C.

5:11, Relocation Assistance and Eviction.

5:48-3.3 Basic eligibility criteria

(a) The basic eligibility criteria for ELPR funds are:

1. The applicant shall be the head of a household with a child under the age of six that:

(i) has a confirmed blood lead level of 20ug/dL (or the most current Centers for Disease Control standard) or higher; ***or***

(ii) has a persistent blood lead level between 15 and 19ug/dL as defined at N.J.A.C. 8:51-4.4;

and*

2. The applicant shall:

(i) be subject to an order to vacate or order for removal issued by a State agency or unit of local government undertaking a program of building code enforcement, housing code enforcement or health code enforcement; ***or***

(ii) have received a written opinion from the health official finding that the health of the child dictates that the child must be removed due to an immediate risk of continuing exposure to lead hazards in his or her dwelling unit;*

and

3. The applicant's current residence must be subject to an order to abate/notice of violation issued by the local board of health in accordance with N.J.A.C. 8:51-6.1.

5:48-3.4 Eligible activities/costs

In accordance with N.J.A.C. 5:11, Relocation Assistance and Eviction, the ELPR Fund shall provide financial assistance for up to 100 percent of the actual reasonable costs of moving expenses either temporary or permanent or a fixed payment, based on the number of rooms in the unit. The fixed payment shall not exceed \$1,000 per household plus a \$400.00 dislocation allowance.

5:48-3.5 Reimbursement of ELPR Fund

If reimbursement is received from the property owner, Federal or state sources or from insurance proceeds, such reimbursement shall be directed to reimburse the ELPR Fund for payments made under this subchapter.

5:48-3.6 Liability for relocation costs

(a) Whenever relocation assistance is authorized pursuant to the LHCA or ELPR Fund, the Commissioner may determine to seek reimbursement for payments made for relocation assistance from the owner of the rental housing from which the tenants were moved. The Commissioner shall seek reimbursement if the owner of such rental housing had failed to maintain the housing in a lead-safe condition in accordance with N.J.A.C. 5:10 or municipal ordinance.

(b) In the case of any displacement of a household from a unit of rental housing that has been found, in a final administrative or judicial determination, not to be maintained in lead-safe condition in accordance with N.J.A.C. 5:10, 5:15, 5:27 or 5:28 or by municipal ordinance, all relocation costs incurred by a public agency to relocate that household shall be paid by the owner of the rental housing to the public agency making relocation payments upon presentation to the owner by the public agency of a statement of those relocation costs and of the date upon which the relocation costs are due and payable.

(c) In the event that the relocation costs to be paid to the public agency are not paid within 10 days after the due date, interest shall accrue and be due to the public agency on the unpaid balance at the rate of 18 percent per annum until the costs, and the interest thereon, shall be fully paid to the public agency.

(d) In the event that the relocation costs to be paid to a public agency shall not be paid within 10 days after the date due, the unpaid balance thereof and all interest accruing thereon shall be a lien on the parcel in which the dwelling unit from which displacement occurred is located. To perfect the lien granted by this section, a statement showing the amount and due date of the unpaid balance and identifying the parcel, which identification shall be sufficiently made by reference to the municipal assessment map, shall be recorded with the clerk or register of the county in which the affected property is located and, upon recording, the lien shall have the priority of a mortgage lien. Whenever relocation costs with regard to the parcel and all interest accrued thereon shall have been fully paid to the public agency, the statement shall be promptly withdrawn or canceled by the public agency.

(e) In the event that relocation costs to be paid to a public agency are not paid as and when due, the unpaid balance thereof and all interest accrued thereon, together with attorney's fees and costs, may be recovered by the public agency in a civil action as a personal debt of the owner of the property. If the owner is a corporation, the directors, officers and any shareholders who each control more than five percent of the total voting shares of the corporation, shall be personally liable, jointly and severally, for the relocation costs.

f) All rights and remedies granted by this section for the collection and enforcement of relocation costs shall be cumulative and concurrent.