

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for
Public and Indian Housing**

[Docket No. N-95-3778; FR-3875-N-01]

**NOFA for Lead-Based Paint (LBP) Risk
Assessments**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1995.

SUMMARY: This NOFA informs Public Housing Agencies and Indian Housing Authorities (referred to jointly as "HAs") that have pre-1980 family developments, of the availability of up to \$8,052,535 in funding for lead-based paint (LBP) risk assessments. The NOFA contains information on the following:

- (a) The purpose of the NOFA, available amounts and eligibility;
- (b) Application processing, including how to apply and how selections will be made;
- (c) A schedule of steps involved in the application process;
- (d) Notice that funds will be awarded on a first-come, first-served basis; and
- (e) Notice of the requirement that the Department's risk assessment protocol be used by HAs in conducting a LBP risk assessment and in developing recommendations regarding interim controls.

DATES: An application may be submitted immediately after publication of this NOFA, and must be submitted by 3:00 p.m. local time (i.e., the time in the HUD Field Office where the application is submitted) on May 30, 1995. This deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their applications to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Application kits may be obtained from HUD Field Offices. Completed applications are to be submitted to the Field Office that has jurisdiction over the HA submitting the request for funding. Copies of the Department's LBP risk assessment protocol, which establishes minimum requirements that must be used by HAs funded under this NOFA, are available at cost by calling HUD USER on 1-800-245-2691 or (301) 251-5154 (not a toll-

free number). A telecommunications device (TDD) for persons with hearing and speech impediments is available at 1-800-877-8339.

FOR FURTHER INFORMATION CONTACT:

William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4134, Washington, D.C. 20410, telephone (202) 708-1640. Indian Housing Authorities may contact: Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B-133, Washington, DC 20410, telephone (202) 755-0032. A telecommunications device (TDD) for persons with hearing and speech impediments is available at (202) 708-0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control numbers 0348-0043, 2577-0044, 2525-0101, and 0348-0046.

I. Purpose and Substantive Description

A. Allocation Amounts

(1) *Total amount available.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102-139, approved October 28, 1991; at 105 Stat. 744) (1992 Appropriations Act) set aside \$25,000,000, of the \$2,800,975,000 of budget authority available for modernization of existing public housing developments, for the risk assessment of lead-based paint (LBP). However, amounts actually available from the appropriated amount were reduced because conversions from Section 8 (U.S. Housing Act of 1937)-funded section 202 (Housing Act of 1959) direct loan projects to rental assistance-funded section 202 grant projects did not occur at the rate anticipated by Congress in the FY 1992 Appropriations Act. Reductions were made in the FY 1991 carryover balances to fund FY 1992 programs, as provided in the Appropriations Act. The amount of funds available for LBP risk assessment in FY 1992 was \$23,853,455. In accordance with the language of that Appropriations Act, where funds awarded totaled less than the amount

available, the remaining funds are to be carried over in subsequent NOFAs. Thus, in FY 1992, the Department awarded \$9,055,821. In FY 1993, \$14,797,634 was available for LBP risk assessment funding and \$2,840,711 was awarded based on applications received. In FY 1994, \$11,946,823 was available; of that amount \$3,888,076 was awarded, based on applications received. Additionally, \$16,312 was awarded in FY 1994 to correct calculation errors made on applications submitted and eligible for funding in FY 1993. The total amount of funding that remains available under this FY 1995 NOFA is up to \$8,052,535. The funding may change if the carryovers, transfers, and recaptures estimated to occur in FY 1995 are not realized.

(2) *Selection of applications for funding.* Awards shall be made on a first-come, first-served basis. Additionally, an application must be complete and must meet the threshold criteria set forth in Section II.B. of this NOFA. As such, it is required that the proposed risk assessment be performed in pre-1980 family developments. Further, the Department has determined that a development targeted within an application will not be eligible for funding where a development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

In these instances, the Department recognizes that hazards have been addressed or identified; thus, there is no need to conduct a risk assessment.

(3) *Cost.* Where a development is eligible to be the subject of a complete risk assessment, in accordance with the threshold criteria set forth in Section II.B. of this NOFA, the HA shall base its funding request on a per-unit-to-be-sampled-per-development cost. The per-unit cost must include costs for collection of dust and soil samples, collection of paint chip samples (where necessary), administration, laboratory analysis of collected paint, dust, and soil samples, interpretation of laboratory results on samples collected, review of maintenance and management practices, and the *development* (not the implementation) of recommendations for interim controls. Costs associated with interim controls are not eligible for funding under this NOFA. Funding of interim controls must be secured from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves, or State/local contributions).

The cost-per-unit-to-be-sampled may not exceed the amount of \$495. Prior year funding indicates that a number of HAs were able to complete risk assessments at less than this amount (ranging from \$250 to \$350 per-unit-to-be-sampled, excluding HA administrative costs). HAs are strongly encouraged to budget prudently for these costs. Where this amount is exceeded, the HA must submit justification of the amount requested, and the Field Office will examine the cost reasonableness of such request.

The number of units to be sampled, which, at a minimum, must be used by HAs funded under this NOFA, is outlined in the table below:

Number of units in development	Number of units for inspecting and testing (collecting samples)
1-4	All.
5-20	4 units or 50% (whichever is greater).
21-75	10 units or 20% (whichever is greater).
76-125	17.
126-175	19.
176-225	20.
226-300	21.
301-400	22.
401-500	23.
501+	24, plus 1 dwelling for each additional increment of 50 units or less.

The method to be used in determining which units are to be included in the sample is as follows:

- (a) Units cited as having building code violations within the past year;
- (b) Units determined to be in poor condition;
- (c) Units that contain two or more children between the ages of 6 months and 6 years;
- (d) Units that serve as day-care facilities; and
- (e) Units prepared for reoccupancy within the past 3 months. If necessary, add additional units to achieve the required minimum sample number specified in the above table.

Note: In addition to the minimum number of units to be sampled, add units housing children with elevated blood lead levels.

As explained in Section III, Application Content, of this NOFA, an application must state each development number and specify the number of units to be sampled, the amount requested for each development, and the total amount the HA is requesting.

(4) *Distribution of funds.* An administrative decision has been made not to assign funds to HUD Field Offices

using the same method as in previous fiscal years. Funds will be assigned to Field Offices based on the number of applications submitted that met the eligibility criteria and the amount of funds requested. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on the date and time applications were received in the HUD Field Office. HUD Field Offices shall date- and time-stamp each application upon receipt.

In Fiscal Year 1995, up to \$7,835,117 will be targeted to public housing agencies, and up to \$217,418 will be targeted to Indian housing authorities in the Office of Native American Programs (ONAP). As many eligible applications as possible will be funded.

(5) *Remaining funds.* In the event that the funds awarded under this NOFA total less than the amount available, the remaining amount will be carried over to FY 1996, because the FY 1992 Appropriations Act specifically targets these funds for the assessment of risks associated with lead-based paint. If funds are carried over to FY 1996, a subsequent NOFA for these remaining set-aside funds will be published.

(6) *Section 3 (24 CFR part 135).* Section 3 of the Housing and Urban Development Act of 1968 and the regulations at 24 CFR part 135 (see June 30, 1994, Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

B. Eligibility and Requirements

(1) All HAs with pre-1980 family developments are eligible (i.e., both large HAs funded under the Comprehensive Grant Program (CGP) and small HAs funded under the Comprehensive Improvement Assistance Program (CIAP)). Specific developments targeted for funding within an application must meet the requirements set forth in Section II.B. of this NOFA.

(2) HAs, especially smaller ones, are encouraged to form a consortium for purposes of having risk assessments conducted. Such a consortium would enable a number of HAs to obtain coordinated services for those risk assessments.

(3) In accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937

Act) (added by the 1992 Appropriations Act, 105 Stat. 759), pre-1980 family developments within a HA's inventory may be the subject of a LBP risk assessment. As stated in section 14(a)(3), risk assessments are intended "to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families." Risk assessments are not mandatory; however, HAs are strongly encouraged to conduct them. In undertaking a risk assessment, a HA shall use a risk assessment protocol that, at a minimum, follows the Department's Lead-Based Paint Risk Assessment Protocol. Upon completion of the risk assessment, the HA must provide a copy of the results of the risk assessment to the appropriate Field Office. The risk assessment must be completed within eighteen (18) months of HUD's fund reservation notification to the HA.

While the scope of the risk assessment may exceed the contents of the Department's protocol, funding shall be requested based on this protocol. The goal of the protocol is to enable a HA to identify lead hazards, so that appropriate interim controls can be implemented until random testing and/or full abatement can be undertaken. Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The risk assessment protocol has been developed by the Department to ensure compliance with this provision and with certain requirements of the Lead-Based Paint Poisoning Prevention Act.

HAs are expected to implement the interim control recommendations resulting from the completed risk assessment, especially in cases where full abatement will not be undertaken within a reasonable time frame (one year). However, actual implementation of recommendations that result from the risk assessment conducted is not eligible for funding under this NOFA. The implementation of resulting recommendations (e.g., comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, operating reserves or State/local contributions).

In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to abate lead-based paint hazards; rather, they are interim measures to be used until testing and/or full abatement can be undertaken, as appropriate. Similarly, in no instance

shall conducting a risk assessment satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test for and abate lead-based paint hazards.

(4) CIAP requirements, as set forth in 24 CFR part 968, subpart B, and the CIAP Handbook, 7485.1 REV-4, are applicable to HAs funded under this NOFA. These requirements encompass implementation schedules, progress reports, budget revisions, requests for extensions, closeouts, etc. Fund requisitions are to be processed through the LOCCS/VRS system.

(5) HAs must follow the requirements of 24 CFR part 85 for the procurement of risk assessments.

(6) In accepting funding to perform a risk assessment, HAs must agree to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol. This evaluation will entail a review of collected sampling data and the effectiveness of recommended interim control procedures.

C. Ineligible Costs and Activities

(1) A specific development targeted within an application is *not* eligible for funding, in accordance with the threshold requirements set forth in Section II.B. of this NOFA, where the development has been:

- Tested and abated; or
- Tested and the results were negative; or
- Tested, results were positive, and an adequate interim control plan has been developed; or
- The subject of a risk assessment previously.

(2) Actual implementation of recommendations that result from the risk assessment conducted is *not eligible* for funding under this NOFA. The implementation of resulting recommendations (e.g., comprehensive or random testing, abatement of lead, interim control measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, or operating reserves). HAs are expected to implement these recommendations, especially those related to interim control measures when abatement of lead hazards will not take place within a reasonable time (one year). *In no instance shall the implementation of interim control measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test and/or abate lead-based paint hazards.*

(3) Funds under this NOFA may not be used to purchase insurance including existing-conditions LBP liability insurance. While funds may be used to

conduct risk assessments required to be in place prior to the issuance of an insurance policy, under no circumstance may these funds be used to pay for the premiums associated with this insurance.

D. Selection of Applications

(1) Applications will be selected for funding only after they have been deemed eligible in accordance with the threshold requirements set forth in Section II.B. of this NOFA. The Department expects to have enough money to fund all eligible applications. In the event funding requests exceed the amount available, awards will be made based on a first-come, first-served basis as indicated by the date- and time-stamp posted by the HUD Field Office when the HA's application is submitted.

(2) *Field Offices shall ensure that all applications (including copies) are date- and time-stamped immediately upon receipt.* Field Offices shall notify Headquarters of funding decisions on July 13, 1995. The Field Office will be responsible for identifying, notifying applicants of, and receiving corrections of any technical deficiencies in the application, as discussed in Section IV of this NOFA.

(3) The Field Office Public Housing Division Director shall make final funding decisions. Each Field Office will advise Headquarters, by the date specified in Section I.D (2) of this NOFA, of the number of eligible applications, the amounts requested for each eligible development listed in each eligible application, and the total amount requested by an eligible housing authority. Headquarters will assign funds to the Field Offices based on total amounts requested from applicant HAs within each Field Offices' jurisdiction.

E. Notification of Awards

The Field Office will notify the HA of its funding decision after HUD has completed the required congressional notification. Reservation and congressional notification documents will be prepared by the Field Office.

II. Application Process

A. General Requirements

Forms that comprise the application kit are available from HUD Field Offices. To be considered for funding, an original and 2 copies of the application must be submitted to the HUD Field Office that has jurisdiction over the applicant HA. An application may be submitted immediately upon publication of this NOFA, and must be submitted before 3:00 p.m., local time, on May 30, 1995, to the HUD Field

Office that has jurisdiction over the applicant HA. The contents of the application are listed below, in Section III of this NOFA.

The above-stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

B. Threshold Requirements

To be considered eligible for funding, an HA must propose to conduct risk assessments for pre-1980 family developments that:

- Have not previously been the subject of a risk assessment; or
- Have not been tested and abated; or
- Have been tested and results were positive, but the developments have not been abated or an adequate interim control plan has not been developed.

III. Checklist of Application Submission Requirements

The following documents comprise the application:

(a) OMB Standard Form 424, Application for Federal Assistance (HAs shall complete only items 2, 5, 12, 13, 14, 15, 17 and 18) and SF-424(B);

(b) Form HUD-52825, Comprehensive Assessment/Program Budget, Part I—Summary. The total amount requested for funding will be identified on this form under either account 1410.1, Administration (where HA staff will be used and the HA certifies that it has the capability of, and will be conducting the professional risk assessment; NOTE: a portion, not to exceed ten percent [10%] of the funding requested, may be used for administrative expenses incurred by the HA, including the use of a consultant to prepare background materials in support of the risk assessment), or account 1430.2, Consultant Fees (where the HA will be contracting for the professional risk assessment).

(c) Form HUD-52825, Comprehensive Assessment/Program Budget, Part II—Supporting Pages. Developments proposed to be the subject of a risk assessment are to be identified on this form. The applicant must provide the name; address; project number; total number of units; number of units to be sampled, in accordance with the requirements set forth in Section I.A(3) of this NOFA and in the risk assessment protocol; and amount requested for each

development, with supporting justification, as appropriate.

(d) Certification signed by the HA Executive Director that, at a minimum, the risk assessment protocol to be used will be equivalent to the Department's protocol.

(e) Certification signed by the HA Executive Director that the proposed risk assessment will be completed within eighteen (18) months of the date that funds are awarded and that the HA agrees to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol, to assess its validity for the identification of lead-based paint hazards and effectiveness in addressing those hazards.

(f) Certification signed by the HA Executive Director that a copy of the completed risk assessment will be provided to the appropriate HUD Field Office upon completion of the assessment.

(g) Certification that HA staff are qualified to conduct LBP risk assessments in accordance with the protocol, if applicable.

(h) Certification that the HA will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(i) Form HUD-50070, Certification for Drug-Free Workplace.

(j) Certification for Contracts, Grants, Loans and Cooperative Agreements, required of HAs established under State law that are applying for grants exceeding \$100,000.

(k) SF-LLL, Disclosure of Lobbying Activities, required of HAs established under State law only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(l) Form HUD-2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

Immediately after the submission of an application, the appropriate Field Office will screen the application to determine whether all items were submitted. If items 1, 2, and 3 listed in Section III, Application Content, of this NOFA are missing, the application will be considered substantially incomplete and, therefore, ineligible for processing.

If the HA fails to submit any of items 4-12 listed in Section III of this NOFA, or the application contains a technical mistake, such as an incorrect signatory, the Field Office will immediately notify the HA that it has 14 calendar days from

the date of HUD's written notification to submit or correct the specified items. If any of items 4-12 are missing and the HA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

V. Other Matters

A. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA merely sets forth funding availability for HAs to conduct, at their discretion, risk assessments for lead paint hazards.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Families could benefit from this funding action as a result of the identification of immediate and potential lead-based paint hazards; that identification will ultimately lead to a safer environment. However, since the impact on the family is not necessarily significant and is beneficial, no further review is considered necessary.

D. Section 102 of the HUD Reform Act; Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880)

will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) is codified as 24 CFR part 4 and applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two

provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 has been implemented in 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of that part.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban

Development, 451 Seventh Street, S.W., Washington, D.C. 20410-3000. Telephone: (202) 708-3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless

the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 14371 and 3535(d).

Dated: March 17, 1995.

Ronald J. Morony,

Acting Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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