



AUG 16 2001

Mr. Joseph Maheady  
Senior Environment Policy Representative  
National Association of Realtors  
700 Eleventh Street, NW  
Washington, DC 20001-4507

Dear Mr. Maheady:

We are responding to materials you submitted to the U.S. Environmental Protection Agency (EPA) before your April 18, 2001 meeting with EPA staff, and materials you submitted to the U.S. Department of Housing and Urban Development (HUD) in your May 15, 2001 letter to HUD. These materials raised questions about implementation of EPA's and HUD's March 6, 1996, rulemaking, Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing (Disclosure Rule); EPA's June 1, 1998 rule, Requirements for Hazard Education Before Renovation of Target Housing (Renovation Rule); and HUD's September 15, 1999 Lead-Safe Housing Rule.

1. Timing of disclosure.

You asked whether the "timing" guidance which EPA and HUD previously provided to the National Association of Realtors (NAR) in March, 1999 and subsequently incorporated into our Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information concerning Lead-Based Paint in Housing, Part III (August 2, 2000), can be applied nationwide. Yes, it can be applied nationwide; EPA and HUD will state this in future Interpretive Guidance.

2. Execution of the disclosure and acknowledgment form in "counterparts."

You asked whether the disclosure and acknowledgment form could be executed in "counterparts" through the use of photocopies, that is, whether the listing broker and seller of a property may execute their portions of the disclosure and acknowledgment form, distribute photocopies of the signed form to prospective purchasers, and have a cooperating broker and the purchaser execute and return the photocopy of the form. Lessors and sellers may use this practice, as long as HUD and EPA can access all of the original signatures.

3. Use of electronic versions of the disclosure and acknowledgment forms.

You asked whether electronic versions of the disclosure and acknowledgment forms were acceptable, that is, whether a broker may transmit an electronic version of the form signed by the seller, to be executed and returned by the purchaser. When the applicable provisions of the Electronic Signatures in Global and National Commerce Act (ESIGN), Public Law 106-229, are implemented through the rulemaking which is now under way, HUD and EPA will provide guidance on its implementation with respect to the Disclosure Rule.

4. Disclosure by joint owners of property.

You asked whether each party who is a joint owner of a property must execute the disclosure and acknowledgment form or whether execution by one party would be sufficient. EPA and HUD agree with your position relative to joint ownership of property in cases where one joint owner is fully disclosing all known lead-based paint or lead-based paint hazard information held by either owner. Our focus is on the proper disclosure of information and the execution of the disclosure by someone legally authorized to represent the parties. EPA and HUD believe that any omission of information about lead-based paint or lead-based paint hazards known to any joint owner would be a violation of the Disclosure Rule.

5. Acknowledging receipt of information.

You asked whether the buyer needs to acknowledge receipt of information on the disclosure form if no reports pertaining to lead-based paint and lead-based paint hazards were provided to the buyer. If the seller has no information in the form of reports or records to provide, then the buyer does not have to acknowledge receiving such information. EPA and HUD have stated this information in the past and will develop interpretive guidance which captures our position on this issue. This guidance applies to the case of rentals as well as sales.

6. Terminology of the disclosure and acknowledgment form.

You asked whether the terminology of the Disclosure and Acknowledgment form used by lessors or sellers must correspond with that prescribed in the Disclosure Rule, and cited the sample form provided in the final rule preamble (61 FR 9074-75, March 6, 1996). NAR recognizes that EPA and HUD require that exact wording be used for the Lead Warning Statements to ensure that the law is properly stated. EPA agreed in its September 8, 1999 letter to Representative Todd Tiahrt, to which you refer, that

the additional language inserted into the Lead Warning Statement to provide clarification was permissible. However, EPA and HUD also believe that some alterations to the Lead Warning Statement could result in violations if they mischaracterize the hazards of lead exposure or misstate the requirements of the law.

With regard to the rest of the disclosure and acknowledgment form, the regulation did not mandate specific language, but rather set out requirements and the final rule preamble provided a sample form. EPA and HUD provided a sample format -- but not a required form -- to allow for flexibility in the development of a form that would satisfy the Disclosure Rule as well as any state or local requirements. Therefore, apart from the Lead Warning Statement, lessors or sellers are free to use whatever language they believe is appropriate to meet the requirements for the disclosure and acknowledgment form set out in EPA regulations at 40 CFR 745.113 and in HUD regulations at 24 CFR 35.92.

#### 7. Approval of standard disclosure and acknowledgment form.

You also asked whether HUD and EPA require a standard disclosure and acknowledgment form and whether there is a procedure to approve alternative forms. The answer is no to both questions. The Disclosure Rule did not require any particular form; therefore, HUD and EPA do not approve forms, and do not have a procedure to do so. EPA will provide copies of this letter to its Regional Offices so that they are clear on EPA's and HUD's joint position on this issue.

#### 8. Enforcement.

You indicated that NAR would like to discuss an appropriate mechanism for addressing enforcement concerns. When you met with EPA staff on April 18, 2001, you discussed regular meetings to discuss enforcement. HUD and EPA's Office of Enforcement and Compliance Assistance are pleased to convene such meetings at your request.

#### 9. Federal Lead-Based Paint Pamphlet.

You inquired as to whether it is permissible to continue to use the 1995 version of the pamphlet, "Project Your Family From Lead in Your Home" to comply with the disclosure rule, since this publication was revised in 1999. The answer is yes. The 1995 version may be used in the short term to comply with the rule. For copies of the newer version you may contact the National Lead Information Clearinghouse at 1-800-424-LEAD or download it directly from HUD's website at [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead) or EPA's website at [www.epa.gov/lead](http://www.epa.gov/lead).

EPA is in the process of further revising the pamphlet to include lead hazard information resulting from the publication of the final TSCA section 403 rule, Identification of Dangerous Levels of Lead (66 FR 1205-1240; January 5, 2001), and hopes to make the revised pamphlet available in September, 2001. Although older versions of the pamphlet may still be used in the short term, EPA and HUD will be recommending that persons distributing the pamphlet switch to the 2001 version as soon as possible, so that the public receives the most up-to-date information regarding the lead hazard standards.

#### 10. EPA's Renovation Rule.

In the materials you supplied to EPA before the April 18, 2001, meeting, you discussed NAR's concerns with the Renovation Rule. EPA is interested in your comments on the burden of complying with the current regulatory requirement to distribute the federal lead-based paint information pamphlet no more than 60 days prior to beginning renovation activities. However, in considering a change in the requirement to once a year, as you suggest, EPA would need to compare the effectiveness of annual distribution to the present method. We do not know of any data that compare the two methods. Therefore, we propose to work with your industry and other affected entities to develop the data through the use of a survey. At our next meeting, EPA staff will be able to fully explain the proposed project and how you can be involved in all aspects of planning and implementation.

#### 11. HUD's Lead-Safe Housing Rule.

In your May 15, 2001, letter to HUD, you asked whether the HUD-negotiated rate for lead-based paint inspections in project-based section 8 housing can be extended to landlords of tenant-based housing. This issue was addressed in HUD's letter of May 21, 2001, which stated that landlords are free to negotiate with the contractor doing the lead paint inspections in project-based housing and can get further information from Mr. Avery Becton in HUD's Office of the Chief Procurement Officer. He may be reached at (202) 708-1772, extension 7126.

Your final query was whether HUD would consider further extensions to the Lead Safe Housing Rule after August 10. On August 3, HUD issued its Notice OHHLHC-01-05, announcing that the Office of Healthy Homes and Lead Hazard Control will receive updated Transition Implementation Plans posted by September 10 for the transition from previous HUD lead rules to the Lead Safe Housing Rule from jurisdictions receiving transition assistance. If the updated Plan demonstrates good faith efforts to build capacity, HUD will conclude that compliance is not feasible for the applicable programs and/or disciplines in that jurisdiction,

and extend the transition assistance period. No further extensions will be provided beyond January 10, 2002. The Notice is on HUD's lead web site, [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead), at the top of the "What's New" column. Questions about the Notice may be directed to HUD's Lead Paint Compliance Assistance Center at, toll-free, 1-866-HUD-1012.

We hope that you find this information on your 11 questions useful. If you have any additional questions do not hesitate to contact David E. Jacobs of HUD at (202) 755-4973, or Ellie Clark of EPA at (202) 260-3402.

Sincerely,

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