

## ***Guidance on HUD/EPA Abatement Letter***

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The following provides sample scenarios of the some of the decisions that program administrators will face when determining if the work being done in a rehabilitation project is abatement.

The analysis of each scenario is based on two principles:

1. **Intent.** The HUD/EPA Abatement Letter of April 19, 2001 stresses the importance of intent in determining whether or not a specific activity constitutes abatement. Abatement is defined as an activity that is specifically intended to permanently eliminate lead-based paint or lead-based paint hazards.

The intention to permanently eliminate lead-based paint can be established in one of four ways:

- Abatement is required by a regulation such as the Lead Safe Housing Rule. (Example: Abatement of identified lead hazards conducted in the interior of a unit where the level of rehabilitation assistance is over \$25,000 per unit).
  - Abatement is required by a court or agency order. (Example: A court orders abatement of a unit after a lead-poisoned child is identified in the unit).
  - Project work specifications call for abatement. (Example: The project work specifications specifically state that lead is being permanently removed.)
  - A cost allocation document attributes the cost of an activity to lead hazard reduction **and** the activity in question is an abatement method. There are four abatement methods: component replacement, paint removal, enclosure, and encapsulation. (Example: For an \$18,000 HOME-funded rehabilitation project, a cost allocation document allocates the cost of window replacement to lead hazard reduction. Because the window replacement is classified as a lead hazard reduction cost **and** window replacement is “component replacement”, which is an abatement method, the window replacement is considered an abatement activity and must be performed by a certified abatement contractor.)
2. **Cost Allocation.** As explained above, the intent to abate may be established in a cost allocation document. This means that the allocation of costs – between “hard costs of rehabilitation” and “lead hazard reduction” can have significant implications on the nature of the job and hence, the qualifications of the personnel who do this job. The following scenarios illustrate this point.

## Scenarios – Cost Allocation and Implications for Job Planning

*(NOTE: For the sake of simplicity, all scenarios below assume full federal funding for the rehabilitation.)*

**Scenario 1:** A \$12,000 rehab project (hard costs) does not include window replacement. The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (interim controls). The rehab specialist decides to change the scope of his rehab project to include the replacement of windows (it turns out they are really old and there are compelling energy as well as lead reasons to replace them).

*What does this mean for cost allocation purposes?* In this case, the rehab specialist has two options.

**Option 1:** He can allocate cost of window replacement as a rehabilitation hard cost. In this case, an abatement crew is not required but safe work practices must be followed because lead-based paint is known to be present. Workers must, therefore be trained in safe work practices or supervised by a certified abatement supervisor.

**Option 2:** He can allocate the cost of window replacement to lead hazard reduction. In this case an abatement contractor will be required because window replacement is an abatement method. (It is component replacement).

**Note:** State regulations may affect these options. If the state regulation requires abatement certification and training for workers who perform any kind of work on a surface known to contain lead, then state requirements regarding the training and certification of such workers applies, regardless of how the costs are allocated.

**Scenario 2:** A \$28,000 rehab project (hard costs) includes window replacement (of \$8000). The risk assessment identifies the windows as a hazard and provides a choice between window replacement (abatement) and friction treatments (non-abatement). The risk assessment also identifies various other small hazards. The rehab specialist decides to go ahead with the window replacement. He then revises his work specs to include work on all hazards identified and finalizes his cost allocation document.

*What does this mean for cost allocation purposes?* In this case, the rehab specialist has two options.

**Option 1:** He can allocate the costs of the window replacement to lead hazard reduction. This would reduce the rehab hard costs to \$20K and allow them to perform interim controls as their method of lead hazard reduction (and use trained workers). However, because component replacement is an abatement method, the window replacement must be done by an abatement crew.

**Option 2:** He can allocate the costs of the window replacement to rehab. This would bring the per unit rehab costs to \$28,000 (i.e. over \$25,000), so abatement of all hazards is required.

**Scenario 3:** A \$20,000 rehab project (hard costs) includes the replacement of the 8 windows on the first floor because they are old and don't work well anymore. Windows on the second floor are not scheduled for work. The risk assessment identifies all the windows in the unit as hazards and provides a choice between window replacement and window treatments. The risk assessment also identifies a number of other hazards. The rehab specialist decides to go forward with the replacement of the first floor windows. He opts to perform friction treatments on the remaining windows and to perform interim controls on the remaining hazards.

In the cost allocation document, he allocates the cost of the window replacement to rehabilitation costs. He allocates the cost of the friction treatments and all the reduction of the other hazards to lead hazard reduction. He uses workers trained in safe work practices to perform all the work.

*Is this a permissible approach?* Yes. None of the work on this job is abatement. Because of the way he allocated the costs, the window replacement is rehabilitation (not hazard reduction and therefore, not abatement). Further, the friction treatments on the remaining windows constitute interim controls, not abatement.

*What if he had chosen to allocate the cost of the window replacement to lead hazard reduction?* Then, it would be considered abatement because component replacement is an abatement method. In that case, he would need abatement workers to perform the window replacement. However, trained workers would be permitted to perform the friction treatments since that is an interim controls method.

*Note:* If a state law required work on any known to contain lead-based paint to be worked on by a certified contractor, then an abatement contractor would be required for all the lead hazard reduction work.

**Scenario 4:** A \$28,000 rehab project (hard costs) includes window replacement (of \$8000). The risk assessment identifies hazards throughout the unit (including the windows) and identified acceptable interim controls and abatement methods for each hazard. The cost of the abatement methods recommended by the risk assessor will total \$15,000. This cost is too high for the program to bear so they reconsider the scope of the project. The rehab specialist rewrites the scope of work to exclude the window replacement (thereby reducing the project hard costs to \$20,000) and include interim controls on all hazards, including the windows that were originally scheduled for replacement. This option makes the project affordable to them.

*Is this a permissible approach?* Yes.