

**CHAPTER 48****LEAD HAZARD CONTROL ASSISTANCE FUND****Authority**

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**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. GENERAL PROVISIONS**

- 5:48-1.1 Purpose
- 5:48-1.2 Definitions

**SUBCHAPTER 2. LEAD HAZARD CONTROL ASSISTANCE FUND**

- 5:48-2.1 Purpose and program objectives
- 5:48-2.2 Allocation of funds
- 5:48-2.3 Forms of financial assistance
- 5:48-2.4 Limitations on financial assistance
- 5:48-2.5 Release of LHCA funds
- 5:48-2.6 Basic eligibility criteria
- 5:48-2.7 Additional eligibility criteria—abatement projects
- 5:48-2.8 Additional eligibility criteria—interim control projects
- 5:48-2.9 Eligible project activities/costs
- 5:48-2.10 Funding priorities
- 5:48-2.11 Non-displacement protections
- 5:48-2.12 Lead Safe Housing Registry
- 5:48-2.13 Public inspection of Lead Safe Housing Registry
- 5:48-2.14 Relocation due to immediate risk
- 5:48-2.15 Lead education/outreach and training

**SUBCHAPTER 3. EMERGENCY LEAD POISONING RELOCATION FUND**

- 5:48-3.1 Purpose and program objectives
- 5:48-3.2 Forms of financial assistance
- 5:48-3.3 Basic eligibility criteria
- 5:48-3.4 Eligible activities/costs
- 5:48-3.5 Reimbursement of ELPR Fund
- 5:48-3.6 Liability for relocation costs

**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.

“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).

“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.

“Department” means the Department of Community Affairs.

“Division” means the Division of Housing and 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.

"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 Procedure 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.

"LHCA" means Lead Hazard Control Assistance.

"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 U.S. 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 U.S. 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 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 \$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 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 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.