



GREGORY RUSS
CHAIR & CHIEF EXECUTIVE OFFICER

MEMORANDUM

To: Greg Russ, Chair & CEO; Shaan Mavani, Chief Asset and Capital Management Officer

From: Brad Greenburg, Chief Compliance Officer

Date: September 13, 2022

CC: Eva Trimble, Chief Operating Officer; Jonathan Gouveia, Executive Vice President, Real Estate Development; Lisa Bova-Hiatt, General Counsel

Subject: Policies Governing Testing, Risk Assessments and Abatement of Lead-Based Paint at PACT Sites

I. Introduction and Executive Summary

In January 2019, the U.S. Department of Housing and Urban Development (“**HUD**”) and the New York City Housing Authority (“**NYCHA**”) entered into an agreement (“**HUD Agreement**”) to establish specific requirements and milestones to address the serious health and safety hazards at NYCHA properties, including lead-based paint. As you know, NYCHA has a set of affirmative legal obligations with respect to lead-based paint that impact the Permanent Affordability Commitment Together (“**PACT**”) program, including with respect to lead abatement per the requirements listed in Paragraph 15 of the HUD Agreement. To that end, on December 10, 2019, NYCHA finalized a policy memo entitled “Lead-Based Paint Procedures for NYCHA’s PACT Projects,” (the “**December 2019 Memo**”) which is appended here as **Appendix A**.

This memo will amend or clarify, where applicable, the obligations of the PACT Partner with respect to the scope of abatement that must take place under the PACT program. The obligations laid out in this memo will ensure PACT Partners are held to the same standards as the public housing portfolio, as set forth in internal NYCHA policy documents, the HUD Agreement and local and federal law governing lead-based paint. Starting on the date the memo is executed, the following will apply:

1. PACT Partners will be required to test all units and common areas for lead-based paint at 0.5 mg/cm², the new stricter City standard, and NYCHA will not accept test results at 1.0 mg/cm², the federal standard. No exceptions will be provided.
2. In almost all cases, PACT Partners will be required to abate all lead-based paint found at the 0.5 mg/cm² standard by removal in any space that tests positive at a PACT site.
3. As PACT Partners craft their abatement plans, NYCHA will consider providing limited exceptions in terms of the method of abatement in common areas, commercial spaces and community facilities.
4. As PACT Partners craft their abatement plans, NYCHA will also consider providing limited exceptions in terms of requiring abatement at the lower standard in units where no child under six resides or visits the unit and where the unit has previously received a lead-free exemption at the 1.0 mg/cm² federal standard. These units will still be abated at the lower standard at a later date.

II. Summary of Policy Recommendations

The below table lays out policy recommendations described in this memo. Each topic also has a section justifying the policy recommendation:

<u>Topic</u>	<u>Policy</u>
Abatement in Units	NYCHA will require its PACT partners to abate lead-based paint by removal at the 0.5 mg/cm² standard in all units where lead-based paint is identified at that threshold. Alternative abatement methods will not be permitted in units. Abating components or units using the federal 1.0 mg/cm ² standard but not the 0.5 mg/cm ² City standard will also not be permitted in units.
Abatement in Common Areas	<p>The same rule requiring abatement via removal at the 0.5 mg/cm² standard will apply to the abatement of interior and exterior common areas except in extraordinary circumstances that will be reviewed by NYCHA as part of the PACT Partner’s abatement plan. For example, if the space is not “generally accessible” to residents, abatement would not be required because the area is not within the definition of a “common area” under 40 C.F.R. part 745, subpart L. To be considered inaccessible space, there would need to be signage, lockable doors and secure locks on the doors that prevent access to the space by residents. Determination of which spaces are “generally accessible” will be done in coordination with NYCHA.</p> <p>In addition, in limited circumstances where the ongoing maintenance obligation and the potential hazard would be minor based on the location and the type of component, an alternative abatement method for common area components testing positive using the 0.5 mg/cm² standard would be permitted if approved jointly by NYCHA and the federal Monitor.</p>
Abatement in Commercial Spaces	<p>NYCHA will evaluate abatement plans for commercial spaces and community facilities like that for other interior and exterior common areas included in a PACT project, and will include in its evaluation the specific use of the space (e.g. whether the space is used as a daycare or other child care facility). Some commercial or community facility spaces, based on their use, may also be considered “common areas” under 40 C.F.R. Part 745, Subpart L. For example, spaces that are accessory to a residential use like community rooms, tenant association rooms and property management offices will need to be treated as a “common area.”</p> <p>Again, NYCHA will heavily preference the removal of lead-based paint at 0.5 mg/cm² at commercial facilities and will consult with the federal Monitor on the use of an alternative abatement method in exceptionally limited circumstances.</p>
Use of Lead-Free Exemptions at 1.0 mg/cm ²	<p>NYCHA has historically received lead-free exemptions at 1.0 mg/cm² from HPD. PACT Partners may use these existing lead-free exemptions and may choose not to abate the unit during the construction period unless one of the following conditions are met, which would trigger a requirement that the PACT Partner abate the unit – (1) a child under six years old resides in or regularly visits the unit; or (2) the unit becomes vacant.</p> <p>If the first condition is met, PACT Partners will be obligated to adhere to the same</p>

Topic	Policy
	<p>policy as the policy established for the public housing portfolio and the child under six unit will need to be re-tested and, if necessary, abated at the 0.5 mg/cm² standard during the construction period. If the second condition is met, HPD revokes its exemption at turnover and a PACT Partner is required to re-test and, if necessary, abate the unit to the 0.5 mg/cm² standard during the construction period to secure a new lead-free exemption. In addition, if NYCHA or a PACT Partner tests a unit with a 1.0 mg/cm² exemption at 0.5 mg/cm², the PACT Partner will be obligated to use the results of that test to determine whether abatement is required and to apply for a new lead-free exemption at the new standard, if eligible.</p>
Testing	<p>NYCHA will require that PACT partners test units and common areas at the 0.5 mg/cm² level to produce abatement plans and to apply for lead free exemptions from HPD. NYCHA, like HPD, will not accept test results at the 1.0 mg/cm² standard. During these inspections, the PACT partner should identify lead hazards, including, dust, and deteriorated paint and report these conditions directly to NYCHA.</p> <p>PACT Partners should make a concerted effort to access all units for testing during the pre-conversion phase of a project, unless the unit was previously tested by NYCHA at the 0.5 mg/cm² level.</p> <p>PACT Partners must provide Notices of Evaluation pursuant to 24 C.F.R. § 35.125 upon completion of a test where lead is found to be present.</p>

III. Abatement

The goal of this memo is to ensure that NYCHA’s abatement standards are uniform across all lead abatement pipelines. Under Paragraph 15 of the HUD Agreement, NYCHA is obligated to ensure that “during the construction period, the PACT Partner abates lead-based paint in compliance with the lead abatement standards of 24 C.F.R. § 35.903(d), regardless of the dollar value of rehabilitation.” Under 24 C.F.R. § 35.903(d), technically only lead-based paint *hazards* would require abatement during the construction period. However, the December 2019 Memo clarified this issue by requiring that PACT Partners, like NYCHA on the public housing side, abate all lead-based paint, regardless of whether it is considered a hazard.

Exhibit A Paragraphs 8 through 12 further describe NYCHA’s obligation to abate the entire public housing portfolio over the course of a 20-year period through January 31, 2039 in conformance with 40 C.F.R. Part 745, Subpart L. NYCHA is obligated to abate lead-based paint even if it does not meet the definition of a hazard. In the last two years, NYCHA also made the decision to use the PACT program to meet its obligation under Exhibit A Paragraphs 8 through 12 of the HUD Agreement, including at Harlem River Houses and Williamsburg Houses, which converted in February 2022 and December 2021 respectively and are named in Paragraph 8.

Building on decisions made leading up to the Round 8 PACT closings, this memo will further establish the use of uniform standards with respect to the methods of abatement and the standard that will be used to measure whether a component is positive for lead-based paint and therefore falls within the scope of work to be abated.

On the public housing side, based on the requirements of the HUD Agreement and changes to Local Law,

NYCHA made the policy decision to use abate by removal at the 0.5 mg/cm² threshold as its standard scope for abatement in units. This decision was made based on the following:

- Exhibit A Paragraph 13 of the HUD Agreement requires that, for the purpose of Paragraphs 8 through 12, “with respect to abatement” the definitions in 40 C.F.R. Part 745, Subpart L shall apply. In addition, under Exhibit A Paragraph 13 of the HUD Agreement, if the federal Monitor determines that NYCHA will not be able to comply with ongoing maintenance, evaluation and the other obligations required based on the use of “alternative abatement methods,” which is defined to include “enclosure, encapsulation, encasement or other abatement measures that retain the lead-based paint in place” then “NYCHA shall abate by removal.” In other words, NYCHA may only use an alternative abatement method if the federal Monitor determines that NYCHA could comply with ongoing maintenance, reevaluation and other obligations associated with that method.
- Under Local Law 66 of 2019, which became effective on December 1, 2021, New York City changed the definition of lead-based paint from paint with lead content measured at 1.0 milligrams per square centimeter (the federal standard) to paint with lead content measured at 0.5 milligrams per square centimeter for the purposes of determining compliance under New York City’s Local Law 1. NYCHA expects that the federal government will follow suit and eventually change its standard as well.
- New York City’s Local Law 1 of 2004, as amended, requires that *any* New York City landlord (including NYCHA and its PACT Partners) identify and fix lead-based paint hazards in the apartments of children under six years old if the building was built before 1960 or between 1960 and 1978 if the owner knows the building has any lead-based paint. The obligations of Local Law 1 include, but are not limited to, producing an annual notice to collect information on whether a child younger than six years old lives in the landlord’s units and then to investigate units for peeling paint and to subsequently remediate deteriorated paint conditions. In other words, if a unit did not either test negative or get abated at the new City standard of 0.5 mg/cm², the ongoing obligations that may be evaluated by the federal Monitor as described in Exhibit A Paragraph 13 of the Agreement would include, under Local Law 1, the need to evaluate whether a child lives in that unit and then to maintain that unit in compliance with Local Law 1 if a child regularly visits or lives in that unit.

These legal requirements intersect. The Agreement strongly favors the use of removal in most circumstances based on an analysis of ongoing obligations, and the change in New York City’s standard for what constitutes lead-based paint imposes an additional set of ongoing obligations on units that have not affirmatively tested negative or been abated at the lower 0.5 mg/cm² threshold.

For these reasons, in December 2021, NYCHA made the policy decision in its public housing portfolio to re-test units and abate units via removal at the 0.5 mg/cm² standard. This approach ensures the federal Monitor does not, under Exhibit A Paragraph 13 of the HUD Agreement, need to assess whether NYCHA can comply with ongoing maintenance obligations deriving from *both* the use of an alternative abatement method and failing to abate components or units that fall below the federal standard of 1.0 mg/cm² but above the City standard of 0.5 mg/cm². Instead, this approach permanently eliminates any ongoing obligations by ensuring the unit is lead-free at the strictest standard in the country.

NYCHA’s PACT partners at Williamsburg Houses and Harlem River Houses, in collaboration with NYCHA, made the same decision and, after these transactions closed in December 2021 and February 2022 respectively, have been abating units heavily contaminated with lead-based paint via removal at the 0.5 mg/cm² threshold.

Since taking this approach, NYCHA has identified a set of challenges associated to it, including the need

to relocate more residents on a temporary basis and an increase in cost and timeline. However, paying this cost now and relocating residents in units that test positive at 0.5 mg/cm² once to do this work is a better approach than the alternative, which would require staggering costs and multiple relocations of a resident over time.

Even if NYCHA or a PACT Partner were to delay abatement via removal at 0.5 mg/cm², NYCHA or the PACT Partner would need to pay some of the cost now for a partial abatement, accrue additional ongoing costs associated with maintenance and then eventually still needing to pay for the cost of full removal in approximately twenty years when the alternative method is no longer viable. Thus, use of an alternative abatement method is not a more cost-effective approach than removing lead-based paint at the most stringent standard now.

In addition, it is preferable for NYCHA or the PACT Partner to temporarily relocate a resident once during the construction period rather than potentially needing to relocate residents *several times* - (1) to abate during the construction period at 1.0 mg/cm² or using an alternative method; (2) to abate later at 0.5 mg/cm² or using removal when that becomes necessary; and (3) potentially many other times in order to perform interim controls and deal with ongoing hazards associated with renovating a unit with lead-based paint still in place.

NYCHA recognizes, too, that this policy choice may extend the timeline of a project. However, NYCHA's ultimate obligation is to abate the portfolio by January 31, 2039. No additional extension to the initial timeline for a project set to close in 2023 will take us outside that window. Rather, taking longer now is a better approach than waiting to do this work later when the Agreement's deadlines have passed.

Finally, the ongoing obligations to maintain and evaluate where an alternative abatement method is used is made more difficult in units relative to common areas. Ongoing maintenance and evaluation are simpler in common areas, where coordinating unit access is unnecessary. In addition, hazards associated with the deterioration of lead-based paint are more acute in units, where residents spend a significant amount of time relative to common areas. Thus, NYCHA's preference for removal at the most stringent standard will also govern abatement in common areas, though the analysis may be different under certain circumstances.

For these reasons, with your approval, this memo formalizes use of a single uniform policy across NYCHA's public housing and PACT portfolio with respect to the abatement of lead-based paint:

1. *NYCHA will require its PACT partners to abate lead-based paint by **removal at the 0.5 mg/cm² standard in all units** where lead-based paint is identified at that threshold. Alternative abatement methods will not be permitted in units. Abating components or units using the federal 1.0 mg/cm² standard but not the 0.5 mg/cm² City standard will also not be permitted in units.*
2. *The same rule requiring abatement via **removal at the 0.5 mg/cm² standard will apply to the abatement of interior and exterior common areas except in extraordinary circumstances that will be reviewed by NYCHA as part of the PACT Partner's abatement plan.** For example, if the space is not "generally accessible" to residents, abatement would not be required because the area is not within the definition of a "common area" under 40 C.F.R. part 745, subpart L. To be considered inaccessible space, there would need to be signage, lockable doors and secure locks on the doors that prevent access to the space by residents. Determination of which spaces are "generally accessible" will be done in coordination with NYCHA. In addition, in limited circumstances where the ongoing maintenance obligation and the potential hazard would be minor based on the location and the type of component, an alternative abatement method for*

common area components testing positive using the 0.5 mg/cm² standard would be permitted if approved jointly by NYCHA and the federal Monitor.

There are three additional points of clarification applicable to the PACT Program that are to be formalized in this policy memo:

- 1. NYCHA interprets the phrase “during the construction period” found in the Agreement to match the defined period following conversion that is specified in the relevant PACT documents where the Work or Scope of Work (defined in the RAD notice to be the improvements required by HUD) is taking place. NYCHA also reserves its rights to monitor the PACT Partner’s work related to lead-based paint under the PACT transaction documents on an ongoing basis.*
- 2. NYCHA will evaluate abatement plans for commercial spaces and community facilities like that for other interior and exterior common areas included in a PACT project, and will include in its evaluation the specific use of the space (e.g. whether the space is used as a daycare or other child care facility). Some commercial and community facility spaces, based on their use, may also be considered “common areas” under 40 C.F.R. Part 745, Subpart L. For example, spaces that are accessory to a residential use like community rooms, tenant association rooms and property management offices will need to be abated. Again, NYCHA will heavily preference the removal of lead-based paint at 0.5 mg/cm² at commercial and community facilities and will consult with the federal Monitor on the use of an alternative abatement method in exceptionally limited circumstances.*
- 3. NYCHA has historically received lead-free exemptions at 1.0 mg/cm² from HPD. PACT Partners **may use** these existing lead-free exemptions and may choose not to abate the unit during the construction period **unless** one of the following conditions are met, which would trigger a requirement that the PACT Partner abate the unit – **(1) a child under six years old resides in or regularly visits the unit; or (2) the unit becomes vacant.** If the first condition is met, PACT Partners will be obligated to adhere to the same policy as the policy established for the public housing portfolio and the child under six unit will need to be re-tested and, if necessary, abated at the 0.5 mg/cm² standard during the construction period. If the second condition is met, HPD revokes its exemption at turnover and a PACT Partner is required to re-test and, if necessary, abate the unit to the 0.5 mg/cm² standard during the construction period to secure a new lead-free exemption. In addition, if NYCHA or a PACT Partner tests a unit with a 1.0 mg/cm² exemption at 0.5 mg/cm², the PACT Partner will be obligated to use the results of that test to determine whether abatement is required and to apply for a new lead-free exemption at the new standard, if eligible.*

Note that some of this is a change in or a further clarification of NYCHA’s policy related to lead-based paint abatement relative to the December 2019 Memo, which did not distinguish among abatement types, and which pre-dated the change in the City’s standard.

IV. Testing

The December 2019 Memo required that PACT Partners conduct paint testing or presume paint surfaces are positive in all units and common areas. The December 2019 Memo also described the use of a random sampling method for testing at the federal standard of 1.0 mg/cm². However, the decision to require abatement via removal at the 0.5 mg/cm² standard necessitates a clarification of NYCHA’s policy towards testing. In order to plan for the lead-based paint abatement scope of work, PACT Partners must test units and common areas at the 0.5 mg/cm² standard during the pre-conversion design phase if the building was built before 1960 or between 1960 and 1978 if the owner knows the building has any lead-

based paint. The PACT Partner should make a best effort to test 100% of the units prior to conversion. NYCHA recognizes that access issues, and refusals from some residents will make it so that some units may not be tested until after the conversion. Pre-conversion testing to the maximum extent practicable will ensure proper scoping and budgeting for lead-based paint abatement via removal at 0.5 mg/cm².

Additionally, as of March 1, 2022, HPD is no longer accepting exemption applications at 1.0 mg/cm². Therefore, testing negative (or testing positive and abating) at that level will not be useful when PACT Partners apply to HPD for any type of exemption. NYCHA requires that PACT Partners apply for these exemptions as part of the scope of the project if the unit is eligible for a lead-free exemption under HPD's rules.

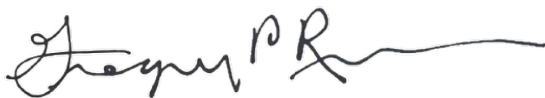
NYCHA has been testing units at the new City standard throughout its portfolio and so, in some cases, the PACT Partners will be able to use these testing records to apply for lead free exemptions at 0.5 mg/cm² or will be able to rely on the testing information to design an abatement via removal plan in those units. Still, testing units not yet tested by NYCHA at the 0.5 mg/cm² standard, during the design phase will be necessary to properly scope, schedule, and budget the construction phases of the project.

For these reasons, with your approval, this memo formalizes use of a single uniform policy across NYCHA's public housing and PACT portfolio, including the following:

1. ***NYCHA will require that PACT partners test units and common areas at the 0.5 mg/cm² level to produce abatement plans and to apply for lead free exemptions from HPD. NYCHA, like HPD, will not accept test results at the 1.0 mg/cm² standard. During these inspections, the PACT partner should identify lead hazards, including, dust, and deteriorated paint and report these conditions directly to NYCHA.***
2. *PACT Partners should make a concerted effort to access all units for testing during the pre-conversion phase of a project unless (i) the unit was previously tested by NYCHA at the 0.5 mg/cm² level or (ii) the unit does not have a child under six residing the unit and is not vacant but the unit did receive an HPD lead-free exemption.*
3. *PACT Partners must provide Notices of Evaluation pursuant to 24 C.F.R. § 35.125 upon completion of a test where lead is found to be present.*

V. Conclusion

There are other requirements described in the December 2019 Memo including with respect to the PACT Partner's obligations to conduct a risk assessment, to adhere to the requirements of the Lead Disclosure Rule, to conduct clearance examinations and to comply with other parts of the Lead Safe Housing Rule's requirements. These requirements remain in effect and will also be the subject of later procedural documents issued by NYCHA. NYCHA also reserves the right to impose additional testing and abatement related obligations. NYCHA also has the right to observe any abatement activities and request any documentation for review.



Gregory Russ
Chair and Chief Executive Officer

09.13.22

Date