

**Report to the City Council: The Department of Housing Preservation and Development’s  
Implementation of Local Law #1 of 2004 in FY 2023 (July 1, 2022 – June 30, 2023)**

The New York City Childhood Lead Poisoning Prevention Act, also known as Local Law 1 of 2004, as amended (“Local Law 1”), outlines the responsibilities of property owners and New York City agencies in the prevention of and response to lead-based paint hazards in tenant-occupied housing. This report is submitted annually in compliance with the related reporting requirement of Housing Maintenance Code § 27-2056.12.

Local Law 1 requires that property owners of tenant-occupied buildings erected prior to 1960, or tenant-occupied buildings erected between 1960 and 1978 where the owner has actual knowledge of the presence of lead-based paint, take preventative measures related to lead-based paint. Such measures include providing an annual notice to tenants to determine if a child under six years old resides in the apartment, conducting annual inspections in those apartments where a child under six resides and the common areas of those buildings to look for lead-based paint hazards, hiring appropriately certified contractors to address these hazards, and performing specific lead-based paint hazard-reduction activities when an apartment turns over. A lead-based paint hazard is defined in the law as any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated sub surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. Local Law 1 requires that the New York City Department of Housing Preservation and Development (HPD) respond to complaints describing peeling paint, or a deteriorated subsurface or underlying defect in the dwelling unit in a building built prior to 1960 and conduct inspections where a child under six years old resides; issue violations where lead-based paint hazards are found; and repair lead-based paint hazards when a property owner does not comply with HPD violations for such hazards or does not comply with a Commissioner’s Order to Abate (COTA) issued by the Department of Health and Mental Hygiene (DOHMH) in response to a child with an elevated blood lead level. Local Law 1 also requires HPD to audit property owner compliance with all record keeping requirements regarding lead-based paint.

HPD’s work has protected thousands of children from lead-based paint hazards since the implementation of Local Law 1. The substantial reduction in the number of children with elevated blood lead levels at significantly lower thresholds is evidence of the progress that has been made. According to DOHMH’s most recent *Childhood Blood Lead Level Surveillance Quarterly Report* (<https://www.nyc.gov/assets/doh/downloads/pdf/lead/lead-rep-cc-annual-22.pdf>), the number of children with elevated blood lead levels in New York City are approaching historic lows.

This report provides information related to HPD’s activities regarding lead-based paint in five important areas:

- **Section 1** presents data on HPD’s enforcement activities for FY23. Overall, complaints were down slightly to just under 39,000, the number of lead-based paint hazard violations issued increased by 15% continuing the trend based on the expanded definitions of the criteria for the issuance of a violation, and the amount of money that HPD spent on lead-based hazard remediation work in privately owned buildings increased to \$2.7 million, including some expenditures incurred in the previous fiscal year.

- **Section 2** presents data on HPD’s audits of owners’ records related to lead-based paint activities. HPD audited 780 properties in FY23. HPD will be changing the criteria for the selection of buildings under the Building Lead Index in FY24 as mandated by a change to Local Law.
- **Section 3** presents information about HPD’s enforcement of turnover requirements. HPD has issued more than 5,200 violations for turnover based on inspections and audits.
- **Section 4** presents other existing initiatives towards reducing lead-based paint exposure, including outreach and education efforts targeted to ensure property owners understand their responsibilities regarding lead-based paint.
- **Section 5** presents Budget and Personnel data: During FY23, HPD increased staffing to the Lead-Based Paint Inspection Unit, increased overall spending on lead-based paint activities by 34% to \$27 million, and continued to work with other agencies to Take the Lead on Lead, promoting a lead free New York, through enforcement and education.

Section 6 identifies HPD’s future initiatives.

## Section 1: Enforcement for Lead-Based Paint Hazards

### 1.1 Complaints to HPD

Complaints are received for lead-based paint under Local Law 1 in the same manner that all other complaints are received by HPD – through 311, which operates 24 hours a day, seven days a week. Most complaints are called in or submitted online to 311 by tenants. 311 complaints require a caller or online submitter to indicate whether there is a child under six residing (routinely spending at least 10 hours a week) in the apartment.

Complaints where a child under age six resides in a dwelling unit and the occupant reports conditions related to painted surfaces (such as leaks or broken plaster) are counted as complaints prompting lead hazard inspections and are inspected by the Lead-Based Paint Inspection Program (LBPIP), a specialized unit within the Division of Code Enforcement. LBPIP inspectors are equipped with X-Ray Fluorescence Analyzers (XRF) so that testing of any paint hazards can be done during the initial inspection. Pursuant to the law, an inspection must be attempted within 10 days from the date of such a complaint.

The impact of two changes which occurred in FY21 and FY22 increased the number of complaints received:

- 1) Complaints which meet the above criteria which are received from tenants in 1 and 2 family homes qualify as lead-based paint complaints, pursuant to Local Law 29 of 2020, effective February 11, 2021.
- 2) A child who routinely spends 10 or more hours a week in an apartment is now defined as “residing” in the apartment pursuant to Local Law 64 of 2019 and implemented in July 2020 for the purposes of assessing the apartment for lead-based paint hazards.

The law also requires HPD proactively inspect for lead-based paint hazards on *all* inspections when a child under age six resides in the apartment. Given this, HPD also routes complaints where it was indicated from 311 that a child under six resides but with no reported conditions related to painted surfaces to the LBPIP for inspection. These complaints are not counted as lead-based paint complaints since there is no reported condition related to paint, but HPD reports them as part of the same workload because the process for inspection is the same.

In both above complaint situations, after an attempt is made to contact the landlord to notify them of the complaint, the complaint is then forwarded to the LBPIP to schedule an inspection with the tenant. If the tenant is reached and indicates that the condition has not been corrected, an appointment is set. If the tenant cannot be reached, an inspection is attempted without an appointment.

**Table 1: Lead-Based Paint Complaints**

| <b>Complaints for Peeling Paint Conditions Where a Child Under Six Years of Age Resides<sup>1</sup></b>                     | <b>FY19</b> | <b>FY20<sup>2</sup></b> | <b>FY21<sup>3</sup></b> | <b>FY22</b> | <b>FY23</b> |
|---|-------------|-------------------------|-------------------------|-------------|-------------|
| Complaints Prompting Lead Hazard Inspections in Privately-Owned Buildings   | 30,349      | 18,460                  | 26,974                  | 39,787      | 38,752      |
| Complaints in Privately-Owned Buildings Flagged on Intake with a Child Under 6 Residing Within but No Paint Hazard Reported | 14,295      | 12,111                  | 18,622                  | 27,142      | 29,386      |

## 1.2 Inspections by HPD

### 1.2.1 Complaint Lead-Based Paint Inspection Process

A LBPIP inspection consists of an inspector creating a sketch of the apartment to designate all rooms, checking all painted surfaces for the presence of peeling or deteriorated paint and gathering any additional information regarding the child(ren). Using an XRF analyzer, the inspector will test any peeling or deteriorated surfaces within the apartment. Results from the XRF analyzer are downloaded onto a laptop computer and if the test result indicates the presence of lead-based paint, a lead-based paint hazard violation will be issued.

### 1.2.2 Line of Sight Lead-Based Paint Inspection Process

The term “line of sight lead-based paint inspection” refers to inspections conducted when a child under six resides in the unit and the inspection is conducted by general Code Enforcement Housing inspectors who are not a part of the LBPIP. This occurs when inspections are conducted in apartments where no 311 complaint was filed, such as to investigate an allegation of a building-wide condition such as heat; or where a filed complaint did not indicate the presence of a child; or inspections which are being conducted proactively related to an enhanced enforcement program; or inspections which are being reinspected to confirm the correction of an existing violation. If a Code Enforcement Housing inspector enters an apartment in a legal residential unit in a building built prior to 1960 for any reason, the Housing inspector will ask the occupant if a child under six resides there. If the occupant indicates that there is a child under six who resides in the unit, or if the Housing inspector observes a child, the Housing inspector is then required under Local Law 1 to check all painted surfaces for the presence of peeling paint or deteriorated sub-surfaces. The Housing inspector will note any peeling paint or deteriorated subsurface, and the

<sup>2</sup> During the final months of FY20—the first months of the COVID-19 pandemic—and the early months of FY21, the overall number of both lead- and non-lead-based complaints decreased.

<sup>3</sup> The numbers for previous fiscal years have been updated to reflect the count of problems as reported on the Mayor’s Management Report.

apartment will be referred to the LBPIP for an XRF inspection of these surfaces (conducted in the same manner as described above under the Complaint Lead-Based Paint Inspection Process). If there is no access to the unit when the LBPIP inspector attempts to inspect, a presumed lead-based paint violation is issued for the surfaces in each room where peeling paint was noted during the original inspection. Property owners may contest this presumption that the paint is lead-based paint by providing appropriate evidence to HPD.

At the time of a lead-based paint complaint inspection, a child under six complaint inspection by LBPIP or a line-of-sight lead-based paint inspection, the inspectors conducting such inspections are required to give the family a copy of the DOHMH information pamphlet about lead-based paint hazards. The pamphlet encourages blood testing for children to check for lead poisoning and advises the tenant of ways to help prevent lead-based paint hazards.

**Table 2: Inspections**

| <b>HPD Inspections Pursuant to Local Law 1 for Lead Hazards in Privately Owned Buildings</b>  | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>FY22</b> | <b>FY23</b> |
|---|-------------|-------------|-------------|-------------|-------------|
| Total Inspections Attempted in Privately-Owned Buildings  | 43,502      | 37,448      | 48,913      | 61,762      | 65,275      |
| Total Complaint Inspections Attempted   | 40,790      | 35,382      | 46,338      | 60,259      | 63,355      |
| <ul style="list-style-type: none"> <li>Based on a Complaint Prompting a Lead Hazard Inspections in Privately-Owned Buildings</li> </ul> | 18,803      | 13,892      | 20,618      | 31,212      | 32,291      |
| <ul style="list-style-type: none"> <li>Based on a Child Under 6 Non-Lead-Based Paint Complaint</li> </ul>                               | 9,544       | 9,000       | 12,456      | 18,172      | 19,697      |
| <ul style="list-style-type: none"> <li>Line of Sight Inspections<sup>4</sup></li> </ul>   | 12,443      | 12,490      | 13,264      | 10,875      | 11,367      |
| Reinspection of Lead-Based Paint Violation  | 2,712       | 2,066       | 2,575       | 1,503       | 1,920       |

### 1.3 HPD Lead-Based Paint Hazard Violations

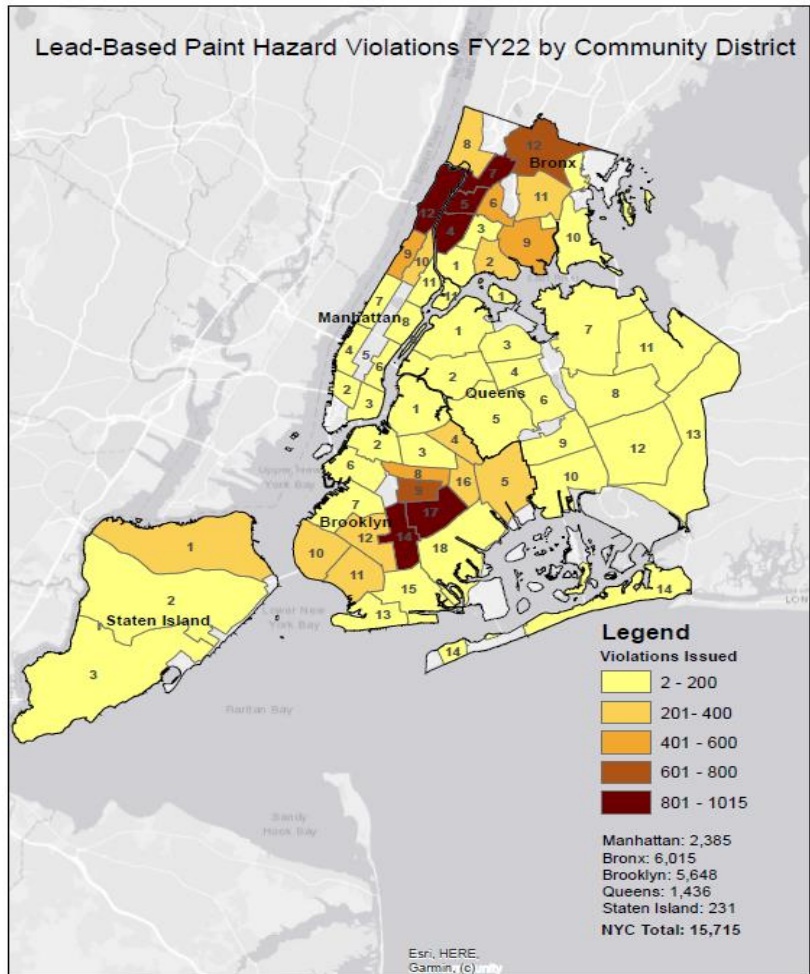
HPD violations are issued when HPD identifies that a child under the age of six routinely spends 10 or more hours a week in a rental unit in a unit in a building built prior to 1960 and there is peeling on a painted surface. If HPD tests the surface and the XRF reading is above 0.5 mg/cm<sup>2</sup>, a positive lead-based paint violation will be issued. If HPD tests the surface and the XRF reading is 0.5 mg/cm<sup>2</sup>, an inconclusive paint violation will be issued. This violation can be challenged by the owner with the provision of lab results from a lab test of the paint (see contestation section). If HPD does not test the surface, HPD presumes that the paint has lead and issues a presumed lead-based paint violation. However, if HPD does not test the surface and the unit already has an HPD exemption, the paint will not be presumed to be lead-based paint and no violation will be issued.

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<sup>4</sup> Note that these numbers changed for previous years due to a counting error in the Line of Sight Inspection category for the previous period. Line of Sight inspections include non-lead line of sight inspections, inspections related to lead-based paint audits and inspections for the purpose of testing referrals to the LBPIP.

### 1.3.1 HPD Violations Issued, Downgraded and Certified by Owners as Corrected

A lead-based paint hazard violation is issued for each room within an apartment where there is at least one positive XRF test, one inconclusive<sup>5</sup> XRF test or one surface with peeling paint where the paint is presumed<sup>6</sup> to be lead-based paint. An apartment may be issued multiple violations. Once a lead-based paint hazard violation is issued, a Notice of Violation (NOV) is sent to the owner along with a copy of the HPD Guide to Local Law 1 Work Practices. A call to the registered managing agent/owner of the property is also attempted in order to advise them of the existence of the condition, the mailing of the NOV and the expectation that the condition will be corrected on a timely basis. If the owner/agent provided an email address as part of their property registration, they may also receive an email advising them about the issuance of the violations.



The lead-based paint hazard NOV sent to owners includes a date by which the owner must correct the violation and certify that it has been corrected. Only the owner, managing agent, officer of the corporation that owns the property, or party otherwise responsible for the property can certify the violation. To certify, an owner must submit completed certification of correction forms indicating the work was entirely performed utilizing proper safe work practices. They also must provide documentation to support that the work was performed by a US Environmental Protection Agency (EPA)-licensed firm and provide copies of the clearance dust wipe test results. If an owner experiences any serious difficulties when attempting to correct violations, they can request up to two postponements of the date of correction using forms included in the NOV. An owner can also contest presumed lead-based paint hazard violations and violations issued if the lead-based paint tested as “inconclusive” with the XRF analyzer using a contestation form provided by HPD and the owner’s submitted documentation meet the requirements for evidence that the paint is not lead-based.

<sup>5</sup> HPD inspectors use the XRF instrument Viken Detection Model Pb200i which classifies XRF results as inconclusive if they are equal to 0.5 mg/cm<sup>2</sup>.

<sup>6</sup> HPD inspectors did not XRF test the paint.

**Table 3: Lead-Based Paint Hazard Violations**

| <b>Violations Issued by HPD Pursuant to Local Law 1</b>  | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>FY22</b> | <b>FY23</b> |
|--|-------------|-------------|-------------|-------------|-------------|
| Total Lead-Based Paint Hazard Violations Issued <sup>7</sup>   | 13,771      | 9,619       | 9,489       | 15,715      | 18,112      |
| - Violations Based on a Positive XRF Test for Lead   | 7,362       | 5,757       | 6,562       | 9,380       | 10,087      |
| - Violations for which Lead is Presumed  | 6,409       | 3,862       | 2,927       | 4,430       | 4,918       |
| - Violations for which XRF testing was inconclusive  | n/a         | n/a         | n/a         | 1,905       | 3,107       |
| <b>Status of Lead-Based Paint Hazard Violations Issued Pursuant to Local Law 1</b>   | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>FY22</b> | <b>FY23</b> |
| Violations Downgraded (Presumed Lead-Based Paint Violations Issued Which Were Subsequently Tested and Found to Not Contain Lead-Based Paint) | 4,882       | 2,952       | 2,032       | 2,506       | 3,371       |
| Violation Certifications Submitted by Owner  | 3,445       | 2,674       | 2,820       | 1,808       | 2,714       |
| Of Certified Violations Inspected, the Certified Violations that Remain Open because HPD could not access for verification                   | 292         | 438         | 702         | 393         | 565         |
| Certifications that Did Not Result in Removal of Violations (False Certifications)   | 102         | 72          | 255         | 34          | 30          |

### 1.3.2 Emergency Repairs pursuant to HPD lead-based paint hazard violations

If the violation has not been certified as corrected by the owner by the end of the certification period (see below for information on certification), HPD’s Environmental Hazards Unit (EHU) is required to attempt to inspect the unit within 10 days and will create a scope of work if the repair has not been completed.

If, upon inspection by EHU, it appears the owner has done work to correct the lead-based paint hazard violations but failed to file a clearance dust wipe test and other required documentation needed to certify the violation, the dust wipe samples are instead taken by EREH staff and sent to a laboratory for analysis. This is done to ensure the work performed by the owner did not leave behind dust that would be identified as lead-contaminated dust. If dust wipe test results are above the clearance level thresholds under Local Law 1, HPD cleans the affected area and performs another dust wipe test. Once the dust wipe test shows that clearance levels have been achieved, the repair order is closed. In this case, the violation remains open on HPD’s violation record until the owner files required paperwork showing proper work practices. This is because the statute does not permit HPD to remove the violation if the owner does not submit documentation that the repair was performed using required safe work practices.

If work needs to be done and the violation issued was for presumed lead-based paint, EHU may test the peeling paint or deteriorated subsurface for which the violation was issued. If the area tests negative, the violation is downgraded to a peeling paint violation (non-lead) and re-issued to the property owner as a class A violation. If the surface tested by EHU is positive, was previously tested by the LPBIP, or is not tested by EHU after being presumed to be lead or was already tested positive or inconclusive by Code Enforcement, EHU will issue a work order to one of its approved contractors.

<sup>7</sup> There were multiple factors contributing to this increase in violations, including an increase in the number of apartments for which a lead-based paint inspection is required and the lower lead in paint level at which lead-based paint is defined.

EHU monitors the contractor's work. Clearance dust wipe samples are taken by EHU after the work is complete and sent to a properly licensed lab for analysis. If the samples are below clearance levels, the job is closed. If the sample fails, the area is re-cleaned and tested again. All violations corrected through EHU are closed after correction occurs and clearance is achieved.

During FY23, HPD utilized five requirement contracts with EPA-certified lead abatement firms for lead hazard reduction work, with maximum annualized award capacity of approximately \$4,949,998. One additional contract with another EPA-certified lead abatement firm is maintained for lead dust cleanup and is valued at \$99,999. In addition, HPD utilized pre-qualified vendors to award lead hazard reduction work on an as needed basis. HPD will be expanding the number of requirement contracts in FY24.

One of the main obstacles to HPD's ability to correct lead hazard violations when an owner fails to do so is gaining access to the dwelling unit. HPD personnel and contractors must gain access on several occasions: to inspect, to XRF test and scope, to perform the work, and to collect clearance dust wipes for testing. The necessity of gaining access multiple times increases the likelihood that at some point access will be denied. To improve access, HPD also conducts inspections outside of normal work hours and on weekends. Performing the work, however, generally needs to occur during normal business hours. Access problems also arise when either an owner or tenant affirmatively refuses access to HPD personnel or contractors, or when the tenant is uncooperative in providing access to the apartment. If the tenant affirmatively denies access to the dwelling unit, the work is cancelled. If, after two unsuccessful visit attempts, access has not been obtained, a letter is sent to the tenant asking them to contact HPD to schedule an appointment. If no response is received within eight days, the job is cancelled. If the tenant responds and access is still not gained after scheduling an appointment, the job is cancelled. Whenever the work is cancelled, the violation remains open.

All work conducted by HPD is billed through the Department of Finance to the property. The charges become a lien against the property if not paid on time and may contribute to the property's eligibility for the City's tax enforcement proceedings.

**Table 4: HPD Violation Correction in Privately Owned Buildings**

|   | FY19      | FY20      | FY21        | FY22 <sup>8</sup> | FY23        |
|---|-----------|-----------|-------------|-------------------|-------------|
| Number of distinct apartments in which remediations were performed to correct violations                        | 370       | 407       | 414         | 252               | 489         |
| Total amount spent related to completed lead based paint remediation  | \$677,666 | \$758,337 | \$1,075,092 | \$1,005,596       | \$1,947,325 |
| Average amount spent by HPD per dwelling unit (contracted remediation only)                                     | \$1,769   | \$1,780   | \$2,500     | \$4,071           | \$3,982     |
| Total Amount Spent by HPD on lead-based paint abatement attempts and completions, dust wipe only work and clean | \$652,049 | \$754,301 | \$900,482   | \$1,458,308       | \$2,754,425 |
| Median time between correction due date and initial inspection (scope) date (days)                              | 16        | 17        | 10          | 19                | 26          |
| Median time from initial inspection (scope) to Work Completed by HPD (days)                                     | 59        | 98        | 84          | 104               | 95          |

#### 1.4 HPD Litigation

If the property owner or one of their employees denies access to the dwelling unit, the lead-based paint hazard violation is forwarded to the Housing Litigation Division (HLD) to seek a court order for access. HLD prosecutes access warrant cases to allow EREH to perform lead repairs. Housing Court judges are often reluctant to issue an access warrant without giving the owner several opportunities to do the work themselves, particularly when there is partial compliance, or evidence of difficulty in gaining sufficient access from the tenant to properly complete the violation, even though the statutory period to correct has passed. Most access warrant cases are concluded when a re-inspection finds that the owner has completed the work, often under consent orders issued as interlocutory relief during the Housing Court case.

HPD may also seek civil penalties when a property owner falsely certifies the correction of a condition.

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<sup>8</sup> *COVID-19 Impact:* Lead remediation work was not conducted during the last quarter of FY20 due to the COVID-19 pandemic. Work completed prior to March 2020 may not have been closed timely because work was stopped and HPD was unable to conduct dust wipes until after well into the pandemic. Work was limited during much of FY21 because tenants were still concerned about providing access for HPD and our vendors during much of the period. During this same period, violations continued to be issued and the number of violations increased as discussed in the sections above. Contractor capacity was also limited.



**Table 5: Litigation**

| <b>Litigation Pursuant to Local Law 1</b>   | <b>FY19</b> | <b>FY20</b> | <b>FY21</b> | <b>FY22</b> | <b>FY23</b> |
|---|-------------|-------------|-------------|-------------|-------------|
| Civil actions brought pursuant to false certification of violations (multiple violations may be grouped together for one civil action) <sup>9</sup> | 87          | 36          | 2           | 29          | 1           |
| Civil actions seeking a warrant for access for HPD to perform emergency repairs   | 60          | 32          | 37          | 53          | 75          |

### 1.5 Department Training

All new Code Enforcement inspectors and EHU field staff receive a three-day EPA lead-based paint inspector training with an approved EPA training provider and are required to take the EPA test for certification. Renewals of certification are required every three years. During FY22, 96 employees attended classes associated with EPA Lead Inspector certifications. This includes 39 employees who were newly trained and 57 who attended mandatory refresher classes.

Housing Inspectors are also trained in: (1) Local Law 1 requirements regarding the surfaces and the definitions of surface conditions that require issuance of a specific violation; (2) how to designate the surfaces in a uniform manner (e.g., size of surfaces, compass location of wall, compass location of room) to ensure that the proper area is identified and remediated by the owner or HPD; and (3) the violation order numbers and department procedures for issuing each type of violations. Inspectors assigned to the LBPIP are additionally trained in the safe use of XRF machines and receive Radiation Safety Training.

### 1.6 Emergency Repair Pursuant to Department of Health and Mental Hygiene Referrals (DOHMH)

HPD’s Environmental Hazards Unit (EHU) also receives referrals directly from DOHMH when a property owner fails to abate the lead-based paint hazardous condition or fails to submit clearance dust wipes after performing abatement work ordered by DOHMH in an apartment where a child was found to have an elevated blood lead level. EREH will respond with emergency repairs. In response to these referrals, HPD completed 40 lead-based paint hazard abatement projects and 139 dust clearance projects in FY23. (See Section 2.1 for more information about the DOHMH Inspection process.)

## Section 2: Audits of Records Related to Lead-Based Paint Recordkeeping Requirements

HPD audits for records related to lead-based paint recordkeeping requires are generated based on two distinct processes described below: 1) Department of Health and Mental Hygiene Commissioner’s Order to Abate (COTA) Elevated Blood Lead Level Referrals 2) HPD’s Building Lead Index. In both audit processes, HPD issues a Record Production Order (RPO) to the property owner if the building is a privately-owned multiple dwelling (three or more units). The records being demanded include records related to annual notices, annual visual inspections, the XRF testing performed pursuant to Local Law 31 of 2020, and all repairs, remediations, and abatements related to lead-based paint that are required under Local Law 1, including those required at turnover. The owner must provide 10 years of records. If the property owner supplies the appropriate records, HPD will attempt to conduct inspections in all units the records identify

<sup>9</sup> Throughout the end of FY20 and the entirety of FY21, Housing Court activities were limited due to the COVID-19 pandemic.

a child under six resides in, and at least 20% of units identified to be without a child under six residing, to verify the owner’s information. If the owner supplies no records or incomplete records, HPD will issue violations to enforce the record retention requirements under Local Law 1. HPD will also attempt to access every unit and will conduct Local Law 1 inspections where there a child under the age of six resides. Violations are issued if there is peeling paint or a deteriorated subsurface and the XRF testing identifies lead in the paint during these inspections. As indicated in Section 2.3 Litigation, HPD may seek future compliance with these recordkeeping violations in Housing Court.

## 2.1 Audits Based on Department of Health and Mental Hygiene Commissioner’s Order to Abate (COTA) Elevated Blood Lead Level Referrals

DOHMH conducts an environmental investigation to determine possible exposure to lead in paint, dust, and other products when they receive data to indicate that a child has a blood lead level of  $\geq 3.5$  mcg/dL and  $< 18$  years of age<sup>10</sup> (effective October 25, 2023). If that investigation determines that lead-based paint hazards are present in the child’s home or another residential unit where the child is identified to spend time, DOHMH will issue a Commissioner's Order to Abate (COTA) and HPD will receive a referral from DOHMH to audit the property’s lead-based paint records.

**Table 6: Commissioners Order to Abate Audits**

|  | 2020 | 2021 | 2022 | 2023 |
|--|------|------|------|------|
| Buildings Audited  | 582  | 412  | 605  | 573  |
| Of buildings audited in the period, buildings issued a violation Issued for Failure to Provide Documents (618)             | 571  | 393  | 570  | 526  |
| Of buildings audited in the period, buildings Issued a violation for Failure to Conduct Annual Notice and Inspection (619) | 289  | 364  | 543  | 485  |
| Apartments in buildings audited in the period issued Violations for Lead-Based Paint Hazards Identified During Inspection  | 214  | 115  | 180  | 63   |

## 2.2 Audits Based on the Building Lead Index (BLI)

Local Law 70 of 2019 amended Local Law 1 and requires HPD to conduct audits of properties for records related to Local Law 1 compliance. HPD adopted amendments to its lead-based paint rules to implement the law. Using the BLI, built in collaboration with DOHMH, to identify a minimum of 200 buildings each fiscal year, HPD requests the lead-based paint related records from selected multiple dwelling property owners and follows up with building inspections. Approximately half of the buildings are selected based on a representative sample of buildings which have received violations from HPD for lead-based paint hazards. A second category focuses on buildings which have been issued a violation for leaks, mold, or other underlying conditions which might disturb the subsurface. HPD also factors additional information from DOHMH regarding the incidences of childhood lead exposure into the building selection process.

<sup>10</sup> The blood lead level trigger for DOHMH intervention has been lowered several times historically.

Additionally, under two other categories, there are buildings built prior to 1960 which are selected randomly. The first RPO issued under this requirement was generated in December 2019.

**Table 7: Building Lead Index Audits**

|  | 2020 | 2021 | 2022 | 2023 <sup>11</sup> |
|--|------|------|------|--------------------|
| Buildings Audited  | 285  | 298  | 207  | 207                |
| Of buildings audited in the period, buildings issued a violation Issued for Failure to Provide Documents (620)             | 275  | 288  | 195  | 202                |
| Of buildings audited in the period, buildings Issued a violation for Failure to Conduct Annual Notice and Inspection (619) | 260  | 277  | 189  | 195                |
| Apartments in buildings audited in the period issued Violations for Lead-Based Paint Hazards Identified During Inspection  | 54   | 80   | 65   | 30                 |

### 2.3 Litigation related to Lead Audits

In FY21, HPD reached settlements with two major landlords to obtain \$60,000 in civil penalties and an order to correct lead-based paint violations across 200 homes in the Bronx and civil penalties of \$150,000 and an order to correct lead-based paint violations across almost 700 households in Brooklyn and Queens. Both owners have since submitted documents in compliance with legal recordkeeping requirements; HPD will continue to pursue enforcement where the compliance falls short for these properties and another two dozen properties where court orders are in affect seeking recordkeeping compliance.

Additionally, HPD continues to collaborate with government partners to supplement its litigation efforts to bring major landlords into compliance with Local Law 1. Litigation teams led by the Office of Attorney General and New York City Law Department rely on HPD’s lead-based paint enforcement teams to identify and audit buildings where lead-based paint regulations are not followed.

**Table 8: Litigation Pursuant to Recordkeeping Requirements**

| Litigation Pursuant to Local Law 1 Recordkeeping Requirements  | FY19 | FY20 | FY21 | FY22 | FY23 |
|--|------|------|------|------|------|
| Civil Actions Brought Pursuant to Failure to Submit Lead-Based Paint Documents Pursuant to § 27-2056.7 | 14   | 52   | 35   | 31   | 6    |

## Section 3: Turnover Requirements

When a tenant no longer resides in a dwelling unit and the unit is vacant to be rented again, it is referred to as “turnover.” Upon turnover, Local Law 1 requires that owners complete certain lead-based paint

<sup>11</sup> The FY23 number was adjusted to exclude some audit types from the count as done in previous years that were follow up requests based on previous litigation.

activities to ensure the unit is safe for the next tenant before they take occupancy. These activities fall under two separate categories: (1) abatement and (2) the correction of lead-based paint hazards.

Abatement means to permanently eliminate lead-based paint and lead-based paint hazards. This includes the removal of the lead-based paint from the surface or fixture, the replacement of the fixture, or the permanent enclosure or encapsulation of the lead-based paint. On turnover, owners are required to ensure that painted window and door friction surfaces either test negative for lead-based paint or those painted window and door friction surfaces must be abated. If abated, this should only be required to be performed one time, at the first turnover.

Correction of lead-based paint hazards refers to non-permanent methods of correction, such as wet scraping peeling paint or making a painted surface smooth and cleanable. Owners must ensure that all lead-based paint hazards (ex. peeling paint) are corrected as well as make all bare floors, windowsills, and window wells smooth and cleanable. This must be performed at each turnover of the unit.

HPD may issue two different types of turnover violations. A turnover violation may be issued if either (1) there is a lead-based paint hazard (tested or presumed) on a door or a window friction surface where the tenant confirms they moved into the unit in August 2004 or later<sup>12</sup> or (2) the building is being audited by HPD, there is no lead-based paint hazard but the tenant confirms they moved in within 10 years of the inspection date and the owner has provided no documentation that turnover activities were performed in their 10 years' of records. FY22 was the first full year of the implementation of turnover violations being issued during inspection unrelated to audits.

**Table 9: Turnover violations**

|  | FY20  | FY21  | FY22  | FY23  |
|--|-------|-------|-------|-------|
| Turnover: failure to provide documentation in response to an audit of compliance with turnover | 1,607 | 6,254 | 5,730 | 3,909 |
| Turnover: lead-based paint hazard  | n/a   | 297   | 1,337 | 1,364 |

## Section 4: Other Lead-Based Paint Initiatives

### 4.1 Financial Assistance for Property Owners: Healthy Homes Primary Prevention Program

The Lead Hazard Reduction and Healthy Homes – Primary Prevention Program (PPP) is funded primarily by federal Lead Hazard Reduction grants from the US Department of Housing and Urban Development (HUD). Buildings that qualify for the PPP funding are constructed prior to 1960, including small homes and multifamily apartment buildings of any size, located in any of the five boroughs of New York City. The building must have lead-based paint that is not intact as determined by lead risk assessments performed by the program inspectors. The building or home must be occupied by households with low- and very low-income levels, and at least one or more units must house a child less than six years of age or a pregnant woman or be visited by a child less than six years of age on a regular basis. In FY23, the Program completed lead remediation work in 65 units working under 2 HUD grants. Under its 2017 HUD grant, which concluded and closed out in FY23, the program successfully finished 45 units across nine projects, with all units being rentals except for one owner-occupied home. In contrast, under its 2020 HUD grant, which

<sup>12</sup> Local Law 1 of 2004 was effective August 2, 2004.

will not be finalized until FY24, the program has completed 20 units in seven projects. Among these, three units are owner-occupied homes, while the remainder are rental properties.

## 4.2 Required XRF Testing by 2025

Local Law 31 of 2020 (Local Law 31) requires all buildings built prior to 1960 to have completed testing of all dwelling units for the presence of lead-based paint by August 9, 2025, or within one year of a child under the age of six residing in or moving into the unit, whichever is sooner. The testing should be done using an XRF Analyzer and the owner must maintain all records, providing copies of those records to tenants. This law does **not** require the removal of all lead-based paint identified from the XRF testing.

Owners who conducted the required Local Law 31 compliance testing prior to December 1, 2021, with an XRF instrument that tested at the old 1.0 mg/cm<sup>2</sup> testing level are not required to perform another full apartment inspection at the new 0.5 mg/cm<sup>2</sup> testing level in order to have fulfilled the requirements of Local Law 31. However, any XRF testing performed after December 1, 2021, for compliance with Local Law 31 must be performed to meet the requirements of the new definition of lead-based paint.

## 4.3 Exemptions

### 4.3.1 Applications

Under Local Law 1, property owners of multiple dwelling buildings built prior to 1960 may apply to HPD seeking an exemption from the presumption that the paint is lead-based paint. The exemption process requires that owners follow the inspection protocols outlined in federal regulations and guidelines, which describe the methodology to be used and the qualifications for testing. An owner may seek an exemption for an individual unit in a building through individual testing or for all apartments in a building or development using a sampling methodology established by the US Department of Housing and Urban Development (HUD). An owner may also seek an exemption for the common areas of the building.

Effective December 9, 2019, HPD may grant two types of exemptions from the presumption of lead-based paint to residential properties built before 1960: **Lead Free or Lead Safe**. Building owners can apply for one of the two different types of exemptions, depending on the results of XRF testing and the work that has been completed related to lead-based paint abatement.

- A Lead-Free exemption certifies that all surfaces tested negative for lead-based paint at the time the paint was tested or that any surfaces that were identified as lead-based paint have been fully abated, meaning the lead-based paint was removed.
- A Lead Safe exemption certifies that any lead-based paint has been contained or encapsulated, requiring ongoing monitoring by the building owner.

Exemptions requested prior to December 9, 2019, were not issued an exemption with a distinct Lead Free or Lead Safe status.

**Table 10: HPD Issued Exemptions**

4.3.2 Definition of lead-based paint definition change effect on exemptions

| Exemptions  | FY20  | FY21   | FY22   | FY23   |
|---|-------|--------|--------|--------|
| Total Units for which Exemptions Were Approved        | 7,686 | 12,232 | 32,932 | 24,876 |
| • <i>Lead Free</i>                                    | 1,033 | 11,489 | 32,877 | 24,804 |
| • <i>Lead Safe</i>                                    | 1     | 44     | 55     | 72     |
| • <i>Approved Prior to Lead Safe/Lead Free Status</i> | 6,652 | 699    | n/a    | n/a    |

An exemption granted to a unit under the previous definition of lead-based paint remains in effect until the first turnover of the unit after December 1, 2021. Upon the first turnover of the unit after December 1, 2021, the exemption is no longer valid, and the unit is once again subject to all of the requirements of Local Law 1. The owner is obligated to inform HPD that the turnover occurred and HPD issues a formal revocation of the exemption. The owner may retest the unit and apply for a new exemption using the 0.5 mg/cm<sup>2</sup> threshold. During FY22 HPD posted and updated several guidance documents on its webpage to assist property owners navigate the turnover requirements landscape.

- HPD released an FAQ in October 2021 that answered common questions on how the change in definition would affect property owners and their responsibility to adhere to the law and HPD’s requirements. This guidance included the instructions to report to HPD the turnover.
- HPD established a process for property owners to report the turnover of a unit which had been granted an exemption status under the previous definition of lead-based paint and HPD formally revoked these exemptions.
- Notifications were mailed directly to all registered property owners with existing exemptions to notify them of these new requirements for any turnover after December 1, 2021.
- In May 2022, HPD released its Turnover FAQ that summarized and provided guidance on the turnover requirements to property owners which included guidance on how an exemption granted under the previous definition of lead-based paint was deemed revoked upon the first turnover after December 1, 2021.

4.4 Lead-Based Paint Education and Outreach Campaigns

HPD remains committed to disseminating crucial information to building owners and agents regarding lead awareness and compliance with Local Law 1. Our efforts in FY23 included:

- a series of informational bulletins sent to property owners, including two focused exclusively on lead-based paint ([Lead-Based Paint - HPD \(nyc.gov\)](https://www.nyc.gov/lead-based-paint)). These bulletins are emailed to over 40,000 property owners and managing agents.
- Two live webinar trainings titled “Lead-Based Paint: An Overview of New York City’s Requirements for Building Owners” which attracted over 750 attendees. Other webinars on various lead-based paint topics, providing specific guidance on topics such as violation correction, record-keeping, and turnover requirements are available for viewing on our website as well.

#### 4.5 HPD-Owned Housing

HPD addresses lead-based paint hazards in housing owned by HPD and managed under HPD’s Office of Asset and Property Management (APM) through three approaches. One approach is responding to complaints received from residents in HPD-owned housing units using the same definition of a complaint that would prompt a lead hazard inspection in privately-owned housing. The second approach is fulfilling its requirement as a property owner to perform the annual notice and inspection requirements under Local Law 1. APM conducts the Local Law 1 annual notification process for tenants. Responses to the annual notification are monitored. Those responses reporting that a child under six resides in the dwelling unit are inspected under Local Law 1’s requirement that the property owner perform an annual inspection. The third approach is, as required for a property owner under Local Law 1, controlling for lead-based paint hazards anytime paint is disturbed in a unit where a child under 6 resides, for reasons that are not specific to a complaint or a Local Law 1 annual inspection. Under all approaches, if any lead-based paint hazards are identified in the unit or work is needed to control for any lead-based paint hazard, EHU will scope and contract for all necessary work.

**Table 11: HPD-Owned Buildings**

|  | FY21 | FY22 | FY23 |
|--|------|------|------|
| Complaints Prompting Lead Hazard Inspections   | 40   | 52   | 62   |
| Total inspections attempted based on a complaint prompting a lead hazard inspection                              | 29   | 69   | 100  |
| Responses to the annual notice indicating that a child under 6 resides in the apartment                          | 130  | 124  | 106  |
| Total inspections attempted in response to annual notice responses that a child under 6 resides in the apartment | 175  | 181  | 186  |
| The number of jobs performed by the department buildings to address lead-based paint hazards                     | 21   | 5    | 28   |

### Section 5: Budget and Personnel

As of June 2023, 78 Housing inspectors and 13 Associate (Supervising) Inspectors were assigned to the Lead-Based Paint Inspection Program (LBPIP) to conduct inspections using XRF machines. This is an 18% increase in staffing as compared to staffing at the end of FY22.

Table 12: HPD Lead-Based Paint Activities FY23 Budget as of 6/30/2023

| FY23 Total Lead Spending    | HC       | PS                | OTPS                |                     | Total               |
|-----------------------------|----------|-------------------|---------------------|---------------------|---------------------|
|                             |          |                   | Lead Repair Only    | (All Other)         |                     |
| Lead Inspections and Repair | 267      | \$ 17,436,366     | \$ 3,741,053        | \$ 2,374,230        | \$ 23,551,649       |
| Lead Outreach <sup>13</sup> | -        |                   |                     | \$ 517,205          | \$ 517,205          |
| HPD/DOH Outreach Initiative | 3        | \$ 242,778        | \$ -                | \$ 9,342            | \$ 252,119          |
| Lead Demonstration Grant    | <u>2</u> | <u>\$ 178,305</u> | <u>\$ 1,254,376</u> | <u>\$ 1,254,376</u> | <u>\$ 2,687,057</u> |
| Total                       | 272      | \$ 17,857,449     | \$ 4,995,429        | \$ 4,155,154        | \$ 27,008,031       |

| FY23 Lead Capital Commitments       | Capital Commitments | Total        |
|-------------------------------------|---------------------|--------------|
| Rehabilitation HUD Lead Grant (PPP) | \$ 77,146           | \$ 77,146    |
|                                     | \$ 1,243,740        | \$ 1,243,740 |
| Total                               | \$ 1,320,886        | \$ 1,320,886 |

## Section 6: Looking Ahead

In FY24, HPD will:

- Launch a centralized web portal where owners will be able to file for Local Law 1 exemptions online.
- Continue to conduct outreach about lead-based paint to owners and tenants.
- Continue to work closely on lead-based paint compliance matters with other city and state enforcement agencies, including the New York State Office of the Attorney General, the New York City Law Department, the Department of Health and Mental Hygiene and the Department of Buildings.
- Collaborate with the Department of Health and Mental Hygiene to increase outreach by organizing activities for National Lead Poisoning Prevention Week.

HPD remains committed to eliminating the risk of childhood lead exposure by increasing the enforcement and scope of Local Law 1 to address lead-based paint hazards in more apartments and at lower levels of lead.

<sup>13</sup> Outreach includes Advertising, Postage, Language line, etc.