

Report to the City Council: The Department of Housing Preservation and Development's Implementation of Local Law #1 of 2004 in FY 2019

The New York City Childhood Lead Poisoning Prevention Act, also known as Local Law 1 of 2004 (Local Law 1), outlines the responsibilities of multiple dwelling property owners and New York City agencies in the prevention of and response to lead-based paint hazards in multiple dwelling housing. This report is submitted in compliance with the related reporting requirement of Section 27-2056.12 of Local Law 1.

Local Law 1 requires that property owners of multiple dwellings erected prior to 1960 or multiple dwellings erected between 1960 and 1977 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 resides to look for lead-based paint hazards, and hiring appropriately certified contractors to address these hazards. 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; conduct inspections where a child under 6 years old resides; issue violations where lead-based paint hazards are found; and repair lead-based paint hazards when the property owner does not comply. Local Law 1 also provides HPD with the authority to audit property owner compliance with all required activities.

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. In 2019, as the City has recommitted itself to further reducing blood lead levels through the LeadFreeNYC Initiative, HPD enforcement will expand its focus on ensuring that property owners are aware of and complying with all their responsibilities under Local Law 1.

- **Section I** outlines HPD's role in the implementation of LeadFreeNYC and legislation.
- **Section II** presents data on HPD's enforcement activities.
- **Section III** presents other HPD activities related to the goal of eliminating elevated blood lead levels in children.

Section I: A Lead Free New York City

Mayor Bill de Blasio's LeadFreeNYC plan lays out a bold vision for New York City to eliminate childhood lead exposure. As peeling lead-based paint is the most commonly identified source of lead exposure in young children, HPD has a leading role and is engaging in a multi-faceted approach to the challenge.

Under LeadFreeNYC, HPD has dedicated an additional \$9.3 million in FY20 to expand our staffing and resources and an additional \$4.5 million in capital funds over FY20, FY21 and FY22. The expanded staffing adds 32 new staff lines to HPD, including staff who will audit property owner records and process exemptions (housing Inspectors, attorneys, a compliance officer and an analyst). Resources have been dedicated for communication strategies and capital money has been earmarked to expand our ability to provide loans to property owners interested in addressing lead-based paint permanently on friction surfaces as a facet of other rehabilitation work.

Initiatives Completed

- **Enhance coordination between HPD and DOHMH to increase resources for families.** If HPD inspectors identify lead-based paint after testing peeling paint during an inspection, the HPD inspector connects the tenant directly with the Department of Health and Mental Hygiene (DOHMH).
- **Communicate the lowered lead-contaminated dust level required by Local Law 66 of 2019** (Housing Maintenance Code Section 27-2056.2) and require that violation compliance work meets these new standards.
- **Increase resources to conduct audits related to the lower blood lead action level put into law by Local Law 66 of 2019 (Health Code Section 17-912).** Local Law 66 requires that DOHMH provide intervention services and investigate for the source of lead for children with the blood lead level of 5 mcg/dL or higher. The lower blood lead action level means that DOHMH is responding with coordinated care and inspections to more families. It also means that HPD will receive more cases from DOHMH and respond by seeking records from more property owners about their lead-based paint activities and conducting more building-wide inspections for lead-based paint hazards.

Initiatives Underway

- **Launch a new outreach and communications strategy** to inform building owners of ongoing and new lead rules and requirements using multiple channels
 - Bulletins with detailed information directly to building owners
 - Citywide education and outreach ad campaign in bus shelters, neighborhood stores, subway digital liveboards, newspapers, digital/social, and the Staten Island ferry.
 - Webinars on the basics of lead-based paint compliance
 - Redesigned and expanded webpages
 - Increased number and improved accessibility of translated documents
 - Provision of sample record keeping documents
 - Clarification of the types of documentation that HPD expects will be maintained



➤ Audit and Exemption

Among other changes, Local Law 70 of 2019 mandates HPD to conduct audits of properties for records related to Local Law 1 compliance and establishes that HPD may grant two different types of exemptions to multiple dwellings from the presumption of lead-based paint: lead free and lead safe. HPD published proposed rules related to the implementation of these two changes on July 11, 2019 and held the public hearing on the rules on August 15, 2019. The final rule is expected to be effective by the end of 2019. Once the rules are final, HPD will:

- **Establish a process to identify buildings and proactively audit lead-related records** required to be maintained by landlords. Using a Building Lead Index to identify a minimum of 200 buildings each year, HPD will request the lead-based paint related records from the property owners and follow up with building inspections. Half of the buildings will be part of a representative sample of buildings which have received violations from HPD for lead-based paint hazards. A second category will focus on buildings which have been issued a violation for leaks, mold, or other underlying conditions which might disturb the subsurface. HPD will also be considering factors such as whether the building is in an area with higher rates of children with elevated blood lead levels. Additionally, there will be buildings built prior to 1960 which are selected randomly. Property owners who produce insufficient records will be issued violations for non-compliance as well as any violations for lead-based paint hazards found during the building inspection and HPD may seek civil penalties.
- **Encourage property owners to file lead free or lead safe exemption applications.** Once a property owner has conducted repair/renovation work such that the lead-based paint is either permanently removed throughout the apartment or properly contained or encapsulated, an owner may apply for an

exemption from the presumption of lead-based paint and, therefore, many of the annual requirements related to Local Law 1.

➤ **Increase financial resources for property owners**

HPD will increase funding available for lead paint remediation through the expansion of the Green Housing Preservation Program (GHPP) and the Multifamily Housing Rehabilitation Loan Program (HRP). Buildings participating in GHPP and HRP that meet the LeadFreeNYC initiative criteria, which includes buildings constructed prior to 1960, will begin receiving lead testing/inspections in November 2019; it is projected that 150 units will receive lead remediation financing through the two programs in FY20.

➤ **Communicate to property owners the change in the definition of the term “resides”**

Under Local Laws 64 of 2019 and effective January 1, 2020 “resides” will be defined as “to routinely spend 10 or more hours per week within a dwelling unit.” In order to expand the reach of Local Law 1 to more places where children spend a significant amount of time and therefore which could be a source of lead-based paint exposure, property owners will need to ask tenants about whether a child routinely spends 10 or more hours a week in the apartment as part of the Calendar Year 2020 Annual Notice cycle. DOHMH has already updated the available Annual Notice on its website and HPD will be providing this information to property owners at the beginning of the year. As a part of the rules change, HPD has also updated the required notice at lease commencement.

➤ **Improve communications with DOHMH** by creating an electronic datashare around Commissioner’s Order to Abate inspection and repair referrals.

Section II: Enforcement

Complaints

Complaints are received for lead-based paint under Local Law 1 in the same manner that all other complaints are received by HPD. Most complaints are called in to 311 by tenants. 311 operates 24 hours a day, seven days a week. 311 complaints require a caller to indicate whether there is a child under six residing in the apartment. Complaints where there is a child under six and reported conditions related to painted surfaces (such as leaks or broken plaster) are counted as lead-based paint complaints 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 XRF Analyzers so that testing can be done during the initial inspection. Pursuant to statutory mandate, an inspection must be attempted within 10 days from the date of a lead-based paint complaint.

The law also requires HPD to proactively inspect for lead-based paint hazards on all inspections when a child under six resides in the apartment. Given this, HPD also routes complaints

including a child under six but no reported conditions related to painted surfaces to the LBPIP for inspection. However, these complaints are not counted as lead-based paint complaints since there is no reported condition related to paint.

After an attempt is made to contact the landlord to advise him/her of the complaint, the complaint is forwarded to the LBPIP for scheduling of an inspection with the tenant. If the tenant indicates that the condition has not been corrected, an appointment is set. If the tenant is not reached, an inspection is attempted without an appointment.

Complaints for peeling paint conditions where a child under six years of age resides¹	FY19
Lead-Based Paint Complaints in Privately-Owned Buildings	14,498

Inspections

Complaint Lead-Based Paint Inspection Process

A LBPIP inspection consists of an EPA-certified Inspector making 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 children. The Inspector will test any peeling or deteriorated surfaces within the apartment using an X-Ray Fluorescence Analyzer (XRF). Results from the XRF are downloaded onto a laptop computer. If the test result indicates that there is lead-based paint, a violation will be issued. As previously mentioned, the law requires HPD to proactively inspect for lead-based hazards on all inspections where a child under six resides in the apartment, and so HPD routes complaints received with an indicator that there is a child under six to the LPBIP for this inspection.

Line of Sight Lead-Based Paint Inspection Process

The term “line of sight lead-based paint inspection” refers to inspections conducted by general Code Enforcement Housing Inspectors not in the LBPIP when a child under six resides in the unit. This occurs when inspections are conducted in apartments which did not file a complaint with 311, such as to investigate an allegation of a building-wide condition such as heat, to conduct a proactive inspection of the building related to an enhanced enforcement program, or to reinspect existing violations. If a Code Enforcement Housing Inspector enters an apartment in a multiple dwelling for any reason, the Housing Inspector will ask the occupant if a child under six resides in the apartment. If the occupant indicates that there is a child under six 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 deteriorated or peeling paint. The Housing Inspector will note any peeling paint or deteriorated surfaces and the 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 Inspection* process). If there is no access when the LBPIP attempts to inspect, a presumed lead-based paint violation is issued for the surfaces in each

¹ This is a count of distinct complaints, not distinct apartments. The same apartment may file multiple complaints within a period.

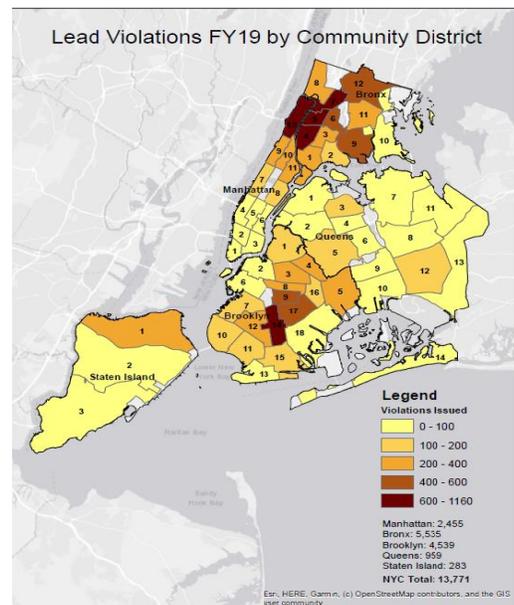
room where peeling paint was noted during the original inspection. Property owners may contest this presumption by supplying appropriate evidence to HPD.

At the time of both a lead-based paint complaint inspection or a child under six complaint inspection by LBPIP and line of sight lead-based paint inspection, the inspectors conducting such inspections are required to give to the family a copy of DOHMH information pamphlet about lead-based paint hazards. The pamphlet encourages blood testing for the children to check for lead poisoning and advises the tenant of ways to help prevent lead-based paint hazards. As mentioned in *Initiatives Underway*, LBPIP Housing Inspectors who confirm lead-based paint during an inspection will also connect the tenant directly with DOHMH.

Inspections by HPD pursuant to Local Law 1 of 2004 for complaints received in the FY ²	FY19
Total Code Enforcement inspections attempted in privately-owned buildings	40,790
o Based on a lead-based paint complaint (pursuant to section 27-2056.9)	18,803
o Based on a child under 6 non-lead-based paint complaint (pursuant to section 27-2056.9)	9,544
o Based on a line of sight inspection (pursuant to section 27-2056.9)	12,443
Reinspection of lead-based paint violations (pursuant to section 27-2056.9)	2,712

Violations

Once a 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 him/her of the existence of the condition, the mailing of the NOV and the expectation that the condition will be corrected on a timely basis. Letters detailing the results of the HPD lead-based paint inspection where peeling paint was observed are sent to both tenants and owners. If violations have not been certified as corrected by the end of the certification period (see below for information on certification), HPD’s Emergency Repair and Environmental Hazards Unit (EREH) attempts to inspect within 10 days and will create a scope of work if the repair has not been completed.



² HPD modified the counting of this indicators of the FY18 report to include inspections conducted as line of sight and inspections conducted by the Alternative Enforcement Program and Housing Quality Standards Unit.

Violations issued by HPD pursuant to Local Law 1 of 2004	FY19
Total violations issued	13,771
○ Violations based on a positive XRF test for lead	7,362
○ Violations for which lead is presumed	6,409
Status of violations issued pursuant to Local Law 1 of 2004 in FY19³	
Violations downgraded (presumed lead-based paint violations issued which were subsequently tested and found to not contain lead-based paint)	5,018
Violation certifications submitted by owner	3,445
Of violations issued in the period, the certified violations that remain open	545
Certifications that did not result in removal of violations (<i>false certifications</i>)	51
Violations corrected by HPD	802

Emergency Repairs

Performing the Repairs

If a scope inspection is performed by EREH and it is observed at such inspection that the work has not been done by the owner, HPD may test the paint in the area of the condition if a presumed lead-based paint violation was issued. If the area tests negative, the violation is downgraded to a peeling paint violation and re-issued to the property owner as a class A violation. If the surfaces test positive by EREH, were previously tested by the LPBIP, or continues to be presumed as lead-based paint, HPD will issue an Open Market Order to one of its approved contractors. HPD currently maintains three contracts with EPA certified lead abatement firms for remediation and abatement, with maximum annualized award capacity of approximately \$2.25 million for FY19. Once awarded, the order is sent to the EREH for monitoring of the contractor's work. Clearance dust wipe samples are taken by HPD staff and sent to a properly licensed lab for analysis. HPD maintains one contract with a maximum award capacity of \$100,000 for dust wipe 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 HPD are closed after correction occurs and clearance is achieved.

Following up on the Owner

If the landlord has done work to correct the lead hazard violations but failed to file a dust wipe test and other required documentation, then lead-contaminated dust wipe samples are taken by HPD staff and sent to a laboratory for analysis. If dust wipe test results are positive, HPD cleans the affected area and performs another dust wipe test. If 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, unless and until the landlord 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 work practices.

³ Status as of September 30, 2019.

Billing for Costs

All work conducted by EREH 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.

Access Challenges

One of the main obstacles to HPD's ability to correct lead hazard violations when the owner fails to do so is gaining access to the dwelling unit. HPD personnel must gain access on several occasions: to inspect, to XRF test and scope, to perform the work, and to perform dust clearance testing. The necessity of gaining access multiple times increases the likelihood that at some point access will be denied. In order to improve access, HPD 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 canceled. If after two unsuccessful visit attempts, access has not been obtained, a letter is sent to the tenant asking him or her to contact HPD to schedule an appointment. If no response is received within eight days, the job is canceled. If the tenant responds and access is still not gained after scheduling an appointment, the job is canceled. Whenever the work is cancelled, the violation remains open.

Violation corrections by HPD related to violations	FY19
Number of apartments in which remediations were performed by HPD to correct violations in privately owned buildings ⁴	498
Dollars spent in FY19 related to HPD violation remediation and clearance	FY19
Total amount spent by HPD related to lead-based paint work orders in privately owned buildings	\$974,063
Average amount spent by HPD per dwelling unit (all jobs)	\$1,956

Litigation

If the property owner or one of his/her employees denies access to the dwelling unit, the lead hazard violations are 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 access warrants without giving owners several opportunities to do the work themselves, particularly when there is partial compliance, or evidence of difficulty in gaining sufficient access from the tenants to properly complete the violations, 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.

⁴ This number is down compared to FY18 because it is tied to the payments made. There was a backlog in payments for work for FY19 of approximately \$300,000 as compared to outstanding payments in FY18.

In FY17, HPD also began to initiate litigation for properties which were issued violations after failing to submit documentation after being issued a Record Production Order from HPD. These demands are issued after DOHMH had issued a Commissioner’s Order to Abate (COTA) in response to a child with an elevated blood lead level. In these cases, HPD seeks penalties for the failure to maintain appropriate records in addition to any civil penalties for open lead-based paint hazards violations or other open violations. As of September 2019, HPD had obtained civil penalties of approximately \$75,000.

Litigation pursuant to Local Law 1 of 2004⁵	FY19
Civil actions brought pursuant to false certification of violations (<i>multiple violations may be grouped together for one civil action</i>)	93
Civil actions brought pursuant to failure to submit lead-based paint documents pursuant to Section 27-2056.7	17
Civil actions seeking a warrant for access for HPD to perform emergency repairs	60

HPD response to Department of Health and Mental Hygiene Elevated Blood Lead Level Cases in New York City

Prior to June 2019, when a child was identified as having an elevated blood lead level (>15 mcg/dL, <18 yrs. of age), DOHMH conducted an environmental investigation to determine possible exposure to lead in paint and other products. Since June 2019, this process occurs for a child with a blood lead level of >5 mcg/dL and <18 years of age. If that investigation determines that lead-based paint hazards are present in the child’s home or another residential unit, DOHMH will issue a COTA and HPD will receive a referral from DOHMH. The referral triggers HPD to issue a Record Production Order to the property owner if the building is a privately-owned multiple dwelling (3 or more units). The records being demanded include records related to annual notices, annual inspections by the owner, and all repairs, remediations, and abatements related to lead-based paint that are required under Local Law 1. If the property owner supplies the appropriate records, HPD will attempt to conduct inspections in all units with a child under 6 and 20% of units without a child to verify the owner’s information. If the owner supplies no records or incomplete records, HPD will attempt to access every unit and will conduct Local Law 1 inspections where there is a child under the age of 6. Violations will be issued if there is peeling paint and the paint tests positive for lead. A violation will also be issued if no records or insufficient records are provided. As indicated above in the section regarding litigation, HPD may seek compliance with this violation in Housing Court.

HPD’s EREH also receives referrals directly from DOHMH when the property owner fails to abate the lead-based paint hazardous condition in the apartment where a child was found to have an elevated blood lead level. EREH will respond with emergency repairs.

⁵ This section does not include comprehensive litigation initiated by HPD (which may include lead-based paint violations as part of the action).

Internal Training

All new Code Enforcement inspectors and EREH field staff receive a three-day EPA lead-based paint Inspector training with an approved EPA provider and are EPA-certified Inspectors. From July 2018 to July 2019, 111 staff were sent for EPA lead Inspector training (approximately 74 were newly trained; while 37 were retrained). From July 2019 to October 15, 2019, 58 staff were sent for lead Inspector training (approximately 32 were newly trained; while 26 were retrained).

They 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. Inspectors assigned to the LBPIP are additionally trained in the use of XRF machines and the use of laptop computers to enter XRF and violation data while in the field. Training and renewal of certifications are monitored by the LBPIP supervisory staff.

Section III: Other Strategies for Continued Progress

Property Owner Training

HPD's Neighborhood Education and Outreach and the Division of Code Enforcement continues to provide courses in Lead Awareness and Local Law 1 Compliance and works to increase the awareness of the general public about Local Law 1 through various community outreach events and marketing initiatives.

Healthy Homes Primary Prevention Program

The Lead Hazard Reduction and Healthy Homes – Primary Prevention Program (PPP) successfully closed out its 2015 Lead Hazard Reduction Demonstration Grant in July 2019. Using this \$3.7MM grant from the United States Department of Housing and Urban Development (HUD), in combination with personnel in-kind and city capital matching funds, the Program remediated lead paint hazards in 250 housing units between November 2015 and June 2019 and performed Healthy Homes repairs to address non-lead paint health/safety issues in 126 of these units. PPP started up its 2017 Lead Hazard Reduction Demonstration Grant in Fall 2018; this three-year \$3.4MM grant has the goal of remediating lead paint hazards in 215 units and performing Healthy Homes repairs in a large sub-set.

City-Owned Housing

As a property owner, HPD is also required to comply with the requirements of Local Law 1. The Office of Asset and Property Management conducts an annual notification process for tenants. Responses to the annual notification are monitored. Those responses reporting the presence of a child under six are automatically forwarded to EREH to inspect, scope and perform all necessary work related to the correction of lead-based paint hazards. The reported information

below reflects activity in Property Management, Tenant Interim Lease, Multifamily Preservation Loan Program, and Affordable Neighborhood Cooperative Program.

City-Owned Housing	FY19
Lead Complaints in City-owned buildings	280
Total inspections in City-owned buildings	240

Exemptions

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 rules or 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 federal Department of Housing and Urban Development (HUD). In FY19, HPD processed 1,461 total of exemption applications, which provided exemptions for 1,930 units.

Looking Ahead

In 2020, HPD will:

- Modify inspection procedures so that HPD Inspectors are asking whether a child routinely spends 10 or more hours per week within a dwelling unit and, if so, are conducting Local Law 1 inspections. (Local Law 64 of 2019)
- Collect information on whether an owner follows Local Law 1 requirements by requesting information during the Property Registration process.
- Add sections to the FY2020 Annual Report on HPD’s audit program and enforcement against properties for failure to comply with the requirements for annual notice/annual inspection and turnover.

HPD, under the leadership of Mayor Bill de Blasio, is committed to advancing the goals set forth in LeadFreeNYC: eliminate the risk of childhood lead exposure by increasing the enforcement and scope of Local Law 1 to address lead hazards in more places and at lower levels of lead.

We will continue our progress by building on our successes and being more proactive in using our resources, staff, and funding to enforce Local Law 1. Our proactive stance will result in more apartments inspected, more remediation and abatement of lead paint, and ultimately, a reduction in lead-based paint hazards throughout New York City in the years to come.

Statistical Section Pursuant to §27-2056.12

	H/C*	Personnel Service Expenditures	Other Than Personnel Service Expenditures (Lead Repair Only)	Other Than Personal Service Expenditures (All Other)	Expense Total
Lead Inspections and Repair	230	\$12,650,672	\$1,011,218	\$618,756	\$14,280,646
HPD / DOH Outreach Initiative	3	\$259,560		\$15,304	\$274,864
Lead Demonstration	3	\$238,193		\$879,925	\$1,118,118
TOTAL	236	\$13,148,426	\$1,011,218	\$1,513,984	\$15,673,628

FY19 Lead Capital Commitments	Capital Commitments	TOTAL
Rehabilitation	\$66,350	\$66,350
HUD Lead Grant (PPP)	\$865,481	\$865,481
TOTAL	\$931,831	\$931,831