

## SUBCHAPTER E—GRANT PROGRAMS

### PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

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AUTHORITY: 12 U.S.C. 1715*l* note; 42 U.S.C. 3535(d).

#### § 280.1 Applicability and scope.

(a) This part sets forth the requirements for existing grants under the Nehemiah Housing Opportunity Grants Program (NHOP). NHOP was established by title VI of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l*). Under NHOP, HUD made grants to nonprofit organizations to be used to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with a HUD approved program. NHOP was repealed by Section 289(b) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839). Accordingly, no new grants are being awarded under the program.

(b) *Purpose.* The purposes of NHOP are:

(1) To encourage homeownership by families who are not otherwise able to afford homeownership;

(2) To undertake a concentrated effort to rebuild the depressed areas of cities and to create sound and attractive neighborhoods; and

(3) To increase the employment of residents of these neighborhoods.

[54 FR 22258, May 22, 1989, as amended at 61 FR 42953, Aug. 19, 1996]

#### § 280.5 Definitions.

As used in this part:

*Assistance* means grants to recipients for the purpose of providing loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

*Date of purchase* means the date that a family executes a sales contract for the purchase of a home under this part.

*Home* means a one- to four-family dwelling. The term includes dwelling units in a condominium project that consists of not more than four dwelling units, dwelling units in a cooperative project that consists of not more than four dwelling units, townhouses, and manufactured homes.

*Metropolitan statistical area* means a metropolitan statistical area or a primary metropolitan statistical area established by the Office of Management and Budget.

*Neighborhood* means an area that is distinguishable from other areas on the basis of one or more significant features such as:

(a) Natural or man-made boundaries;

(b) A locally recognized name, formal or informal;

(c) An identity as a residential subdivision;

(d) An identity as an elementary school district; or

(e) Distinctive population, social, or housing characteristics.

*Nonprofit organization* means a private nonprofit corporation or other private nonprofit legal entity. No part of the net earnings of the organization may inure to the benefit of any member, founder, contributor, or individual. The organization (a) may not be controlled by, or be under the direction of, persons or firms seeking to derive profit or gain from the organization; (b) must have a voluntary board; and (c) must have a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue

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Code of 1986. Nonprofit organization does not include a public body or the instrumentality of any public body.

*Program* means the undertaking by a recipient with HUD assistance under this part for the construction or substantial rehabilitation of homes in accordance with the requirements of this part.

*Recipient* means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to carry out a program under this part.

*Rehabilitation* means labor, materials, tools and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

*Substantial rehabilitation* means: (a) Rehabilitation involving costs in excess of 60 percent of the maximum sales price of a home assisted under this part after rehabilitation; or (b) the rehabilitation of a vacant, uninhabitable structure.

*Unit of general local government* means a borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

[54 FR 22258, May 22, 1989, as amended at 61 FR 5208, Feb. 9, 1996; 61 FR 42953, Aug. 19, 1996]

## § 280.10 NHOP assistance.

Recipients may only use assistance under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

[61 FR 42953, Aug. 19, 1996]

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### § 280.15 Assistance under other HUD programs.

Except for assistance made available under the Community Development Block Grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), a recipient's program is not eligible for assistance under other HUD assistance programs. Dwellings purchased under the program are eligible for mortgage insurance under section 203(b) (one- to four-family home mortgages), section 203(k) (rehabilitation of one- to four-family homes), section 221(d)(2) (low- and moderate-income families), section 234(c) (condominium mortgages), section 245(a) (graduated payment mortgages), and section 251 (adjustable rate mortgages) of the National Housing Act.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

### § 280.20 Home quality.

(a) *Generally*. Except for manufactured homes, homes constructed or substantially rehabilitated under a program must comply with applicable local building code standards. (If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CABO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD). All such homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR part 200, subpart S.

(b) *Manufactured homes*. Manufactured homes under a program must comply with the Manufactured Home Construction and Safety Standards in 24 CFR part 3280; the installation, structural, and site requirements described in 24 CFR 203.43f; and the energy performance requirements of 24 CFR 200.926d(e).

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

### § 280.25 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following additional Federal requirements apply to this program:

(a) *Nondiscrimination and equal opportunity.* (1) The affirmative fair housing marketing requirements at 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108.

(2) *Racial and ethnic data collection requirements.* Recipients must maintain current data on the race and ethnicity of program beneficiaries.

(b) *Displacement and relocation assistance.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Act Amendments of 1987, title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a program assisted under this part.

(2) A displacement from the real property is covered by the URA if it occurs on or after the date that an application is submitted under this part and the application is later approved and funded, unless:

(i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the real property after the application was submitted, but received prior written notice of the expected displacement;

(iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the program under the threat of eminent domain; or

(iv) The applicant (recipient) determines that the displacement did not occur as a direct result of the acquisition, rehabilitation, or demolition for the program, and HUD concurs in that determination.

(3) If a person is displaced from the real property before the submission of the application, and either HUD or the

applicant (recipient) determines that the displacement was a direct result of the acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

(4) The applicant (recipient) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

(5) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR part 24.

(c) *Flood insurance purchase requirements.* Grants will not be provided to programs involving the acquisition or rehabilitation of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as a special flood hazard area, unless: (1) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations under that program (44 CFR parts 59 through 79); or (2) less than a year has passed since FEMA notification regarding such hazards. A recipient may not make a loan under this part involving buildings located in these areas unless flood insurance on the structure is obtained by the purchaser in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(d) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by nonprofit organizations.

(e) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, K, and R, of this title apply to the program.

(f) *Conflicts of interest.* No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to activities under the program or

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(2) Who is in a position to participate in a decisionmaking process of gain inside information with regard to such activities, may obtain a personal or financial interest of benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. The provisions of paragraph (e)(1) of this section do not prohibit a non-managerial and nonsupervisory employee who is otherwise eligible, from purchasing a home under this part.

(g) *Audit.* Recipients are subject to the audit requirements of OMB Circular A-133 (as set forth in 24 CFR part 45). HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Coastal Barriers Resources Act.* The Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) applies to the program.

(i) *Davis-Bacon Act.* The prevailing wage rate determinations under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to the program.

[54 FR 22258, May 22, 1989; 55 FR 20240, May 15, 1990; 57 FR 33256, July 27, 1992; 59 FR 33894, June 30, 1994; 61 FR 5208, Feb. 9, 1996. Redesignated at 61 FR 42953, Aug. 19, 1996; 64 FR 50225, Sept. 15, 1999]

## Subparts A-D [Reserved]

### Subpart E—Program Operation

#### § 280.30 Grant agreement.

(a) *General.* The recipient's responsibilities under NHOP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *HUD Monitoring.* HUD will monitor the recipient's performance to determine whether the recipient is complying with the requirements of the grant agreement. HUD will rely on such data as information obtained from the recipient's records and reports, findings from on-site monitoring and audit reports.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

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#### § 280.35 Minimum participation.

Except as provided in paragraph (a) or (b) of this section, the recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments required under § 280.45(b) have been made.

(a) Recipients may submit a phasing plan to HUD for approval. The phasing plan may propose that the grantee begin construction or substantial rehabilitation on an individual phase of the program when 25 percent of the homes in the individual phase of the program have been pre-sold. Each phase for which approval is sought must contain at least 16 homes. Each submission must include documentation that the phasing plan has been approved by the unit of local government in which the homes are to be located.

(b) Recipients may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

[58 FR 38532, July 19, 1993. Redesignated and amended at 61 FR 42953, Aug. 19, 1996]

#### § 280.40 Eligible purchasers.

(a) *Income limitations.* (1) Each family purchasing a home constructed or substantially rehabilitated under a program must have a family income on the date of purchase that does not exceed the following limitations:

(i) For programs located in a metropolitan statistical area, the family income may not exceed the higher of:

(A) The median family income for the metropolitan statistical area in which the program is located. At any time during the development of the program, the recipient may request HUD to modify this family income requirement. To obtain a modification, the recipient must submit a request by a unit of general local government in

which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD may permit up to 15 percent of the families that purchase homes under this part, to have a family income on the date of purchase that is between 100 and 115 percent of the median family income for the metropolitan statistical area.

(B) The national median income.

(ii) For programs that are not located in a metropolitan statistical area, the family income may not exceed the national median income.

(2) For the purpose of determining the median family income for the nation and metropolitan statistical areas, the recipient must use the most recent median family incomes developed by HUD under Section 8 of the United States Housing Act of 1937. Family income is the annual income as computed in accordance with 24 CFR 813.106.

(b) *Homeownership*. No member of a family purchasing a home constructed or substantially rehabilitated under the program may have owned a home at any time during the three years before the date of purchase.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

#### § 280.45 Sales contract and downpayment requirements.

(a) *Sales contract*. The recipient and each family purchasing a home constructed or substantially rehabilitated under the program must execute a sales contract. The sales contract shall contain appropriate terms and conditions covering the purchase of the home and must contain:

(1) The downpayment provisions described in paragraph (b) of this section;

(2) The repayment provisions described in § 280.55 of this part.

(3) Such other terms and conditions as HUD may require.

(b) *Downpayment*. Each family purchasing a home constructed or substantially rehabilitated under the program must provide a downpayment. A governmental entity or instrumentality may not provide funds for the family's downpayment.

(1) *Amount*. The amount of the downpayment includes all cash contributions made by the family (e.g., contributions for settlement and closing costs). The total amount of the downpayment must be equal to 10 percent of the sales price of the home except:

(i) The recipient may require a downpayment that is greater than 10 percent of the sales price of the home, if the recipient has determined that a higher downpayment is appropriate.

(ii) The recipient may require a downpayment that is less than 10 percent of the sales price of the home, if the first mortgage on the home is to be held by a State or a unit of general local government under a home loan program provided by the State or unit of general local government, and the program provides for a lower downpayment.

(2) *Date of downpayment*. The downpayment must be made on the date required by the recipient. Under § 280.35, however, no construction or rehabilitation may be begun until at least 25 percent of the homes constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the homes and the downpayments are made.

(3) *Interest*. The recipient shall deposit the downpayment in an account with a federally insured bank, savings and loan institution or credit union. The recipient shall pay interest on the downpayment to the family from the date that downpayment is made through the date of settlement, at the actual rate of interest earned on the account. Under no circumstances may the interest rate paid to the family be lower than the lowest passbook rate of interest paid by a federally insured bank, savings and loan institution or credit union conducting business within the State in which the program is located.

[54 FR 22258, May 22, 1989. Redesignated and amended at 61 FR 42953, Aug. 19, 1996]

#### § 280.50 Loan requirements.

(a) *Loan requirements*. A loan made to a family purchasing a home constructed or substantially rehabilitated under the program:

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(1) Must be secured by a second mortgage held by HUD on the property involved;

(2) May not exceed \$15,000;

(3) May not bear interest;

(4) Is repayable to HUD upon the sale, lease, or other transfer of the property; except, as an alternative, the nonprofit organization may elect to provide the Homeowner Incentive under § 280.55(c) for subsequent sale or transfer of the property (the Homeowner Incentive is not available upon the lease of the property).

(5) Must be applied by the family to the purchase price of the home.

(6) May not be used by the family to provide the downpayment required under § 280.45.

(7) Is subject to such other terms and conditions as HUD may require.

(b) *Reimbursement of recipient.* Within 30 days after the date of purchase of a home with a loan under this part, HUD will provide the recipient with an amount equal to the amount of the loan.

[54 FR 22258, May 22, 1989, as amended at 58 FR 58282, Nov. 1, 1993. Redesignated and amended at 61 FR 42953, 42954, Aug. 19, 1996]

### § 280.55 Loan and profit.

(a) *Repayment.* A family purchasing a home with a loan under this part must repay the loan to HUD, if the family sells, leases, or transfers any interest in the property. If the family refinances the first mortgage and the refinancing is unrelated to a sale, equity withdrawal, lease or transfer of an interest in the property, the family will not be required to repay the loan. If the refinancing of the first mortgage involves an equity withdrawal, the family will be required to repay the loan to HUD to the extent of the withdrawal. To the extent that repayment is not required as a result of refinancing, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

(b) *HUD-approval.* (1) The family may request HUD approval of a sale, equity withdrawal or other transfer of the property without full repayment. Approval will be granted if HUD determines that an undue hardship will result from the application of the repayment requirement. Generally, HUD will

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make this finding only if the proceeds of the transaction are insufficient to repay the loan amount in full and approval will be granted only to the extent that the proceeds of the transaction are insufficient to repay the loan in full. HUD will not approve the lease of a home without repayment.

(2) To the extent that HUD approves a sale or transfer without repayment, the second mortgage held by HUD on the property will remain in force until the loan is repaid in full.

(c) *Homeowner incentive.* The nonprofit organization may elect to provide a homeowner incentive to families purchasing a home with a loan under this part. For each home sold under this program for which the nonprofit organization elects to provide the Homeowner Incentive, the nonprofit organization must provide a Notice of Homeowner Incentive which must be acknowledged by signature of the homebuyer(s) and the grantee. The Notice of Homeowner Incentive is to read as follows: "The homeowner incentive will provide that upon the sale or transfer of a property purchased with a loan made under this section, any proceeds remaining after repaying the first mortgage shall be distributed in the following order:

(1) Downpayment—The amount of the downpayment made by the family who purchased a home constructed or rehabilitated under this section, which was paid in the form of cash or the value of sweat equity by the family at the time of the initial purchase, shall be repaid to the family upon the sale or transfer of the property. Downpayment funds not provided by the family at the time of the initial purchase (*i.e.*, obtained from another source) will not be repaid to the family.

(2) Loan and profit—Any amounts remaining after distribution of the downpayment shall be shared equally between the Secretary and the family, but only to the extent that the Secretary recovers an amount equal to the amount of the loan originally made to the family under this section. If such remaining amounts are insufficient for the Secretary to recover the full amount of the loan made under this section, the remaining balance of the second mortgage shall be cancelled and

shall not be transferred to a subsequent purchaser.

(3) Profit—Any amounts remaining after distribution under paragraphs (c)(1) and (c)(2) of this section shall be paid to the family. Funds paid to the family under paragraphs (c)(1), (2) and (3) of this section may be used by the family to repay any other remaining debt on the property (*i.e.*, third or subsequent mortgages).

(4) One copy of the acknowledged Notice of Homeowner Incentive is to be provided to HUD for any home sold with a loan under this part where a sales contract has been executed and/or the sale has closed prior to the issuance of these regulations. For sales where the HUD-approved sales contract has not yet been executed with a prospective purchaser and/or the sale has not yet closed, a copy of the Notice of Homebuyer Incentive must be executed by the homebuyer and the grantee and appended to the HUD-approved sales contract, HUD Second Mortgage or Deed of Trust, and the HUD Note.

(d) *Notice of Election.* In order for a nonprofit organization to make the Homeowner Incentive available to families purchasing a home with a Nehemiah loan, the nonprofit organization must provide HUD with a written Notice of Election of Homeowner Incentive. This Notice must:

(1) State whether or not the Homeowner Incentive will be made available to all homebuyers in the project who have purchased a home under the project with a loan made under this part after July 1, 1990; or

(2) In cases where the Homeowner Incentive will not be made available to

all homebuyers who have purchased a home under the project with a loan made under this part after July 1, 1990 specifically identify those homebuyers to which the Homeowner Incentive will not apply.

(Approved by the Office of Management and Budget under control number 2502-0385)

[54 FR 22258, May 22, 1989, as amended at 58 FR 58282, Nov. 1, 1993; 61 FR 36267, July 9, 1996. Redesignated at 61 FR 42954, Aug. 19, 1996]

#### § 280.60 Funding amendments and deobligation of funds.

(a) *Increases.* After the initial obligation of funds, HUD will not make any upward revisions to the amount obligated.

(b) *Deobligation.* (1) HUD may deobligate amounts:

(i) If the amount of the loans provided under the program are less than the amount of the loans anticipated in the application; or

(ii) If the recipient fails to carry out activities under the program within a reasonable time after selection;

(2) If as a result of an audit, HUD determines that the recipient has expended funds for uses that are ineligible under this part, HUD may adjust or deobligate funding amounts, as appropriate, to recover the ineligible costs.

(3) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42954, Aug. 19, 1996]

## SUBCHAPTERS F–H [RESERVED]