

PART 761—DRUG ELIMINATION PROGRAMS

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Subpart A—General

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

(a) Eliminate drug-related and violent crime and problems associated with it in and around the premises of Federally assisted low-income housing, and public and Indian housing developments;

(b) Encourage owners of Federally assisted low-income housing, public housing agencies and Indian housing authorities (collectively referred to as HAs), and resident management corporations to develop a plan that includes initiatives that can be sustained over a period of several years for addressing drug-related and violent crime

and problems associated with it in and around the premises of housing proposed for funding under this part; and

(c) Make available Federal grants to help owners of Federally assisted low-income housing, HAs, and RMCs carry out their plans.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49917, Sept. 14, 1999]

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of part 964 of this title.

[64 FR 49917, Sept. 14, 1999]

§ 761.10 Definitions.

The definitions *Department*, *HUD*, and *Public Housing Agency (PHA)* are defined in part 5 of this title.

Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

Drug intervention means a process to identify assisted housing or public housing resident drug users, to assist them in modifying their behavior, and/or to refer them to drug treatment to reduce or eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors, including activities, environmental influences, risks, and expectations, that lead to drug abuse.

Drug-related and violent crime shall have the meaning provided in 42 U.S.C. 11905(2).

Drug treatment means a program for the residents of an applicant's development that strives to end drug abuse and to eliminate its negative effects

through rehabilitation and relapse prevention.

Federally assisted low-income housing, or assisted housing, shall have the meaning provided in 42 U.S.C. 11905(4). However, sections 221(d)(3) and 221(d)(4) market rate projects with tenant-based assistance contracts and section 8 projects with tenant-based assistance are not considered federally assisted low-income housing and are not eligible for funding under this part 761.

Governmental jurisdiction means the unit of general local government, State, or area of operation of an Indian tribe in which the housing development administered by the applicant is located.

In and around means within, or adjacent to, the physical boundaries of a housing development.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians, or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the housing developments owned or administered by the applicant. In Indian jurisdictions, this includes tribal prosecutors that assume law enforcement functions analogous to a police department or the Bureau of Indian Affairs (BIA). More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's developments.

Problems associated with drug-related and violent crime means the negative physical, social, educational, and economic impact of drug-related and violent crime on assisted housing residents or public and Indian housing residents, and the deterioration of the assisted housing or public and Indian housing environment because of drug-related and violent crime.

Program income means gross income received by a grantee and directly generated from the use of program funds. When program income is generated by an activity only partially assisted with program funds, the income shall be prorated to reflect the percentage of program funds used.

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as *recipient* provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

Resident council (RC), for purposes of the Public Housing Program, means an incorporated or unincorporated non-profit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one development or in all of the developments of a HA, but it must fairly represent residents from each development that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under part 964 of this title in accordance with the requirements of that part.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public or Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 *note*).

Unit of general local government means any city, county, town, municipality, township, parish, village, local public authority (including any public or Indian housing agency under the United States Housing Act of 1937) or other general purpose political subdivision of a State.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49918, Sept. 14, 1999]

Subpart B—Grant Funding**§ 761.13 Amount of funding.**

(a) *PHDEP formula funding*—(1) *Funding share formula*—(i) *Per unit amount.* Subject to the availability of funding, the amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000, except that qualified applicants with less than 50 units will not receive more than \$500 per unit.

(ii) *Calculation of number of units.* For purposes of determining the number of units counted for purposes of the PHDEP formula, HUD shall count as one unit each existing rental and Section 23 bond-financed unit under the ACC. Units that are added to a PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the PHDEP formula is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the PHDEP formula. New units reaching DOFA after this date will be counted for PHDEP formula purposes as of the following Federal Fiscal Year. Federalized units that are eligible for operating subsidy will be counted for PHDEP formula purposes based on the unit count reflected on the PHA's most recently approved Operating Budget (Form HUD-52564) and/or subsidy calculation (Form HUD-52723), or successor form submitted for that program. Units approved for demolition/disposition continue to be counted for PHDEP formula funding purposes until actual demolition/disposition of the unit.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each

FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 will be subject to the sanctions listed in § 761.30(f)(2).

(iv) Both the amount of and continuing eligibility for funding is subject to the sanctions in § 761.30(f).

(v) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the FEDERAL REGISTER.

[64 FR 49918, Sept. 14, 1999]

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding*—(1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

- (i) A PHA;
- (ii) An RMC; and
- (iii) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* An eligible applicant that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section must be in one of the following needs categories to qualify for funding:

(i) The eligible applicant must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY). The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used; or

(ii) The eligible applicant must have qualified for PHDEP funding, by receiving an application score of 70 or more points under any one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998, but not have received an award because of the unavailability of funds.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* Except as provided in paragraph (a)(5)(ii), below, of this section, to receive PHDEP funding, a PHA that qualifies to receive PHDEP funding for Federal Fiscal Year 2000 and beyond must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to part 903 of this title for each Federal Fiscal Year for which it qualifies for funding.

(ii) To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding and is operating under an exe-

cuted Moving To Work (MTW) agreement with HUD must submit a PHDEP plan that meets the requirements of § 761.21 with its required MTW plan for each Federal Fiscal Year for which it qualifies for funding.

(iii) *RMCs.* To receive PHDEP funding, an RMC operating in an PHA that qualifies to receive PHDEP funding must submit a PHDEP plan for the units managed by the RMC that meets the requirements of § 761.21 to its PHA. Upon agreement between the RMC and PHA, the PHA must submit to HUD, with its PHA Plan submitted pursuant to part 903 of this title, the RMC's PHDEP plan. The RMC will implement its plan as a subrecipient of the PHA.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to part 903 of this title, or IHP, submitted pursuant to subpart C of part 1000 of this title, as appropriate.

(6) An otherwise qualified recipient PHA, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term *Federally assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the FEDERAL REGISTER will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

[64 FR 49918, Sept. 14, 1999]

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of

Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel*, as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel*. (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis. The applicant must identify the baseline services provided by the local law enforcement agency.

(B) The applicant, the provider (contractor) of the security personnel and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police*. (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law en-

forcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) If the local law enforcement agency is receiving any PHDEP funds from the applicant, the applicant and the local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services*, as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the grantee has

executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security*, as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals*, as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the investigator(s) and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols*, as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting

in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the members of the tenant patrol and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs*, as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs)*. For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract

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with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports.* Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing,* under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities.* For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

[64 FR 49919, Sept. 14, 1999]

Subpart C—Application and Selection

§ 761.20 Selection requirements.

(a) *PHDEP selection.* Every PHA, RMC and consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the FEDERAL REGISTER to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant

amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

[64 FR 49920, Sept. 14, 1999]

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD, for Federal Fiscal Year (FFY) 2000 and each following FFY, a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not

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submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the FEDERAL REGISTER may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a copy of the consortium agreement between the PHAs which are participating in the consortium, and a copy of the payment agreement between the consortium and HUD.

[64 FR 49920, Sept. 14, 1999]

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements—(1) Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to § 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g.,

memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements—(1) Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under part 91 of this title for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must consult with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21 and must maintain documentation of such consultation. Furthermore, a grantee must coordinate its grant-funded activities with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable and maintain documentation of such coordination.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

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(c) *Funding and evaluation requirements*—(1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining, measurable goals including the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section will be subject to the sanctions listed in § 761.30(f)(2).

[64 FR 49921, Sept. 14, 1999]

§ 761.25 Resident comments on grant application.

The applicant must provide the residents of developments proposed for funding under this part 761, as well as any RMCs, RCs, or ROs that represent those residents (including any HA-wide RMC, RC, or RO), if applicable, with a reasonable opportunity to comment on its application for funding under these

programs. The applicant must give these comments careful consideration in developing its plan and application, as well as in the implementation of funded programs. Grantees must maintain copies of all written comments submitted for three years.

Subpart D—Grant Administration

§ 761.30 Grant administration.

(a) *General.* Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part 761, any specific Notices of Funding Availability (NOFAs) issued for these programs, 2 CFR part 200, applicable laws and regulations, applicable OMB circulars, HUD fiscal and audit controls, grant agreements, grant special conditions, the grantee's approved budget (SF-424A), budget narrative, plan, and activity timetable.

(b) *Grant term extensions*—(1) *Grant term.* Terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. Any funds not expended at the end of the grant term shall be remitted to HUD.

(2) *Extension.* HUD may grant an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required. HUD will not consider requests for retroactive extension of program periods. HUD will permit only one extension. HUD will only consider extensions if the grantee meets the extension criteria of paragraph (b)(5) of this section at the time the grantee submits for approval the request for the extension.

(3) *Receipt.* The request must be received by the local HUD Office or local HUD Office of Native American Programs prior to the termination of the grant, and requires approval by the local HUD Office or local HUD Office of Native American Programs with jurisdiction over the grantee.

(4) *Term.* The maximum extension allowable for any program period is 6 months.

(5) *Extension criteria.* The following criteria must be met by the grantee when submitting a request to extend the expenditure deadline for a program or set of programs.

(i) *Financial status reports.* There must be on file with the local HUD Office or local HUD Office of Native American Programs current and acceptable Financial Status Reports, SF-269As.

(ii) *Grant agreement special conditions.* The grantee must have satisfied all grant agreement special conditions except those conditions that the grantee must fulfill in the remaining period of the grant. This also includes the performance and resolution of audit findings in a timely manner.

(iii) *Justification.* The grantee must submit a narrative justification with the program extension request. The justification must provide complete details, including the circumstances that require the proposed extension, and an explanation of the impact of denying the request.

(6) *HUD action.* The local HUD Office or local HUD Office of Native American Programs will attempt to take action on any proposed extension request within 15 days after receipt of the request.

(c) *Duplication of funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Program. The grantee must establish an auditable system to provide adequate accountability for funds that it has been awarded. The grantee is responsible for ensuring that there is no duplication of funds.

(d) *Insurance.* Each grantee shall obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants shall assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, and drug treatment providers, and the establishment of voluntary tenant patrols; evaluate the qualifications and training of the individuals or firms un-

dertaking these functions; and consider any limitations on liability under tribal, State, or local law. Grantees shall obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 761.15(b)(5). Voluntary tenant patrol liability insurance costs are eligible program expenses. Subgrantees shall obtain their own liability insurance.

(e) *Failure to implement program.* If the grant plan, approved budget, and timetable, as described in the approved application, are not operational within 60 days of the grant agreement date, the grantee must report by letter to the local HUD Office or the local HUD Office of Native American Programs the steps being taken to initiate the plan and timetable, the reason for the delay, and the expected starting date. Any timetable revisions that resulted from the delay must be included. The local HUD Office or local HUD Office of Native American Programs will determine if the delay is acceptable, approve/disapprove the revised plan and timetable, and take any additional appropriate action.

(f) *Sanctions.* (1) HUD may impose sanctions if the grantee:

(i) Is not complying with the requirements of this part 761, or of other applicable Federal law;

(ii) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports;

(iii) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(iv) Does not adhere to grant agreement requirements or special conditions;

(v) Proposes substantial plan changes to the extent that, if originally submitted, the applications would not have been selected for funding;

(vi) Engages in the improper award or administration of grant subcontracts;

(vii) Does not submit reports; or

(viii) Files a false certification.

(2) HUD may impose the following sanctions:

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(i) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(ii) Disallow all or part of the cost of the activity or action not in compliance;

(iii) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(iv) Require that some or all of the grant amounts be remitted to HUD;

(v) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(vi) Withhold further awards for the program; or

(vii) Take other remedies that may be legally available.

[61 FR 13987, Mar. 28, 1996, as amended at 80 FR 75941, Dec. 7, 2015]

§ 761.35 Periodic grantee reports.

Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity of the grant.

(a) *Semi-annual (nonconstruction) performance reports.* For purposes of the Public Housing Program only, the following provisions in paragraph (a) of this section apply:

(1) In accordance with 2 CFR 200.328, grantees are required to provide the local HUD Office or the local HUD Office of Native American Programs with a semi-annual performance report that evaluates the grantee's performance against its plan. These reports shall include (but are not limited to) the following in summary form:

(i) Any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment and an explanation of any difference;

(ii) Successful completion of any of the strategy components identified in the applicant's plan;

(iii) A discussion of any problems encountered in implementing the plan and how they were addressed;

(iv) An evaluation of whether the rate of progress meets expectations;

(v) A discussion of the grantee's efforts in encouraging resident participation; and

(vi) A description of any other programs that may have been initiated, expanded, or deleted as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(2) *Reporting period.* Semi-annual performance reports (for periods ending June 30 and December 31) are due to the local HUD Office or the local HUD Office of Native American Programs on July 30 and January 31 of each year. If the reports are not received by the local HUD Office or the local HUD Office of Native American Programs on or before the due date, grant funds will not be advanced until the reports are received.

(b) *Final performance report.* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (b) of this section apply:

(1) *Evaluation.* Grantees are required to provide the local HUD Office or the local HUD Office of Native American Programs, as applicable, with a final cumulative performance report that evaluates the grantee's overall performance against its plan. This report shall include (but is not limited to) the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section, in summary form.

(2) *Reporting period.* The final performance report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office or the local HUD Office of Native American Programs, as applicable, within 90 days after termination of the grant agreement.

(c) *Semi-annual financial status reporting requirements.* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (c) of this section apply, as specified below:

(1) *Forms.* The grantee shall provide a semi-annual financial status report. For purposes of the Public Housing

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Program, this report shall be in accordance with 2 CFR 200.327. For both the Assisted Housing and Public Housing Programs, the grantee shall use the form SF-269A, Financial Status Report-Long Form, to report the status of funds for nonconstruction programs. The grantee shall use SF-269A, block 12, "Remarks," to report on the status of programs, functions, or activities within the program.

(2) *Reporting period.* Semi-annual financial status reports (SF-269A) must be submitted as follows:

(i) For purposes of the Assisted Housing Program, semi-annual financial status reports covering the first 180 days of funded activities must be submitted to the local HUD Office between 190 and 210 days after the date of the grant agreement. If the SF-269A is not received on or before the due date (210 days after the date of the grant agreement) by the local HUD Office, grant funds will not be advanced until the reports are received.

(ii) For purposes of the Public Housing Program, semi-annual financial status reports (for periods ending June 30 and December 31) must be submitted to the local HUD Office or the local Office of Indian Programs, as applicable, by July 30 and January 31 of each year. If the local HUD Office or the local HUD Office of Native American Programs, as applicable, does not receive the SF-269A on or before the due date, the grant funds will not be advanced until the reports are received.

(d) *Final financial status report (SF-269A).* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (d) of this section apply:

(1) *Cumulative summary.* The final report will be a cumulative summary of expenditures to date and must indicate the exact balance of unexpended funds. The grantee shall remit all Drug Elimination Program funds owed to HUD, including any unexpended funds, as follows:

(i) For purposes of the Assisted Housing Program, the grantee must remit such funds to HUD within 90 days after the termination of the grant agreement.

(ii) For purposes of the Public Housing Program, the local HUD Office or

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the local HUD Office of Native American Programs shall notify the grantee, in writing, of the requirement to remit such funds to HUD. The grantee shall remit such funds prior to or upon receipt of the notice.

(2) *Reporting period.* The final financial status report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office or the local HUD Office of Native American Programs, as applicable, within 90 days after the termination of the grant agreement.

[61 FR 13987, Mar. 28, 1996, as amended at 80 FR 75941, Dec. 7, 2015]

§ 761.40 Other Federal requirements.

In addition to the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, subpart A, use of grant funds requires compliance with the following Federal requirements:

(a) *Labor standards.* (1) When grant funds are used to undertake physical improvements to increase security under § 761.15(b)(3), the following labor standards apply:

(i) The grantee and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the program, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trades;

(B) For laborers and mechanics employed in carrying out nonroutine maintenance in the program, the HUD-determined prevailing wage rate. As used in paragraph (a) of this section, nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Nonroutine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear

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and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).

(2) The provisions of paragraph (a)(1) of this section shall not apply to labor contributed under the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents (for purposes of the Public Housing Program, residents of a program managed by the resident management corporation) to volunteer a portion of their labor.

(ii) An individual may volunteer to perform services if:

(A) The individual does not receive compensation for the voluntary services, or is paid expenses, reasonable benefits, or a nominal fee for voluntary services; and

(B) Is not otherwise employed at any time in the work subject to paragraphs (a)(1)(i)(A) or (a)(1)(i)(B) of this section.

(b) *Flood insurance.* Grants will not be awarded for proposed activities that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59 through 79; or

(2) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(3) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(c) *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, H, and R of this title.

(d) *Conflicts of interest.* In addition to the conflict of interest requirements in 2 CFR 200.112 (for all recipients and subrecipients), 200.317 (for recipients and subrecipients that are States), and 200.318(c) and 200.319(a)(5) (for recipients and subrecipients that are not States) for the Public Housing Program, no person, as described in paragraphs (d)(1) and (d)(2) of this section, may obtain a personal or financial interest or benefit from an activity funded under these drug elimination programs, 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:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities.

(e) *For IHAs*, § 950.115 of this title, “Applicability of civil rights requirements,” and § 950.120 of this title, “Compliance with other Federal requirements,” apply and control to the extent they may differ from other requirements of this section;

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in part 52 of this title, to the extent provided by FEDERAL REGISTER notice in accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Certain eligible activities under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If the PHDEP plan proposes the use of grant

funds to assist any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49921, Sept. 14, 1999; 64 FR 50227, Sept. 15, 1999, 80 FR 75941, Dec. 7, 2015]

PARTS 762–790 [RESERVED]

PART 791—ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

Subpart A—General Provisions

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AUTHORITY: 42 U.S.C. 1439 and 3535(d).

SOURCE: 61 FR 10849, Mar. 15, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 791.101 Applicability and scope.

This part describes the role and responsibility of HUD in allocation of budget authority (pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439)) for housing assistance under the United States Housing Act of 1937 (Section 8 and public housing) and under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and of budget authority for housing assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1710q). This part does not apply to budget authority for the public housing operating fund or capital fund.

[64 FR 26639, May 14, 1999]

§ 791.102 Definitions.

Act. The Housing and Community Development Act of 1974 (42 U.S.C. 1437), as amended.

Allocation area. A municipality, county, or group of municipalities or counties identified by the HUD field office for the purpose of allocating housing assistance.

Assistant Secretary. The Assistant Secretary for Housing or the Assistant Secretary for Public and Indian Housing, as appropriate to the housing assistance under consideration.

Budget authority. The maximum amount authorized by the Congress for payments over the term of assistance contracts.

Fiscal year. The official operating period of the Federal government, beginning on October 1 and ending on September 30.

Metropolitan area. See MSA.

MSA. A metropolitan statistical area established by the Office of Management and Budget. The term also includes primary metropolitan statistical areas (PMSAs), which are the component parts of larger urbanized areas designated as consolidated metropolitan statistical areas (CMSAs). Where an MSA is divided among two or more field offices, references to an MSA mean the portion of the MSA within the State/Area Office jurisdiction.

Public housing agency (PHA). (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer a program under the 1937 Act (or an agency or instrumentality of such an entity).

(2) In addition, for purposes of the program of Section 8 tenant-based assistance under part 982 of this title, the term PHA also includes any of the following:

(i) A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members);