

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Parts 261, 761, and 961**

[Docket No. FR-3997-F-01]

RIN 2501-AC18

Consolidated Drug Elimination Program Requirements for Assisted Housing and Public Housing**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule consolidates and streamlines HUD's regulations for the Assisted Housing Drug Elimination Program and the Public Housing Drug Elimination Program. This rule is part of HUD's efforts to comply with the President's regulatory reform initiatives. Since the requirements for the two programs are very similar, this consolidation will eliminate redundant and unnecessary provisions in HUD's regulations.

EFFECTIVE DATE: April 29, 1996.

FOR FURTHER INFORMATION CONTACT: *For questions concerning the Assisted Housing Drug Elimination Program (AHDEP), contact:* Michael E. Diggs, Office of Multifamily Housing Programs, Office of Housing, Room 6130, telephone number (202) 708-0614, ext. 2514.

For questions concerning the Public Housing Drug Elimination Program (PHDEP), contact: Malcolm E. (Mike) Main, Crime Prevention and Security Division, Office of Community Relations and Involvement, Office of Public and Indian Housing, Room 4116, telephone (202) 708-1197, ext. 4232.

The address for the above persons is: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may call (800) 877-8339 (Federal Information Relay Service TDD). (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:**I. Background**

The Public Housing Drug Elimination Program was first authorized by chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901-11908). The purpose of the Drug Elimination Program is to make grants for use in eliminating drug-related crime and the problems associated with it. HUD first issued implementing regulations for this program in 24 CFR part 961 on July 3, 1990 (55 FR 27598).

Under this original authorization, public housing agencies (PHAs) and Indian housing authorities (IHAs) were eligible to apply for and receive grants under the program. (IHAs and PHAs will be collectively referred to as HAs.)

Section 581 of the National Affordable Housing Act (NAHA) (Pub. L. 101-625, approved November 28, 1990) amended the Public Housing Drug Elimination Program in a number of ways, and HUD implemented these amendments through a final rule published on January 7, 1993 (58 FR 3160). As described in the preamble to the January 7, 1993 final rule, that rule also implemented two amendments to the program from the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992).

In addition to enhancing the Public Housing Drug Elimination Program, the National Affordable Housing Act included the authorization for the Assisted Housing Drug Elimination Program. Under the Assisted Housing Program, HUD can provide grants to private for-profit and nonprofit owners of Federally assisted low-income housing. For purposes of the Assisted Housing Drug Elimination Program, NAHA also permits HUD to establish other criteria, in addition to those applicable to the Public Housing Drug Elimination Program, for the evaluation of funding applications submitted by owners of Federally assisted low-income housing. HUD issued a final rule implementing the Assisted Housing Drug Elimination Program on January 26, 1995 (60 FR 5280). The January 26, 1995 final rule followed the regulations for the Public Housing Drug Elimination Program very closely. The main difference from the Public Housing Program's regulations reflected the flexibility in the submission requirements and eligible activities provided by NAHA for the Assisted Housing Program.

II. Regulatory Reinvention

In response to Executive Order 12866 and President Clinton's memorandum of March 4, 1995 to all Federal departments and agencies on the subject of regulatory reinvention, HUD has reviewed all its regulations to determine whether certain regulations can be eliminated, streamlined, or consolidated with other regulations. As part of this review, HUD determined that the regulations for the Assisted Housing Drug Elimination Program and the Public Housing Drug Elimination Program are very similar, and HUD can consolidate them into one part.

Therefore, this final rule will consolidate the regulations in parts 261 (Assisted Housing Drug Elimination Program) and 961 (Public Housing Drug Elimination Program), into one set of regulations in part 761 (in chapter VII of title 24 of the Code of Federal Regulations (CFR)). Chapter VII of HUD's regulations is an appropriate place for the Drug Elimination Program regulations, since that chapter has historically contained those regulations common to programs under the authority of the Assistant Secretary for Housing—Federal Housing Commissioner (such as the Assisted Housing Drug Elimination Program) and to programs under the authority of the Assistant Secretary for Public and Indian Housing (such as the Public Housing Drug Elimination Program).

This final rule also streamlines the Drug Elimination Program regulations to the extent possible. For example, some of the provisions merely repeat language in the authorizing statute (42 U.S.C. 11901-11908). It is unnecessary to maintain statutory requirements in the CFR, since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

This rule also removes information in the regulations that is nonregulatory and would more appropriately appear in the separate Notices of Funding Availability (NOFAs) for the two programs, such as details about the selection criteria and examples of eligible activities. This final rule streamlines the regulations to provide that specific information on these topics will be included in the annual NOFAs.

Specifically, this final rule accomplishes the following:

1. Consolidates the regulations from parts 261 and 961 into part 761;
2. Removes the definitions of terms that are either not used in the regulations or are defined in the statute;
3. Removes the nonregulatory examples from the definition of "program income" and from the new § 761.15—Applicants and activities; and
4. Removes statutory language from the new § 761.15—Applicants and activities.

As a result of the streamlining efforts in this rule, HUD will eliminate approximately 7 pages of unnecessary regulations from the CFR.

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking found in 24 CFR part 10. However, part 10 provides for exceptions from the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. This final rule merely consolidates and streamlines two sets of similar regulations; it does not change HUD's policies or substantive requirements.

III. Other Matters

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends existing regulations by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. Separate Findings of No Significant Impact with respect to the environment were made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of initial development of the regulations for the Drug Elimination Programs. The findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or

their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

24 CFR Part 261

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 961

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

Accordingly, under the authority of 42 U.S.C. 3535(d), for the reasons stated in the preamble, in title 24 of the Code of Federal Regulations, parts 261 and 961 are removed, and part 761 is added as follows:

PART 261—[REMOVED]

1. Part 261 is removed.
2. In chapter VII, the heading is revised to read as follows:

CHAPTER VII—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HOUSING ASSISTANCE PROGRAMS AND PUBLIC AND INDIAN HOUSING PROGRAMS)

3. A new part 761 is added to read as follows:

PART 761—DRUG ELIMINATION PROGRAMS

Subpart A—General

Sec.

- 761.1 Purpose and scope.
- 761.5 Public and Indian housing; encouragement of resident participation.
- 761.10 Definitions.

Subpart B—Use of Grant Funds

- 761.15 Applicants and activities.

Subpart C—Application and Selection

- 761.20 Application selection and requirements.
- 761.25 Resident comments on grant application.

Subpart D—Grant Administration

- 761.30 Grant administration.
- 761.35 Periodic grantee reports.
- 761.40 Other Federal requirements.

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

Subpart A—General

§ 761.1 Purpose and scope.

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

(a) Eliminate drug-related 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 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.

§ 761.5 Public and Indian housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related crime and problems associated with it within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of HAs to combat drug-related crime and problems associated with it 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 24 CFR parts 950 and 964.

§ 761.10 Definitions.

The definitions “Department”, “HUD”, “Indian”, “Indian Housing Authority (IHA)”, and “Public Housing Agency (PHA)” are defined in 24 CFR part 5.

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 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 crime means the negative physical, social, educational, and economic impact of drug-related 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 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.

Resident council (RC), for purposes of the Public Housing Program, means an incorporated or unincorporated nonprofit 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 24 CFR part 964 in accordance with the requirements of that part, or with an IHA under 24 CFR part 950, or with an IHA in accordance with the requirements of this part 761. The corporation must have each of the following characteristics:

- (1) It must be a nonprofit organization that is incorporated under the laws of the State or the Indian tribe in which it is located;
- (2) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(i) Approves the establishment of the corporation, and;

(ii) Has representation on the Board of Directors of the corporation;

(3) It must have an elected Board of Directors;

(4) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation;

(5) Its voting members must be residents of the development or developments it manages;

(6) It must be approved by the resident council or resident organization. If there is no council or organization, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development; and

(7) It may serve as both the resident management corporation and the resident council or the resident organization, so long as the corporation meets the requirements of part 964 of this chapter for a resident council or the requirements of this part for a resident organization.

Resident organization (RO) shall have the same meaning as *Resident council (RC)*, as defined in this § 761.10.

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.

Subpart B—Use of Grant Funds

§ 761.15 Applicants and activities.

In any particular funding round, the separate Notices of Funding Availability (NOFAs) published in the Federal Register will contain specific information concerning eligible and ineligible applicants and activities.

(a) *Eligible applicants.* (1) Under the Public Housing Drug Elimination Program (PHDEP), specific information with regard to eligible applicants will appear in the NOFA for each funding round.

(2) Under the Assisted Housing Program (AHDEP), eligible applicants

are owners of federally assisted low-income housing, as the term "*Federally assisted low-income housing*" is defined in § 761.10.

(b) *Eligible activities.* An application for funding under the Assisted Housing Program or the Public Housing Program may be for one or more of the eligible activities described in 42 U.S.C. 11903, as further explained or limited in paragraph (b) of this section and in the separate annual Notices of Funding Availability (NOFAs) for each program. 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). For purposes of the Public Housing Program, the following provisions in paragraphs (b)(1)(i) and (b)(1)(ii) of this section apply:

(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.

(B) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel 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 provide 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

enforcement 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 to what extent the funded activity will represent an increase over this baseline.

(C) The applicant and the cooperating 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). For purposes of the Public Housing Program, the following provisions in paragraphs (b)(2)(i) and (b)(2)(ii) of this section apply:

(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 to what extent 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 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 the Public Housing Program, the following provisions in paragraphs (b)(3)(i) through (b)(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 the Public Housing Program, the following provisions in paragraphs (b)(4)(i) and (b)(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 provide 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 cooperating local law enforcement agency, and the investigator(s) 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 the Public Housing Program, the following provisions in paragraphs (b)(5)(i) through (b)(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 cooperating local law enforcement agency, and the members of the tenant patrol 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 HAs that receive grants to contract 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) *Eliminating drug-related crime in HA-owned housing*, under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(c) *Continuation of current program activities*. For purposes of both drug elimination programs, the Department will evaluate an applicant's performance under any previous Drug Elimination Program grants within the past five years. Subject to evaluation and review are the applicant's financial and program performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. If the evaluation discloses a pattern under past grants of ineffective performance with no corrective measures attempted, it will result in a deduction of points from the current application.

(d) *Ineligible activities*. For purposes of the Public Housing Program, the

following provisions in paragraph (d) of this section apply:

(1) Joint applications are not eligible for funding under this program.

(2) Funding is not permitted for costs incurred before the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or the actual writing of the application.

(3) Funding is not permitted 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.

Subpart C—Application and Selection

§ 761.20 Application selection and requirements.

(a) *Selection criteria*. HUD will review each application that it determines meets the requirements of this part 761 and evaluate it by assigning points in accordance with the selection criteria in 42 U.S.C. 11904 and in the separate NOFAs published for each program.

(b) *Plan requirement*. Each application must include a plan for addressing the problem of drug-related crime and/or the problems associated with it on the premises of the housing for which the application is being submitted. For applications that cover more than one development, the plan 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.

(c) *Notices of Funding Availability*. HUD will publish specific Notices of Funding Availability (NOFAs) in the Federal Register as appropriate for each program to inform the public of the availability of grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including the 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 crime and problems associated with it 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 the program under this part 761.

(d) *Environmental review*. Grants under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds under this part, HUD will perform an environmental review to the extent required by HUD's environmental regulations in 24 CFR part 50, including the applicable related authorities in 24 CFR 50.4.

§ 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, 24 CFR part 85 (as applicable), 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 undertaking 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:

(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.

§ 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 24 CFR 85.40(b)(1)(2) and 85.50(b), 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 Program, this report shall be in accordance with 24 CFR 85.41 (b) and (c). 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 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.

§ 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 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 provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821–4846, and implementing regulations in 24 CFR part 965, subpart H apply to activities under these programs as set out in this paragraph (c). Paragraph (c) of this section is promulgated pursuant to the authority granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements (not including definitions) prescribed by subpart C of 24 CFR part 35.

(1) *Applicability.* The provisions of paragraph (c) of this section shall apply to all developments constructed or substantially rehabilitated before January 1, 1978, and for which assistance under this part is being used for physical improvements to enhance security under § 761.15(b)(3).

(2) *Definitions.* The term “*applicable surfaces*” means all intact and nonintact interior and exterior painted surfaces of a residential structure.

(3) *Exceptions.* The following activities are not covered by this section:

- (i) Installation of security devices;
- (ii) Other similar types of single-purpose programs that do not involve physical repairs or remodeling of

applicable surfaces of residential structures; or

(iii) Any non-single-purpose rehabilitation that does not involve applicable surfaces and that does not exceed \$3,000 per unit.

(d) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85 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) *Indian preference.* For purposes of the Public Housing Program, applicants are subject to the Indian Civil Rights Act (24 U.S.C. 1301), the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), and the Indian preference rules in the IHA procurement regulations at 24 CFR 950, subpart B. These provisions require that, to the greatest extent feasible, preference and opportunities for training and employment be given to Indians, and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

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

PART 961—[REMOVED]

4. Part 961 is removed.

Dated: March 15, 1996.
Henry G. Cisneros,
Secretary.
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