

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 761

[Docket No. FR-4451-A-01]

RIN 2577-AB95

### Public Housing Drug Elimination Program Formula Allocation; Advance Notice of Proposed Rulemaking

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This document announces HUD's intention to develop, through proposed rulemaking, a formula allocation funding for HUD's Public and Indian Housing Drug Elimination Program. HUD believes that formula funding, as opposed to competitive funding, provides a more timely, predictable and equitable allocation of funds. HUD solicits comments in advance of this rulemaking on a method, components of a method, or methods that would result in reliable and equitable funding to public housing agencies with drug elimination programs and ensure that this funding is allocated to agencies meeting certain performance standards.

**DATES:** Comment Due Date: March 22, 1999.

**ADDRESSES:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

**FOR FURTHER INFORMATION CONTACT:** Sonia Burgos, Director, Office of Crime Prevention and Security, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-1197 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTAL INFORMATION:

#### Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998

(Pub.L. 105-276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, and these amendments include some important changes to HUD's Public Housing Drug Elimination Program (PHDEP). The amendments to the PHDEP include authorizing the Secretary to make renewable grants. Specifically, section 586(e)(6) provides for a new section (b) to be added to section 5125 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11904). This new language provides as follows:

An eligible applicant that is a public housing agency may apply for a 1-year grant under this chapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws, in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines appropriate.

Section 586 also provides that the Secretary of HUD may not provide drug elimination assistance to an applicant that is a public housing agency unless the agency will use the grants to continue or expand drug elimination activities, as in effect before October 1, 1998. The Secretary of HUD is to provide preference in funding to these public housing agencies, but this preference does not preclude selection by the Secretary of other meritorious public housing agencies that need funding to address urgent or serious crime problems.

Section 586 further provides that the Secretary of HUD shall, by regulation, issued after notice and opportunity for public comment, issue criteria for establishing a class of public housing agencies that have urgent or serious crime problems.

In Senate colloquy before passage of QHWRA, Senator Mack noted that the amendments made to the Public and Assisted Housing Drug Elimination Act of 1990 represent a significant improvement in the program. The Senator stated:

The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

\* \* \* [T]he intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with more urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty. (Congressional Record of October 8, 1998, S.11842)

Based upon the language of the statute and the Senate colloquy, HUD believes that the intent of Congress can best be carried out by a formula distribution of funds that covers both housing authorities with renewable grants and those with urgent or serious crime-related needs. The proposed formula however would not be applicable to statutory set-asides that specify other funding methods.

#### This Advance Notice of Proposed Rulemaking

The proposed rule that HUD intends to issue will both establish the performance criteria required by section 586 of the QHWRA and provide the method of need-based formula funding. Therefore HUD solicits comments on the following issues and proposals pertaining to the methods of the need based formula in advance of issuance of the proposed rule. HUD recognizes that issues of performance will have a major effect on a formula system, and it is developing issues and positions for which it will seek comment in a proposed rule that combines both technical formula issues and performance issues in one funding system. HUD's preferences for the options provided are noted below. The location on the internet of results of a formula based on HUD's stated preferences is also noted below.

#### A. How To Determine "Renewable Agencies"—Options for Consideration

Option A.1. Subject to ongoing performance reviews, include all housing agencies as renewable agencies that successfully competed for funding in FY 1998.

Option A.2. Subject to ongoing performance reviews and additional capacity requirements, include all housing agencies that successfully competed for funding in at least one of the following years: FY 1996, FY 1997 or FY 1998.

**HUD Preference.** HUD prefers Option 2. HUD believes that an agency that

successfully competed for funding between FY 1996 and FY 1998 and that meets performance standards has recently shown both need and capacity.

**B. How To Determine New Renewable Agencies with Urgent Needs—Options for Consideration**

Option B.1. Subject to ongoing performance reviews and subject to additional capacity requirements, include in a formula distribution a smaller number of housing agencies that have not been recently funded and that meet an established threshold of need of PHDEP funding.

Option B.2. Subject to ongoing performance reviews and subject to additional capacity requirements, include a smaller number of housing agencies that have not been recently funded and that make a case in a competition for a serious and urgent need for PHDEP funding.

**HUD Preference.** HUD prefers Option 1. HUD believes that a formula distribution method will be more timely and predictable than the competition provided in Option 2. (Since almost all large housing agencies would qualify as renewable agencies under Option A.2, housing agencies that would qualify as the new renewable agencies under the method of Option B.1 are generally small housing agencies.)

**C. How To Determine Funding for Renewable Agencies With Urgent Need—Issues for Consideration**

Option C.1. A subset of renewable agencies with urgent needs may be funded by creating a standardized threshold, based on the distribution of all housing agencies on a criterion such as the index of the rate of violent crimes of the community multiplied by the average number of bedrooms per unit of the housing agency. For the minority of housing agencies lacking community-wide violent crime data, impute data based on the average values of comparable communities with data where comparable communities have a certain size in the State or region (and, if data are available, some other characteristics). Agencies exceeding the threshold would receive additional formula funding. In broad terms, agencies under the threshold of need will receive no funding under this factor and agencies just above the threshold will receive modest funding under this factor and agencies well above the threshold will receive very high funding under this factor.

Option C.2. Allow all renewable agencies to be funded under the "urgent need" factor through an index of the rate of violent crimes of the community

multiplied by the average number of bedrooms per unit of the housing agency, and then allow the factor to target more funds to housing agencies with relatively urgent needs. By contrast to Option C.1., agencies under the threshold of need in Option C.2. will receive some funding under this factor and agencies just above the threshold will receive moderate funding under this factor and agencies well above the threshold will receive high funding under this factor (but not as much relative to what they would receive under Option C.1.).

**HUD Preference.** HUD prefers Option C.1. The subset of urgent need agencies follows closely the intention of the statute. At the same time, HUD prefers that the factor for this subset be subsumed into a funding system that covers all renewable agencies (please see the discussion in Option D.2 below.)

**D. Funding Renewable Agencies versus Urgent Need Agencies—Issues for Consideration**

Option D.1. Have two pools of funds based on the relative share of needs of the two categories of agencies (renewable agencies and urgent need agencies) and fund them by different criteria.

Option D.2. Have a combined funding system that has different factors (weighted up to 100 percent) that applies to the universe of agencies to be funded and that also reflects their relative needs.

**HUD Preference.** HUD prefers Option D.2. This option is the easiest to understand and the easiest to compute. In this option, the weights and funding impacts of the different factors are explicit.

**E. Standard Factors for Funding Agencies—Options for Consideration**

Standard factors that may be included in a formula for PHDEP funding are:

Option E.1. A minimum floor of \$25,000 per year.

Option E.2. The share of funding (or average share) provided to the housing agency during Fiscal Years 1996, 1997 and 1998.

Option E.3. The housing agency's share of units.

Option E.4. The housing agency's share of units multiplied by an index of the average number of bedrooms per unit.

Option E.5. The housing agency's share of units multiplied by the positive difference, if any, between the housing agency's score and the unit-weighted median score of all housing agencies on the following index: the rate of violent crimes of the community multiplied by

the average number of bedrooms per unit of the housing agency. The rate of violent crimes is capped at twice the median of the unit weighted scores across all housing agencies. To better understand how this calculation works, please see HUD's posting of a format statement of its method with a printout of data and estimated formula amounts at HUD's website at <http://www.hud.gov/pih/legis/titlev.html>.

Option E.6. The housing agency's share of units multiplied by both the rate of the violent crimes of its community and by the average number of bedrooms per unit of the housing agency. The rate of violent crimes is capped at twice the median of the unit weighted scores across all housing agencies.

**HUD Preference.** To address the statutory goal of predictable and equitable funding, HUD prefers a formula system that includes the factors of Options E.1, 3, 4 and 5. For a weighted formula system, HUD prefers that the factor in Option E.3 be weighted .25; that the factor in Option E.4 be weighted .50, and that the factor in Option E.5 be weighted .25. HUD also prefers a minimum floor of \$25,000. All of HUD's preferences expressed in this notice are illustrated by the format statement with a printout of the data and estimated formula amounts that was referred to earlier and that is posted at HUD's website at <http://www.hud.gov/pih/legis/titlev.html>.

**F. Impact of a Housing Agency's Performance on Funding—Issues for Consideration**

Option F.1. Housing agencies that do not meet performance criteria will have their funds for a given year returned to other housing agencies—either to the pool of funds for renewable agencies or to the pool of fund for urgent need agencies or to a combined pool.

Option F.2. Housing agencies with excessive funds that are unspent or unobligated, for reasons within their control, will have their funds for a given year reduced in proportion to the extent of unspent or unobligated funds.

**HUD Preference.** HUD has no preference at this time.

**Solicitation of Comments**

HUD is requesting interested housing agencies and other interested members of the public to submit public comments on the options and issues for consideration of formula funding for PHDEP presented in this notice, including applicable performance criteria. HUD also welcomes additional options and issues that housing agencies or other members of the public believe

that HUD should consider in developing a formula funding method. Further, HUD welcomes any formula methods that housing agencies or other interested members of the public have devised and for which they request HUD's consideration. Public comments received in response to this notice will be considered in the development of HUD's proposed rule on formula funding for PHDEP.

**Executive Order 12866**

The Office of Management and Budget (OMB) has reviewed this advanced notice of proposed rulemaking (ANPR) under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of

the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Dated: February 9, 1999.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

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