

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing-Federal Housing  
Commissioner**

**24 CFR Part 261**

[Docket No. R-95-1741; FR-3467-F-02]

RIN 2502-AG07

**Federally Assisted Low Income  
Housing Drug Elimination Program**

**AGENCY:** Office of the Assistant  
Secretary for Housing-Federal Housing  
Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Assisted Housing Drug Elimination Program, as authorized by the National Affordable Housing Act and the Housing and Community Development Act of 1992. This program authorizes HUD to make drug elimination grants to owners of federally assisted low-income housing, while previously these grants were only available for public housing agencies and Indian housing authorities. HUD will award these grants for use in eliminating drug-related crime and the problems associated with it.

**EFFECTIVE DATE:** February 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Lessley Wiles, Office of Multifamily Housing Management, Operations Division, Room 6176, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-2654, or (202) 708-3938 (TDD for speech- or hearing-impaired). (These are not toll free numbers).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0476.

**I. Background**

On August 9, 1994 (59 FR 40764), HUD published a proposed rule that would implement the Assisted Housing Drug Elimination Program, as authorized by section 581 of the National Affordable Housing Act (42 U.S.C. 11901-11909) (NAHA), and as amended by section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 18, 1992) (HCDA 1992). The

preamble to the proposed rule contains a detailed explanation of the ways in which NAHA amended the Public Housing Drug Elimination Program, including the addition of authorization to make grants to private, for-profit and nonprofit owners of federally assisted low-income housing for use in eliminating drug-related crime. Section 581 of 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 solicited public comments on the proposed rule. By the expiration of the public comment period on October 11, 1994, HUD received six comments. HUD carefully considered all the public comments received, and has decided to make no changes from the proposed rule. The following section of the preamble presents a summary of the comments received and HUD's responses to those comments.

**II. Public Comment on Proposed Rule**

1. Two commenters suggested changes in the selection criteria (§ 261.15(a)). One commenter suggested that HUD should specifically target the elderly and disabled as priority populations due to their special vulnerability. This commenter would change § 261.15(a)(1) of the rule to include the vulnerability of the populations at risk due to the drug-related crimes, as well as the extent of the substance abuse in the applicant's development.

Another commenter suggested that the order of the criteria should be changed to reflect different priorities. This commenter suggested that the first criterion should be the capability of the applicant to carry out the plan, rather than the extent of the drug-related crime problem in the applicant's development. The commenter explained that this would be more effective; while "there (are) no shortage of serious (drug-related crime) problems, \* \* \* there are too few able organizations with effective plans to make the best use of the meager resources available to combat drugs." According to this commenter, the second criterion should be the quality of the plan, the third criterion should be the extent of local participation and involvement, and the fourth criterion should be the extent of the drug-related crime problem.

HUD Response: In the preamble to the proposed rule, HUD specifically invited comments on additional criteria for selecting grant recipients. Section 581 of NAHA requires, however, that

additional criteria shall be designed only to reflect—(1) relevant differences between the financial resources and other characteristics of public housing authorities and owners of federally assisted low-income housing, or (2) relevant differences between the problem of drug-related crime in public housing and the problem of drug-related crime in federally assisted low-income housing. The suggestions by the commenters, while having merit, do not reflect these differences as outlined in the statute.

With regard to the priority of the criteria, section 5125(b) of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11904(b)), which is the authorizing statute for this drug elimination program, specifies the primary selection criteria for grants under this drug elimination program. This rule reflects the criteria in the statute in the order stated.

2. One commenter objected to the fact that alcohol abuse programs will not be eligible for funding under this drug elimination program, due to the specific exclusion of alcohol from the definition of controlled substance in § 261.5. This commenter asserted that "alcohol is increasingly the prime reason for abuse and other domestic problems encountered in housing developments," and that a drug elimination program cannot be effective unless it addresses the problem of alcohol abuse.

HUD Response: HUD cannot include alcohol in the definition of controlled substance in § 261.5 because this definition is statutorily prescribed. Section 5126(1) of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11905(1)) incorporates the definition of controlled substance as provided in section 102 of the Controlled Substances Act (21 U.S.C. 802). This definition specifically excludes alcohol. Therefore, alcohol abuse programs are not eligible for funding under this drug elimination program.

3. One commenter stated that HUD should not encourage voluntary tenant patrols as an eligible activity (§ 261.10(b)(5)), because they pose an unacceptable risk of harm to residents where drug-related crime is at very serious levels. This commenter explained that while tenant patrols may be appropriate in areas with mild crime problems, these areas are less likely to receive grant awards under this program.

HUD Response: HUD does not encourage the use of tenant patrols. The inclusion of tenant patrols as an eligible activity, however, is statutorily prescribed in section 5124(5) of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11903(5)).

4. One commenter proposed that, in keeping with HUD's comprehensive approach to solving drug-related crime problems, HUD should include the provision of new community space as an eligible activity in § 261.10(b) of the rule. This commenter suggested that to be eligible for funding, the applicant would have to meet the following conditions: (1) Absence of space on-site; (2) Absence of alternative space off-site; (3) HUD concurs to either the creation of new space or taking a unit off-line for this purpose; (4) The space must be provided in turn-key condition within three months of the first drawdown of funds; and (5) The applicant must specify a social program, whether existing or fundable through the grant, to accompany the request for new space. This commenter noted that previous grants have been used to refurbish existing community space.

HUD Response: Given the costs of construction and the limited amount of funds available under this drug elimination program, HUD is not encouraging the construction of new buildings. Rental or leasing of space near the property, where activities such as classes and counseling sessions can take place, would be a preferred option. However, HUD has permitted the retrofitting of existing available space as an eligible physical improvement, provided no units are taken off-line. HUD also permitted the siting of a surplus mobile classroom to provide the needed space, since this involved minimal cost.

5. One commenter raised two concerns about the selection process for the drug elimination grant proposals. First, the commenter asserted that proposals are not judged on the basis of need, but on the quantity of information provided by the applicant. Specifically, this commenter asserted that applications from areas of high drug-related crime have lost points for "lack of crime statistics." The commenter stated that the lack of such data should not be a hindrance in determining eligibility for a grant, and that other support documentation should be considered if such data is not available.

Second, this commenter expressed concern about unintentional geographic bias in awarding grants under drug elimination programs. The commenter suggested that the panel reviewing the grant applications should consist of individuals from geographically diverse areas in order to avoid this bias.

HUD Response: In response to the first concern, there have been allegations in the past that HUD awarded drug grants to public housing projects with no evidence of drug-

related criminal activity. Therefore, obtaining specific statistics on the extent of this activity is necessary to assure that the problems to be addressed by this program do, in fact, exist.

In response to the second concern about geographical bias, local HUD offices will review and score applications for the Federal fiscal year (FY) 1995 drug elimination grants. The funding, based on scores received, will take place at geographically dispersed sites. This should reduce the possibility of bias in project funding selections.

6. Two commenters expressed concern with the way the rule would apply to an applicant seeking funding for a multi-year project. One commenter encouraged HUD to streamline the application process for applicants seeking funds for a continuing program activity. The rule provides that applicants for grants to continue current program activities may apply on the same basis as other applicants (§ 261.10(b)(7)). This commenter remarked that this process is burdensome, and that "HUD offices will effectively be discouraged from awarding continuation funds." In the alternative, this commenter suggested that HUD make funding for subsequent years conditional upon: (1) the property's first year score being sufficient to earn an award in the following year; and (2) confirmation from the HUD drug grant coordinator that the property is in compliance with the requirements of previously received grant funds.

The other commenter suggested changing the grant term provisions in § 261.26(b) to allow for initial one-year terms, with second- and third-year extensions. This would allow the grantee to undertake "ambitious plans without the additional concern of searching for additional funding" early in the program. This commenter further argued that a longer term would encourage outside funding, since the potential funder would have more of a performance record on which to base its determination.

HUD Response: HUD's Office of Housing has no assurance that it will receive funds for more than one year. Consequently, the program can only permit funding for one year. In addition, due to the limitation on the amount of funds available in any given year, HUD's goal is to spread the funds as far as possible and give all eligible applicants a fair chance of receiving funding. Therefore, each grant application must stand alone, without any assumption of additional funding, as both commenters suggested.

7. One commenter argued that the maximum grant amount would have to be increased. This commenter remarked that while security personnel are eligible for funding under this drug elimination program, the only effective approach would be to hire off-duty police. According to the commenter, an off-duty police patrol would cost approximately \$200,000 per year (two patrol officers at \$15 per hour; two 8-hour shifts per weekday, three 8-hour shifts on weekends), which may exceed the maximum grant amount.

HUD Response: HUD does not encourage hiring off-duty police; rather, it hopes to find other solutions to drug-related criminal problems that are more cost-effective. As mentioned above, the limited amount of money available forces HUD and the applicants to seek maximum benefit from limited funds.

### III. Other Matters

#### *Environmental Impact*

At the time of the development of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides grants to eliminate drug-related crime in federally assisted low-income housing. Although small entities in the form of owners of federally assisted low-income housing could participate in the program, the rule is not intended to and would not have a significant economic impact on them.

#### *Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule has the potential for a positive, although indirect, impact on family formation, maintenance, and general well-being.

The rule implements a program that encourages owners of federally assisted low-income housing to develop a plan for addressing the problem of drug-related crime, and makes available grants to carry out this plan. As such, the program is intended to improve the quality of life of federally assisted low-income housing residents, including families, by reducing the incidence of drug-related crime. Accordingly, since any impact on the family from the rule will be positive, no further review is considered necessary.

### Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in 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. As a result, the rule is not subject to review under the Order. The program helps combat serious drug-related crime problems in federally assisted low-income housing. The rule generally tracks the statute and involves little implementing discretion.

### Regulatory Agenda

The rule was listed as Item No. 1765 in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57634) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

### Catalog of Federal Domestic Assistance

The program number for this Assisted Housing Drug Elimination Program is 14.854.

### List of Subjects in 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.

Accordingly, part 261, consisting of §§ 261.1 through 261.29, is added to 24 CFR chapter II, as follows:

## PART 261—ASSISTED HOUSING DRUG ELIMINATION PROGRAM

### Subpart A—General

Sec.

261.1 Purpose and scope.

261.5 Definitions.

### Subpart B—Use of Grant Funds

261.10 Applicants and activities.

### Subpart C—Application and Selection

261.15 Application selection and requirements.

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261.29 Other federal requirements.

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

### Subpart A—General

#### § 261.1 Purpose and scope.

The purposes of the Assisted Housing Drug Elimination Program are to:

(a) Eliminate drug-related crime and the problems associated with it in and around the premises of federally assisted low-income housing;

(b) Encourage owners of federally assisted low-income housing to develop a plan that includes initiatives that can be sustained over a period of several years for addressing drug-related crime and the problems associated with it in and around the premises of assisted housing proposed for funding under this part; and

(c) Make available federal grants to help owners of federally assisted low-income housing carry out their plans.

#### § 261.5 Definitions.

*Act* means The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

*Chief executive officer* of a State or a unit of general local government means the elected official, or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the "chief executive officer" of a unit of general local government are: The elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of the unit of general local government. The chief executive officer of an Indian tribe is the tribal governing official.

*Controlled substance* means a drug or other substance or immediate precursor included in schedule I, II, III, IV, or V of section 102 of the Controlled Substances Act (21 U.S.C. 802). The term does not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined in Subtitle E of the Internal Revenue Code of 1954.

*Drug intervention* means a process to identify assisted housing resident drug

users and assist them in modifying their behavior and/or refer them to drug treatment to 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* means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, a controlled substance.

*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* (includes the term "assisted housing" as used in this rule) means housing assisted under:

(1) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (12 U.S.C. 1701 *et seq.*) (Note: However, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered federally assisted low-income housing and are not eligible for funding.);

(2) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(3) Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note) (not including tenant-based assistance).

*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.

*HUD* or *Department* means the United States Department of Housing and Urban Development.

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

*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 by the applicant.

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

*Resident Organization (RO)* 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 housing development, 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 represents.

*Single State Agency* means an agency responsible for licensing and monitoring State or tribal drug abuse programs.

*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.

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

## Subpart B—Use of Grant Funds

### § 261.10 Applicants and activities.

Applicants and activities eligible for funding under the Assisted Housing Drug Elimination Program are listed in this section. The applicants and activities eligible under any particular funding round may be limited in a Notice of Funding Availability (NOFA) published in the **Federal Register**. Additional details concerning eligible and ineligible applicants and activities will also be published in the NOFAs for this program.

(a) *Eligible applicants.* The applicant must be the owner of a federally assisted low-income housing project under:

- (1) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (Note: However, section 221(d)(4) and section 221(d)(3) market rate projects without project-based assistance contracts are not considered federally assisted low-income housing. Therefore, section 221(d)(4) and section 221(d)(3) market rate projects with tenant-based assistance contracts are not considered

federally assisted low-income housing and are not eligible for funding.);

(2) Section 101 of the Housing and Urban Development Act of 1965; or

(3) Section 8 of the United States Housing Act of 1937 (not including tenant-based assistance).

(b) *Eligible activities.* An application for funding under this program may be for one or more of the following eligible activities, as further specified in program NOFAs:

- (1) Employment of security personnel.
- (2) Reimbursement of local law enforcement agencies for additional security and protective services.
- (3) Physical improvements to enhance security.
- (4) Employment of one or more individuals:
  - (i) To investigate drug-related crime, and the problems associated with it, on or about the real property comprising any federally assisted low-income housing project; and
  - (ii) To provide evidence relating to such crime in any administrative or judicial proceeding.
- (5) The provision of training, communications equipment, and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.
- (6) Drug-abuse prevention, intervention and treatment programs to reduce the use of drugs.

(7) *Continuation of current program activities.* Current or previous Assisted Housing Drug Elimination Program grant recipients who are eligible under § 261.10(a) of this subpart may apply, on the same basis as other applicants, for grants to continue their grant activities or implement other program activities. 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 performances with no corrective measures attempted, it will result in a deduction of points from the current application. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program grant.

## Subpart C—Application and Selection

### § 261.15 Application selection and requirements.

(a) *Selection criteria.* HUD will review each application that it determines meets the requirements of this part and assign points in accordance with the selection criteria. The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in Notices of Funding Availability (NOFAs) published for this program. Each application submitted for a grant under this part will be evaluated on the basis of the following selection criteria:

- (1) First criterion: The extent of the drug-related crime problem in the applicant's development or developments proposed for assistance.
- (2) Second criterion: The quality of the plan to address the crime problem in the developments proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.
- (3) Third criterion: The capability of the applicant to carry out the plan.
- (4) Fourth criterion: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.

(b) *Plan requirement.* Each application must include a plan for addressing the problem of drug-related crime and the problems associated with drug-related crime on the premises of the housing for which the application is being submitted. For applications that cover more than one housing development, the plan does not have to address each development separately if the same activities will apply to each development. Only where program activities will differ from one development to another must the plan address each development separately.

(c) *Notice of Funding Availability.* HUD will publish Notices of Funding Availability (NOFAs) in the **Federal Register**, as appropriate, to inform the public of the availability of grant amounts under this part. 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 eligible applicants and activities; 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 the problem of drug-related 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 the Department has determined to be necessary and appropriate to provide for the implementation and administration of the program under this part.

(Approved by the Office of Management and Budget under control number 2502-0476.)

(d) *Environmental review.* Grants under this part 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 at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

#### **§ 261.18 Resident comments on grant application.**

The applicant must provide the residents of developments proposed for funding under this part, as well as any resident organizations that represent those residents, with a reasonable opportunity to comment on its application for funding under this program. The applicant must give these comments careful consideration in developing its plan and application as well as in the implementation of funded programs. Copies of all written comments submitted must be maintained by the grantee for three years.

#### **Subpart D—Grant Administration**

##### **§ 261.26 Grant administration.**

(a) *General.* Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part, any Notice of Funding Availability (NOFA) issued for this program, 24 CFR part 85, 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, unless an extension is approved by the local HUD Office. The maximum extension allowable for any grant is 6 months. Any

funds not expended at the end of the grant term shall be remitted to HUD.

(2) *Extension.* Grantees may be granted 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.

(3) *Receipt.* The request must be received by the local HUD Office before the termination of the grant, and requires approval by the local HUD Office with jurisdiction over the grantee.

(4) *Term.* The maximum extension allowable for any program period is 6 months. Requests for retroactive extension of program periods will not be considered. Only one extension will be permitted. Extensions will only be considered if the extension criteria of paragraph (b)(5) of this section are met by the grantee at the time the request for the extension of the deadline is submitted for approval.

(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 current and acceptable Financial Status Reports, SF-269As.

(ii) *Grant agreement special conditions.* All grant agreement special conditions must be satisfied except those conditions that must be fulfilled in the remaining period of the grant. This also includes the performance and resolution of audit findings in a timely manner.

(iii) *Justification.* A narrative justification must be submitted with the program extension request. Complete details must be provided, including the circumstances which require the proposed extension, and explanation of the impact of denying the request.

(6) *HUD action.* The local HUD Office will attempt to take action on an extension request within 15 working 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 is required to obtain adequate insurance coverage to protect itself against any potential liability arising out of the

eligible activities under this part. In particular, applicants are required to 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; to evaluate the qualifications and training of the individuals or firms undertaking these functions; and to consider any limitations on liability under State or local law. Grantees are required to obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 261.10(b)(5). Voluntary tenant patrol liability insurance costs are eligible program expenses. Subgrantees are required to 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 the steps being taken to initiate the plan and timetable, the reason for the delay, and the expected starting date. Any timetable revisions which resulted from the delay must be included. The local HUD Office 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 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 under § 261.28;

(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, would have resulted in the application not being 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.

(Approved by the Office of Management and Budget under control number 2502-0476).

#### § 261.28 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) *Final performance report*—(1) *Evaluation.* Grantees are required to provide the local HUD Office with a final cumulative performance report that evaluates the grantee's overall performance against its plan. This report shall include in summary form (but is not limited to) the following: Any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment (such as vandalism, etc.) and an explanation of any difference; successful completion of any of the strategy components identified in the applicant's plan; a discussion of any problems encountered in implementing the plan and how they were addressed; an evaluation of whether the rate of progress meets expectations; a discussion of the grantee's efforts in encouraging resident participation; and 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.* 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 within 90 days after termination of the grant agreement.

(b) *Semi-annual financial status reporting requirements*—(1) *Form.* The grantee shall provide a semi-annual financial status report. The grantee shall use the 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) 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.

(c) *Final financial status report (SF-269A)*—(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 must remit all Drug Elimination Program funds (including any unexpended funds) owed to HUD within 90 days after the termination of the grant agreement.

(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 within 90 days after the termination of the grant agreement.

(d) *Report submission.* The grantee shall submit all required reports to the local HUD Office.

(Approved by the Office of Management and Budget under control number 2502-0476).

#### § 261.29 Other federal requirements.

Use of grant funds requires compliance with the following additional Federal requirements:

(a) *Labor standards.* (1) Where grant funds are used to undertake physical improvements to increase security under § 261.10(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 non-routine maintenance in the program, the HUD-determined prevailing wage rate. As used in this paragraph (a), non-routine 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. Non-routine 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 non-routine 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 organization, HUD may, subject to applicable collective bargaining agreements, permit residents 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 paragraph (a)(1)(i) (A) or (B) of this section.

(b) *Nondiscrimination and equal opportunity.* The following nondiscrimination and equal opportunity requirements apply to this program:

(1) The requirements of The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations issued at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4)

(Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and implementing regulations at 24 CFR part 135; and

(5) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Use of debarred, suspended, or ineligible contractors.* Use of grant funds under this program requires compliance with the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(d) *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 59-79; 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).

(e) *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 at 24 CFR part 965, subpart H (51 FR 27789-27791, August 1, 1986) apply to activities under this program as set out below. 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 this section shall apply to all housing 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 § 261.10(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.

(f) *Conflicts of interest.* No person, as described in paragraphs (f)(1) and (2) of this section, may obtain a personal or financial interest or benefit from an activity funded under this program, 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 decision making process or gain inside information with regard to such activities.

(g) *Drug Free Workplace Act of 1988.* The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F apply to this program.

(h) *Anti-lobbying provisions under section 319.* The use of funds under this part is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and implementing regulations at 24 CFR part 87. These authorities prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding \$100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. However, since grantees sometimes may expect to receive additional grant funds through reallocations, all potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds \$100,000. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(i) *Intergovernmental review.* The requirements of Executive Order 12372 and the regulations issued under the order at 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3 apply to this program.

Dated: January 19, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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