

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 761

[Docket No. FR-4451-P-02]

RIN 2577-AB95

### Public Housing Drug Elimination Program Formula Allocation

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend HUD regulations to replace the competitive distribution of HUD's Public and Indian Housing Drug Elimination Program (PHDEP) funds with a formula allocation funding system. The purpose of this amendment is to provide a more timely, predictable and equitable allocation of PHDEP funds. The competitive distribution of funding through the Assisted Housing component of the Drug Elimination Program would not be affected by this rule.

**DATES:** Comment Due Date: July 12, 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:** Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675-1600 (these are not toll-free numbers). 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. Also, please see HUD's website at <http://www.hud.gov/pih/legis/titlev.html> for additional PHDEP information.

## SUPPLEMENTARY INFORMATION:

### I. Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, including authorizing HUD to make renewable grants to public housing agencies (PHAs). 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.

On February 18, 1998 (64 FR 8210), HUD published an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments on possible methods and elements of a need based formula and performance criteria. Further, HUD welcomed any formula methods for consideration that housing agencies or other interested members of the public may have devised. Public comments received in response to this notice were considered in the development of this proposed rule on formula funding for PHDEP, and are discussed in the following section.

### II. Public Comment on the ANPR

HUD received 60 comments on the ANPR. The commenters addressed the options for PHDEP funding, and offered several recommendations on how funding may be allocated. This proposed rule takes into consideration the comments received on the ANPR, as discussed below.

#### Opposition to Formula Funding

Several commenters opposed the change to formula allocation. Their concern was that providing funding to a somewhat greater number of applicants under a formula would reduce the amount that was previously made available to individual applicants who successfully competed for funding.

HUD remains convinced that formula allocation for this program is the better method for allocating PHDEP funds. First, formula allocation of funding for a period of years eliminates the uncertainty of competitive funding and permits the development and implementation of long range plans. Second, as many commenters pointed out, success in funding competitions is often related to the "creative writing" ability of an applicant, an applicant's capacity to hire a professional grants writer, and the subjective preferences of reviewers. These unfavorable

characteristics would be avoided under a formula system of funding. Third, the timing of funding availability under a formula process will be more consistent and regular than under a competitive process. Fourth, a formula will relieve the administrative burden on PHAs and HUD, by eliminating the competitive NOFA process. For these reasons, HUD has determined that a formula approach to PHDEP funding will provide a more timely, predictable and equitable allocation of PHDEP funds.

#### Criticisms of Funding Formula

Although many of the commenters supported the idea of formula funding, the formula itself was criticized on several points. Among the criticisms was that the formula was difficult to understand; that it used incomplete or invalid data; that the same bedroom mix factor was used more than once; that the weights assigned to the formula's components were not justified, and that the results were not replicable.

This rule proposes to address these criticisms by using a greatly simplified formula for the allocation of PHDEP funding. The amount that will be made available to an applicant qualifying for funding will be based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000.

#### Minimum Amount of Funding

Several commenters addressed the issue of the minimum amount of formula funding. Some favored maintaining the \$50,000 minimum available under the competitive system; some favored the suggested \$25,000 minimum; and others supported a minimum without specifying an amount.

This rule proposes to go forward with the \$25,000 minimum amount of funding. The certainty of funding over five years is proposed to compensate for any problems resulting from the drop in minimum funding. The great majority of beneficiaries of the minimum funding amount is expected to be small applicants that were not previously funded and that would be able to undertake meaningful activities with the minimum amount.

#### Establish Two Pools of PHDEP Funding

Several commenters suggested that PHDEP funding be divided into two pools, one to be allocated according to a formula, and the other awarded on the basis of a competition.

HUD does not support such a system because it would substantially

compromise the savings in administrative burden to PHAs and HUD that would be available under a formula system.

### III. Changes in This Proposed Rule

This rule proposes to amend the Drug Elimination Program (DEP) regulations at 24 CFR part 761 to implement Public Housing Reform Act section 586. In particular, it would amend the way that public housing drug elimination funds are distributed, as explained in the following discussion.

#### *Statutory Changes to DEP Funding and Eligibility*

Section 586(e) of the Public Housing Reform Act amends section 5125 of the Anti-Drug Abuse Act of 1988 (ADAA) (the Public and Assisted Housing Drug Elimination Program is authorized under sections 5121 through 5130 of ADAA). Before being amended by section 586(e), section 5125(b) provided that HUD "shall approve applications under this chapter based exclusively on" a list of four factors. This language placed strict limitations on the manner in which HUD could distribute drug elimination funds. Section 586(e) redesignates paragraphs (b) through (d) of section 5125 as paragraphs (c) through (e), respectively, and amends the limiting language in redesignated paragraph (c) to provide that HUD "shall approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" followed by the same four factors.

Section 586 adds both structure and flexibility to the funding process of the drug elimination program. By replacing the tightly controlling parameters of "based exclusively on" with the expansive "on the basis of thresholds or criteria such as", section 586 provides HUD with greater flexibility in the way DEP funds are distributed. Section 586 also introduces non-competitive, renewable grants as a way of distributing drug elimination funds. The new subsection (b) added to ADAA section 5125 by Public Housing Reform Act section 586 reads as follows:

#### (b) One-Year Renewable Grants—

(1) In General—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 to be appropriate.

(2) Eligibility and Preference—The Secretary may not provide assistance under this chapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this chapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHA's Having Urgent or Serious Crime Problems—The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to carry out this chapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) INAPPLICABILITY TO FEDERALLY ASSISTED LOW-INCOME HOUSING—The provisions of this subsection shall not apply to federally assisted low-income housing.

In Senate colloquy before passage of the Public Housing Reform Act, 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)

The new language of ADAA section 5125(b), as revised by Public Housing Reform Act section 586(e)(6), addresses the manner in which the categories of eligible DEP applicants (PHAs, RMCs, NAHASDA recipients, consortia, and owners of federally assisted low income housing) are to be funded. PHAs are divided into two categories for funding purposes. The first category consists of PHAs that will "use the grants to continue or expand activities eligible for assistance" under the drug elimination program. The requirement that funds must be used to "continue or expand" activities indicates that PHAs in this category must have previously received DEP funding, or they would not have any activities that could be continued or expanded. HUD has determined that PHAs that successfully competed for PHDEP funding under at least one of the Notices of Funding Availability for Federal Fiscal Years (FFYs) 1996, 1997 and 1998 would have activities to continue or expand and would constitute the first category of PHAs that qualify for funding. Further, revised section 5125(b)(2)(A) states that PHAs in this category are to be provided a preference for funding. How HUD will fund these "preference PHAs" is explained below in the discussion of the funding formula proposed by this rule.

The second category of PHAs that qualify for funding is covered by an exception to the preference. This exception is also found in section 5125(b)(2)(A), in the language which states, "except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems". The funding formula discussed below would define what PHAs fall into this "needs" category and the amount of funding each would qualify to receive.

RMCs and NAHASDA recipients would also qualify for "needs" funding under the exception language of section 5125(b)(2)(A), on the basis of "meritorious applications that address urgent or serious crime problems". The determination of how NAHASDA recipients and RMCs qualify for needs funding and the amounts they would receive are explained under the formula funding discussion, below.

A consortium of eligible applicants would qualify for at least the amount of funding for which its individual members would qualify on a preference or a needs basis. Consortia are more fully discussed under a separate heading in this preamble, below.

HUD is seeking comment in particular on methods and the desirability of providing more of a financial incentive for consortia.

Federally assisted low-income housing is specifically excluded from the provisions of revised section 5125(b) of ADAA, by section 5125(b)(4). Assisted housing DEP funding will continue to be made available on a competitive basis under periodic NOFAs published in the **Federal Register**.

#### *Proposed PHDEP Formula Funding*

This rule proposes to distribute all PHDEP funding in a noncompetitive manner through the use of a funding formula. The new language in revised ADAA section 5125(c), discussed above, provides HUD with the flexibility to follow this formula approach. The funding formula process satisfies the section 5125(c) requirement that HUD "approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" the four listed factors. The manner in which eligible applicants qualify for funding through the formula process is sufficient to satisfy the new, more expansive "such as" requirement which replaced the exclusive reliance upon the four listed ADAA factors.

The application of a funding cut-off point, or threshold, to the ranking of eligible applicants derived through the formula process also satisfies the requirement of the "needs" exception in section 5125(b)(2)(A), that the selection "of other meritorious applications that address urgent or serious crime problems" not be precluded. This rule provides that non-preference PHAs, NAHASDA recipients, and RMCs in the top 50% (the cut-off point or threshold) of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community have needs that qualify for funding. Needs in the top 50% are above average needs, and this broad approach to addressing "urgent or serious crime problems" will assure the broad distribution of PHDEP funding. Needs in the bottom 50% are below average and, therefore, difficult to characterize as "urgent or serious".

The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of the same or a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and

more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

The use of a funding cut-off point in the ranking also addresses the preference requirement for previously funded (in FFYs 1996, 1997 or 1998) PHAs. These PHAs will be funded regardless of any ranking, providing them with the preference of assured funding. Renewal of funding under section 5125(b)(1) of ADAA for preference PHAs is contingent only 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." Of course, as section 5125(b)(2)(A) of ADAA also provides, the preference shall not be "construed to require continuation of activities determined by the Secretary to be unworthy of continuation".

In addition to addressing the preference requirement and determining what "needs" applicants will qualify for funding, a formula would determine the amount each applicant that qualifies for funding would receive. The proposed formula at § 761.13 would distribute PHDEP funding based upon a qualified applicant's (an applicant that qualifies on the basis of preference or need) share of the total number of units of all eligible applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000. The amount an applicant that qualifies for funding would receive in any given FFY would vary in proportion to the amounts appropriated annually for the DEP, but would not exceed the established maximum or minimum amounts.

The Department specifically requests comment on whether the proposed formula funding is appropriate for NAHASDA recipients, and will consider implementing alternative methods of funding this category of eligible applicants. Also, please see the discussion under the heading, "Funding of NAHASDA Recipients," below in this preamble.

#### *DEP Application and Plan Requirement*

To qualify for funding, an eligible applicant must still meet the ADAA section 5125(a) requirement of submitting a plan for addressing the problem of drug-related or violent crime in and around the recipient's housing. This rule addresses the plan requirement by providing, at § 761.15, that a PHA must include a DEP plan

with its PHA Plan, submitted pursuant to 24 CFR part 903, as a qualification for DEP funding. Similarly, as a qualification for DEP funding, a NAHASDA recipient must include a DEP plan with its Indian Housing Plan (IHP), submitted pursuant to subpart C of 24 CFR part 1000. As for RMCs, a qualification for funding is that an RMC must submit a PHDEP plan to its PHA. The PHA must then submit, with its PHA Plan, the RMC's PHDEP plan. The minimum requirements for the contents of a PHDEP plan are contained in a new § 761.21. The PHDEP plan serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded.

HUD specifically solicits comments on ways to further streamline the PHDEP plan and performance reporting. HUD is continuing to develop model outcome measures with specific, measurable goals for PHDEP-funded activities, including the overall reduction of violent crime and drug use.

AHDEP applicants will continue to apply in accordance with the requirements of NOFAs published in the **Federal Register**.

Recipients who qualify and receive funding will be reviewed at least annually as grantees to determine if they meet the performance requirements proposed in a new § 761.23. A grantee that fails to satisfy the performance requirements of this section may be subject to the sanctions listed in § 761.30(f)(2).

#### *Consortia*

This rule would also establish the requirements for the eligibility and funding of consortia. The rule permits eligible applicants to join together and form a consortium to apply under PHDEP, whether or not each member would individually qualify for funding as a preference PHA or a needs recipient in the top 50% of the formula ranking. To qualify for funding, the consortium members must prepare and submit a consortium DEP plan that meets the requirements of a DEP plan contained in § 761.21. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding to the extent the individual applicants qualify. The consortium's DEP plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a

central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake. Each member must submit the consortium plan with its PHA plan or IHP, as appropriate.

HUD will make the determination of the amount of funding the consortium as a whole will receive upon first receipt and favorable review of a consortium's plan. The amount of funding made available to the consortium will be the total of the amounts that each individual member would otherwise qualify to receive, on either a preference or needs basis, under the funding formula. The Department specifically requests comment on methods and the desirability of providing more of a financial incentive for consortia.

#### *Funding of NAHASDA Recipients*

An option HUD wishes to present for comment is whether to establish a

separate pool to fund NAHASDA recipients. The lack of full FBI data on Indian Country and the difficulty of formulating appropriate comparable data make it difficult to fund NAHASDA recipients on the same basis as PHAs. Rather than including NAHASDA recipients in the same funding pool with PHAs, HUD would make separate DEP funding available for NAHASDA recipients. The amount of funding available would be set at a level that is significantly greater percentage of the total amounts made available than the average of the amounts received by Indian tribes, IHAs, or tribally designated housing entities (TDHEs) in FFYs 1996, 1997 and 1998. The increase under such a formulation would be in keeping with the overall increase in HUD funding that took place when Native American housing assistance was consolidated under NAHASDA.

HUD welcomes suggestions on the basis on which additional NAHASDA

recipients may be permitted to qualify, short of requiring the submission and verification of extensive data, because it is HUD's goal to streamline the funding process for all categories of PHDEP applicants.

#### **IV. Findings and Certifications**

##### *Paperwork Reduction Act Statement*

The proposed information collection requirements contained in this rule, and the additional PHDEP requirements at 24 CFR part 761 not affected by this rule, including the changeover in the reporting requirements under § 761.35 from a hardcopy format to an electronic format, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

#### REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hrs.)
761.17 .....	600	1	16	9,600
761.21 .....	1100	1	25	27,500
761.23 .....	1100	1	8	8,800
761.25 .....	7000	1	1	7,000
761.30 .....	1100	1	16	17,600
761.35 .....	1100	7	22	169,400
Total Reporting and Recordkeeping Burden (Hours) .....	.....	.....	.....	239,900

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information

technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR-4451) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and

Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410.

Additional information on these information collection requirements may be obtained from the Reports Liaison Officer or from the HUD web site at <http://www.hud.gov/pih/programs/ph/de/cscd.html>.

##### *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.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule begins the rulemaking process to implement changes for the distribution of Public Housing Drug Elimination Program funds under the Quality Housing and Work Responsibility Act of 1998. A significant economic impact on a substantial number of small entities is not expected because under this proposal, all small entities previously funded will continue to be funded at comparable levels. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble. The rule will have no adverse or disproportionate economic impact on small businesses.

#### *Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 761, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, the actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and further review under the National Environmental Policy Act is not necessary and no FONSI is needed.

#### *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.

#### **List of Subjects in 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.

#### *Catalog of Domestic Assistance Numbers*

The Catalog of Domestic Assistance numbers for the Public Housing Drug Elimination Program is 14.854.

Accordingly, for the reasons stated in the preamble, part 761 of title 24 of the Code of Federal Regulations is amended as follows:

#### **PART 761—DRUG ELIMINATION PROGRAMS**

1. The authority citation for 24 CFR part 761 continues to read as follows:

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

2. In part 761, all references to “drug-related crime” are revised to read “drug-related and violent crime” and all references to “Indian housing authorities (IHAs)” are revised to read “NAHASDA recipients”.

3. In § 761.1, the introductory text is revised to read as follows:

##### **§ 761.1 Purpose and scope.**

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

\* \* \* \* \*

4. Section 761.5, is revised to read as follows:

##### **§ 761.5 Public housing; encouragement of resident participation.**

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964.

5. In § 761.10, the introductory text is revised, the definition of *Recipient of assistance under the Native American*

*Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient)* is added in alphabetical order, and the definition of *Resident Management Corporation (RMC)* is revised, to read as follows:

##### **§ 761.10 Definitions.**

The definitions *Department, HUD, and Public Housing Agency (PHA)* are defined in 24 CFR part 5.

\* \* \* \* \*

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

\* \* \* \* \*

*Resident 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.

\* \* \* \* \*

6. The heading of subpart B is revised to read as follows:

#### **Subpart B—Grant Funding**

7. A new § 761.13 is added to read as follows:

##### **§ 761.13 Amount of funding.**

(a) *PHDEP formula funding.* (1) *Funding share formula.* The amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of \$35 million and a minimum award of \$25,000.

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

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

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

required will not receive that FFY's funding.

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

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 may not be funded, in whole or in part.

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

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

8. Section 761.15 is revised to read as follows:

**§ 761.15 Qualifying for funding.**

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

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

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

(3) *Needs qualification for funding.* A PHA that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section, a NAHASDA recipient, or an RMC must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY) to qualify for funding. The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

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

(5) *PHDEP plan requirement.* (i) *PHAs.* To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to 24 CFR part 903.

(ii) *NAHASDA recipients.* To receive PHDEP funding, a NAHASDA recipient that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its Indian Housing Plan (IHP) submitted pursuant to subpart C of 24 CFR part 1000.

(iii) *RMCs.* To receive PHDEP funding, an RMC that qualifies to receive PHDEP funding must submit a PHDEP plan that meets the requirements of § 761.21 to its PHA. That PHA may submit, with its PHA Plan submitted pursuant to 24 CFR part 903, the RMC's PHDEP plan.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to 24 CFR part 903, or IHP, submitted pursuant to subpart C of 24 CFR part 1000, as appropriate.

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

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

9. A new § 761.17 is added to read as follows:

**§ 761.17 Eligible and ineligible activities for funding.**

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

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

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

(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 that 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), with the following additional requirements:

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

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

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

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

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

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

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

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

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must 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 PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

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

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

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

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

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

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

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

10. Section 761.20 is revised to read as follows:

#### **§ 761.20 Selection requirements.**

(a) *PHDEP selection*. Every PHA, NAHASDA recipient, RMC and

consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the **Federal Register** to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

10. A new § 761.21 is added to read as follows:

**§ 761.21 Plan requirement.**

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

established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the **Federal Register** may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake.

11. A new § 761.23 is added to read as follows:

**§ 761.23 Grantee performance requirements.**

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

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

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to 24 CFR 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of

partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

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

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under 24 CFR part 91 for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must demonstrate to HUD that it consulted with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21.

Furthermore, a grantee must demonstrate to HUD that its grant-funded activities are coordinated with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable.

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

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

(c) *Performance requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In

addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

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

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining,

measurable goals for PHDEP-funded activities with respect to the overall reduction of violent crime and drug use.

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

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

12. In § 761.40, paragraphs (e), (f) and (g) are revised to read as follows:

**§ 761.40 Other Federal requirements.**

\* \* \* \* \*

(e) *Indian preference.* For purposes of PHDEP, NAHASDA recipients are subject to the Indian Civil Rights Act (24 U.S.C. 1301), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(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.

(f) *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.

(g) *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 50.19(b)(4), (b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

Dated: April 21, 1999.

**Deborah Vincent,**

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

[FR Doc. 99-11918 Filed 5-11-99; 8:45 am]

BILLING CODE 4210-33-P