

## §761.17

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

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

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

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

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

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

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

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

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

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

[64 FR 49918, Sept. 14, 1999]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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executed a contract for the additional law enforcement services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[64 FR 49919, Sept. 14, 1999]

### Subpart C—Application and Selection

#### § 761.20 Selection requirements.

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

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

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

[64 FR 49920, Sept. 14, 1999]

#### § 761.21 Plan requirement.

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