

Code of 1986. Nonprofit organization does not include a public body or the instrumentality of any public body.

Program means the undertaking by a recipient with HUD assistance under this part for the construction or substantial rehabilitation of homes in accordance with the requirements of this part.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD to carry out a program under this part.

Rehabilitation means labor, materials, tools and other costs of improving buildings, including repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or incidental additions to, or enhancement of, existing buildings, including improvements to increase the efficient use of energy in buildings.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Substantial rehabilitation means: (a) Rehabilitation involving costs in excess of 60 percent of the maximum sales price of a home assisted under this part after rehabilitation; or (b) the rehabilitation of a vacant, uninhabitable structure.

Unit of general local government means a borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

[54 FR 22258, May 22, 1989, as amended at 61 FR 5208, Feb. 9, 1996; 61 FR 42953, Aug. 19, 1996]

§ 280.10 NHOP assistance.

Recipients may only use assistance under this part to provide loans to families purchasing homes constructed or substantially rehabilitated in accordance with an approved program.

[61 FR 42953, Aug. 19, 1996]

§ 280.15 Assistance under other HUD programs.

Except for assistance made available under the Community Development Block Grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), a recipient's program is not eligible for assistance under other HUD assistance programs. Dwellings purchased under the program are eligible for mortgage insurance under section 203(b) (one- to four-family home mortgages), section 203(k) (rehabilitation of one- to four-family homes), section 221(d)(2) (low- and moderate-income families), section 234(c) (condominium mortgages), section 245(a) (graduated payment mortgages), and section 251 (adjustable rate mortgages) of the National Housing Act.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

§ 280.20 Home quality.

(a) *Generally.* Except for manufactured homes, homes constructed or substantially rehabilitated under a program must comply with applicable local building code standards. (If no local building code standards are applicable, the homes must comply with a nationally recognized model building code (such as the CABO One- and Two-Family Dwelling Code) mutually agreed upon by the recipient and HUD). All such homes must also comply with the energy performance requirements contained in the minimum property standards under 24 CFR part 200, subpart S.

(b) *Manufactured homes.* Manufactured homes under a program must comply with the Manufactured Home Construction and Safety Standards in 24 CFR part 3280; the installation, structural, and site requirements described in 24 CFR 203.43f; and the energy performance requirements of 24 CFR 200.926d(e).

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

§ 280.25 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following additional Federal requirements apply to this program:

(a) *Nondiscrimination and equal opportunity.* (1) The affirmative fair housing marketing requirements at 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108.

(2) *Racial and ethnic data collection requirements.* Recipients must maintain current data on the race and ethnicity of program beneficiaries.

(b) *Displacement and relocation assistance.* (1) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) as amended by the Uniform Relocation Act Amendments of 1987, title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, approved April 2, 1987) (URA) and government-wide implementing regulations at 49 CFR part 24 set forth relocation assistance requirements that apply to the displacement of any person (family, individual, business, nonprofit organization or farm) as a direct result of acquisition, rehabilitation or demolition for a program assisted under this part.

(2) A displacement from the real property is covered by the URA if it occurs on or after the date that an application is submitted under this part and the application is later approved and funded, unless:

(i) The person has been evicted for cause based upon a serious or repeated violation of the material terms of the lease or occupancy agreement and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the real property after the application was submitted, but received prior written notice of the expected displacement;

(iii) The person is an owner-occupant and has been informed that the real property will not be acquired for the program under the threat of eminent domain; or

(iv) The applicant (recipient) determines that the displacement did not occur as a direct result of the acquisition, rehabilitation, or demolition for the program, and HUD concurs in that determination.

(3) If a person is displaced from the real property before the submission of the application, and either HUD or the

applicant (recipient) determines that the displacement was a direct result of the acquisition, rehabilitation, or demolition, the person shall be eligible for relocation assistance as a displaced person.

(4) The applicant (recipient) may, at any time, request a HUD determination whether a displacement will be covered by the URA and the implementing regulations.

(5) A displaced person's eligibility for relocation assistance is subject to the requirements in 49 CFR part 24.

(c) *Flood insurance purchase requirements.* Grants will not be provided to programs involving the acquisition or rehabilitation of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as a special flood hazard area, unless: (1) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations under that program (44 CFR parts 59 through 79); or (2) less than a year has passed since FEMA notification regarding such hazards. A recipient may not make a loan under this part involving buildings located in these areas unless flood insurance on the structure is obtained by the purchaser in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*).

(d) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A-110 and A-122 apply to the acceptance and use of assistance by nonprofit organizations.

(e) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraph (e)(2)), of this section apply to the program.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this part. This paragraph is promulgated under 24 CFR 35.24(c)(4) and supersedes, with respect to assistance

under this part, the requirements prescribed in subpart C of 24 CFR part 35. The requirements of this paragraph apply to structures that are occupied or are expected to be occupied by children under seven years of age.

(ii) The following definitions apply to this paragraph (e):

Applicable surface means all interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age: e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: *i.e.*, a confirmed concentration of lead in whole blood of 25 µg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(iii) In the case of a structure constructed or substantially rehabilitated before 1978, the applicant must inspect the structure for defective paint surfaces before it submits an application. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the inspection must be completed before initial occupancy of the structure.

(iv) In the case of a structure constructed or substantially rehabilitated before 1978, if the recipient is presented with test results that indicate that the family purchasing a home under the program includes a child under the age of seven years who has an elevated blood lead level (EBL), the recipient must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an association recognized by HUD. Lead content must be tested by using

an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vi) The recipient must take appropriate action to protect residents of the structure from hazards associated with abatement procedures.

(vii) The recipient must keep a copy of each inspection report for an least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must submit the test results and, if applicable, the certification of treatment to HUD. HUD will retain the records in the recipient's case file. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish the certain chewable surface were tested, or tested and treated, in accordance with the standards prescribed in this section, these surfaces do not have to be tested or treated as any subsequent time.

(3) The applicant or recipient, however, must ensure that the program sponsor carries out all requirements in accordance with the paragraph, and must retain ultimate responsibility for complying with the requirements of this paragraph.

(f) *Conflicts of interest.* No person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the recipient that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to activities under the program or

(2) Who is in a position to participate in a decisionmaking process of gain inside information with regard to such activities, may obtain a personal or financial interest of benefit from the activity, 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. The provisions of paragraph (e)(1) of this section do not prohibit a non-managerial and nonsupervisory employee who is otherwise eligible, from purchasing a home under this part.

(g) *Audit.* Recipients are subject to the audit requirements of OMB Circular A-133 (as set forth in 24 CFR part 45). HUD may perform or require further and additional audits as it finds necessary or appropriate.

(h) *Coastal Barriers Resources Act.* The Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) applies to the program.

(i) *Davis-Bacon Act.* The prevailing wage rate determinations under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) do not apply to the program.

[54 FR 22258, May 22, 1989; 55 FR 20240, May 15, 1990; 57 FR 33256, July 27, 1992; 59 FR 33894, June 30, 1994; 61 FR 5208, Feb. 9, 1996. Redesignated at 61 FR 42953, Aug. 19, 1996]

Subparts A-D [Reserved]

Subpart E—Program Operation

§ 280.30 Grant agreement.

(a) *General.* The recipient's responsibilities under NHOP will be incorporated in a grant agreement executed by HUD and the recipient.

(b) *HUD Monitoring.* HUD will monitor the recipient's performance to determine whether the recipient is complying with the requirements of the grant agreement. HUD will rely on such data as information obtained from the recipient's records and reports, findings from on-site monitoring and audit reports.

[54 FR 22258, May 22, 1989. Redesignated at 61 FR 42953, Aug. 19, 1996]

§ 280.35 Minimum participation.

Except as provided in paragraph (a) or (b) of this section, the recipient may not begin the construction or substantial rehabilitation of homes until 25 percent of the homes to be constructed or substantially rehabilitated under the program are contracted for sale to purchasers who intend to live in the

homes and the downpayments required under § 280.45(b) have been made.

(a) Recipients may submit a phasing plan to HUD for approval. The phasing plan may propose that the grantee begin construction or substantial rehabilitation on an individual phase of the program when 25 percent of the homes in the individual phase of the program have been pre-sold. Each phase for which approval is sought must contain at least 16 homes. Each submission must include documentation that the phasing plan has been approved by the unit of local government in which the homes are to be located.

(b) Recipients may construct and substantially rehabilitate homes for the purpose of display to potential homeowners. The maximum number of display homes is limited to five percent of the number of homes to be constructed or substantially rehabilitated under the program, or three homes, where the program involves less than 60 homes.

[58 FR 38532, July 19, 1993. Redesignated and amended at 61 FR 42953, Aug. 19, 1996]

§ 280.40 Eligible purchasers.

(a) *Income limitations.* (1) Each family purchasing a home constructed or substantially rehabilitated under a program must have a family income on the date of purchase that does not exceed the following limitations:

(i) For programs located in a metropolitan statistical area, the family income may not exceed the higher of:

(A) The median family income for the metropolitan statistical area in which the program is located. At any time during the development of the program, the recipient may request HUD to modify this family income requirement. To obtain a modification, the recipient must submit a request by a unit of general local government in which the program is located, and supporting documentation demonstrating to HUD that such action is necessary to achieve or maintain neighborhood stability. If a modification is granted, HUD may permit up to 15 percent of the families that purchase homes under this part, to have a family income on the date of purchase that is between