

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 583**

RIN 2506-AB85

[Docket No. FR-4089-F-01]

Office of the Assistant Secretary for Community Planning and Development; Supportive Housing Program; Streamlining

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations for the Supportive Housing Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Supportive Housing regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the Supportive Housing regulations clearer and more concise.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708-4300 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. The regulations in 24 CFR part 583 implement the Department's Supportive Housing Program, which provides assistance for housing and supportive services for homeless persons, as authorized by title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the McKinney Act) (42 U.S.C. 11381-11389). In developing the regulations for the Supportive Housing Program, the Department has always attempted to codify only those requirements that are necessary to the proper administration of the program, and to allow the recipients the flexibility to carry out projects that benefit homeless persons (see, e.g., the preamble to the Supportive Housing

final rule, published on July 19, 1994 (59 FR 36886)). However, the Department has determined that it can further improve and streamline the regulations for the Supportive Housing Program by eliminating unnecessary provisions.

For example, many of the provisions in part 583 come directly from the McKinney Act. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

This final rule will make the following specific amendments to part 583:

(1) Amend the first sentence of § 583.1 regarding the authorizing statute—the Stewart B. McKinney Homeless Assistance Act—in order to facilitate references to the statute throughout the regulations;

(2) Replace many of the definitions in § 583.5 that are redundant of the statute with references to the pertinent statutory sections. For the definition of “Operating costs”, this rule will also amend §§ 583.125 and 583.135 to include regulatory guidance that is not redundant of the statute. This rule also updates § 583.5 to refer to the consolidated plan, rather than the Comprehensive Housing Affordability Strategy, according to HUD's Consolidated Plan final rule, published on January 5, 1995 (60 FR 1878);

(3) Remove the provision regarding the rating criteria for applications in § 583.200(b). This information is repetitive of the statute, and can more appropriately be provided in the annual notice of funding availability (NOFA);

(4) Streamline the language in § 583.230 regarding environmental review. The substance of this language is redundant of the environmental review regulations in 24 CFR parts 50 and 58;

(5) Replace language from § 583.300(f) regarding the participation of homeless individuals that is redundant of the statute with a reference to the statutory section;

(6) Replace much of § 583.305, which is redundant of the statute, with statutory references;

(7) Remove the nondiscrimination requirements in § 583.325(b)(2). The Department issued a final rule on February 9, 1996 (61 FR 5198) creating

a new 24 CFR part 5, subpart A of which contains certain definitions, Federal requirements, and a waiver provision that are generally applicable to all HUD programs. The February 9, 1996 final rule removed the duplicative nondiscrimination requirements that were in § 583.325(b)(1); this final rule will remove the duplicative requirements from paragraph (b)(2) of that section;

(8) Remove the outdated reference to the Comprehensive Housing Affordability Strategy (CHAS) in § 583.405(a)(1), and replace it with a reference to the consolidated plan, in accordance with the Consolidated Plan final rule published on January 5, 1995 (60 FR 1878).

This rule will result in the elimination of approximately four pages of unnecessary regulations.

Justification for Final Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is “impracticable, unnecessary, or contrary to the public interest” (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule primarily removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications**Regulatory Flexibility Act**

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule primarily streamlines the Supportive Housing regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rule does not have an environmental impact. This rule simply amends existing regulations by consolidating and streamlining provisions; it does not alter the environmental effect of the regulations being amended. As the Department

developed the regulations in part 583, Findings of No Significant Impact with respect to the environment were made in accordance with regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Those findings remain applicable to this rule, and are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

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.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the order. No significant change in the Department's policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

PART 583—SUPPORTIVE HOUSING PROGRAM

Accordingly, for the reasons set forth in the preamble, 24 CFR part 583 is amended as follows:

1. The authority citation for 24 CFR part 583 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11389.

2. In § 583.1, paragraph (a) is amended by revising the first sentence to read as follows:

§ 583.1 Purpose and scope.

(a) *General.* The Supportive Housing Program is authorized by title IV of the

Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11381–11389). * * *

3. Section 583.5 is revised to read as follows:

§ 583.5 Definitions.

As used in this part:

Applicant is defined in section 422(1) of the McKinney Act (42 U.S.C. 11382(1)). For purposes of this definition, governmental entities include those that have general governmental powers (such as a city or county), as well as those that have limited or special powers (such as public housing agencies).

Consolidated plan means the plan that a jurisdiction prepares and submits to HUD in accordance with 24 CFR part 91.

Date of initial occupancy means the date that the supportive housing is initially occupied by a homeless person for whom HUD provides assistance under this part. If the assistance is for an existing homeless facility, the “*date of initial occupancy*” is the date that services are first provided to the residents of supportive housing with funding under this part.

Date of initial service provision means the date that supportive services are initially provided with funds under this part to homeless persons who do not reside in supportive housing. This definition applies only to projects funded under this part that do not provide supportive housing.

Disability is defined in section 422(2) of the McKinney Act (42 U.S.C. 11382(2)).

Homeless person means an individual or family that is described in section 103 of the McKinney Act (42 U.S.C. 11302).

Metropolitan city is defined in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)). In general, metropolitan cities are those cities that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

Operating costs is defined in section 422(5) of the McKinney Act (42 U.S.C. 11382(5)).

Outpatient health services is defined in section 422(6) of the McKinney Act (42 U.S.C. 11382(6)).

Permanent housing for homeless persons with disabilities is defined in section 424(c) of the McKinney Act (42 U.S.C. 11384(c)).

Private nonprofit organization is defined in section 422(7) (A), (B), and (D) of the McKinney Act (42 U.S.C. 11382(7) (A), (B), and (D)). The organization must also have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles.

Project is defined in sections 422(8) and 424(d) of the McKinney Act (42 U.S.C. 11382(8), 11384(d)).

Recipient is defined in section 422(9) of the McKinney Act (42 U.S.C. 11382(9)).

Rehabilitation means the improvement or repair of an existing structure or an addition to an existing structure that does not increase the floor area by more than 100 percent. Rehabilitation does not include minor or routine repairs.

State is defined in section 422(11) of the McKinney Act (42 U.S.C. 11382(11)).

Supportive housing is defined in section 424(a) of the McKinney Act (42 U.S.C. 11384(a)).

Supportive services is defined in section 425 of the McKinney Act (42 U.S.C. 11385).

Transitional housing is defined in section 424(b) of the McKinney Act (42 U.S.C. 11384(b)). See also § 583.300(j).

Tribe is defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Urban county is defined in section 102(a)(6) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(6)). In general, urban counties are those counties that are eligible for an entitlement grant under 24 CFR part 570, subpart D.

4. Section 583.125 is amended by revising paragraph (b) to read as follows:

§ 583.125 Grants for operating costs.

* * * * *

(b) *Operating costs.* Operating costs are those associated with the day-to-day operation of the supportive housing. They also include the actual expenses that a recipient incurs for conducting on-going assessments of the supportive services needed by residents and the availability of such services; relocation assistance under § 583.310, including payments and services; and insurance.

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5. Section 583.135 is amended by revising paragraph (b) to read as follows:

§ 583.135 Administrative costs.

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(b) *Administrative costs.*

Administrative costs include the costs associated with accounting for the use of grant funds, preparing reports for submission to HUD, obtaining program audits, similar costs related to administering the grant after the award, and staff salaries associated with these administrative costs. They do not include the costs of carrying out eligible activities under §§ 583.105 through 583.125.

6. Section 583.200 is revised to read as follows:

§ 583.200 Application and grant award.

When funds are made available for assistance, HUD will publish a notice of funding availability (NOFA) in the Federal Register, in accordance with the requirements of 24 CFR part 4. HUD will review and screen applications in accordance with the requirements in section 426 of the McKinney Act (42 U.S.C. 11386) and the guidelines, rating criteria, and procedures published in the NOFA.

7. Section 583.230 is revised to read as follows:

§ 583.230 Environmental review.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site, and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4320) (NEPA) and the related environmental laws and authorities listed in HUD's implementing regulations at 24 CFR parts 50 or 58, depending on who is responsible for environmental review.

(b) *Environmental review by HUD.* HUD will perform an environmental review, in accordance with part 50 of this title, before approval of conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. Any application subject to environmental review by HUD that requires an Environmental Impact Statement (EIS) in accordance with the procedures in 24 CFR part 50, subpart

E, will not be eligible for assistance under this part.

(c) *Environmental review by applicants.* Applicants that are States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose powers must assume responsibility for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. These applicants must include in their applications an assurance that they will assume all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under NEPA and related authorities listed in 24 CFR part 58. The grant award is subject to completion of the environmental responsibilities set out in 24 CFR part 58 within a reasonable time period after notification of the award. Applicants may, however, enclose an environmental certification and Request for Release of Funds with their applications.

8. Section 583.300 is amended by revising paragraph (f) to read as follows:

§ 583.300 General operation.

* * * * *

(f) *Participation of homeless persons.* (1) Each recipient must provide for the participation of homeless persons as required in section 426(g) of the McKinney Act (42 U.S.C. 11386(g)). This requirement is waived if an applicant is unable to meet it and presents a plan for HUD approval to otherwise consult with homeless or formerly homeless persons in considering and making policies and decisions. See also § 583.330(e).

(2) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless individuals and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project.

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9. Section 583.305 is revised to read as follows:

§ 583.305 Term of commitment; repayment of grants; prevention of undue benefits.

(a) *Term of commitment and conversion.* Recipients must agree to operate the housing or provide supportive services in accordance with this part and with sections 423 (b)(1) and (b)(3) of the McKinney Act (42 U.S.C. 11383(b)(1), 11383(b)(3)).

(b) *Repayment of grant and prevention of undue benefits.* In accordance with section 423(c) of the McKinney Act (42 U.S.C. 11383(c)), HUD will require recipients to repay the grant unless HUD has authorized conversion of the project under section 423(b)(3) of the McKinney Act (42 U.S.C. 11383(b)(3)).

10. Section 583.325 is amended by revising paragraph (b) to read as follows:

§ 583.325 Nondiscrimination and equal opportunity requirements.

* * * * *

(b) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth at part 5 of this title apply to this program. The Indian Civil Rights Act (25 U.S.C. 1301 et seq.) applies to tribes when they exercise their powers of self-government, and to Indian housing authorities (IHAs) when established by the exercise of such powers. When an IHA is established under State law, the applicability of the Indian Civil Rights Act will be determined on a case-by-case basis. Projects subject to the Indian Civil Rights Act must be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

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§ 583.405 [Amended]

11. In § 583.405, paragraph (a)(1) is amended by removing the term "CHAS", and by adding in its place the term "consolidated plan".

Dated: September 23, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

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