

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development; Shelter Plus Care Program; Streamlining****24 CFR Part 582****[Docket No. FR-4091-F-01]****RIN 2506-AB86****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 Shelter Plus Care Housing Program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the Shelter Plus Care regulations by removing provisions that are redundant of statutes or are otherwise unnecessary. This final rule will make the Shelter Plus Care regulations clearer and more concise.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: David Pollack, Program Development Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7260, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708-1234. (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 1-800-877-8339.

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 582 implement the Department's Shelter Plus Care Program, which provides rental assistance that is matched with supportive services for hard-to-serve homeless persons with disabilities. In developing the regulations for the Shelter Plus Care, 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 as much discretion and flexibility as possible. See, for example, the interim rule, published on May 10, 1994 (59 FR 24252). The Department has determined that it can further

improve and streamline the regulations for the Shelter Plus Care program.

This final rule makes the following specific amendments to part 582:

- (1) Amends the first sentence of § 582.1 regarding the authorizing statute—the Stewart B. McKinney Homeless Assistance Act—in order to facilitate references to the statute throughout the regulations;
- (2) Replaces many of the definitions in § 582.5 that are redundant of the statute with references to the pertinent statutory sections;
- (3) Removes the rating criteria for applications in § 582.200(b) that repeat statute and adds cross-reference to the statute;
- (4) Revises § 582.230 to add provisions on nonrecipient responsible entities assuming HUD environmental review responsibilities under the SRO component of the program. These revisions conform § 582.230 to 24 CFR part 58 as revised at 60 FR 13518, March 13, 1995, and at 60 FR 48610, September 19, 1995;
- (5) Removes provisions in § 582.310 that repeat the text of section 3(a)(1) of the United States Housing Act of 1937; and
- (6) Makes several conforming amendments to §§ 582.105, 582.300, 582.305, and 582.340.

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 merely 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 streamlines the Shelter Plus Care 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 582, 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.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule is

limited to removing those unnecessary provisions in the Shelter Plus Care Program regulations.

Catalog

The Catalog of Federal Domestic Assistance number is 14.238, Shelter Plus Care.

List of Subjects in 24 CFR Part 582

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

Accordingly, for the reasons set forth in the preamble, 24 CFR part 582 is amended as follows:

PART 582—SHELTER PLUS CARE

1. The authority citation for 24 CFR part 582 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

2. Section 582.1 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b), to read as follows:

§ 582.1 Purpose and scope.

(a) *General.* The Shelter Plus Care program (S+C) is authorized by title IV, subtitle F, of the Stewart B. McKinney Homeless Assistance Act (the McKinney Act) (42 U.S.C. 11403–11407b). * * *

(b) *Components.* Rental assistance is provided through four components described in § 582.100. Applicants may apply for assistance under any one of the four components, or a combination.

3. Section 582.5 is revised to read as follows:

§ 582.5 Definitions.

The terms *Fair Market Rent (FMR)*, *HUD*, *Public Housing Agency (PHA)*, *Indian Housing Authority (IHA)*, and *Secretary* are defined in 24 CFR part 5.

As used in this part:

Acquired immunodeficiency syndrome (AIDS) and related diseases has the meaning given in section 853 of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Applicant has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Eligible person means a homeless person with disabilities (primarily persons who are seriously mentally ill; have chronic problems with alcohol, drugs, or both; or have AIDS and related diseases) and, if also homeless, the family of such a person. To be eligible for assistance, persons must be very low income, except that low-income individuals may be assisted under the

SRO component in accordance with 24 CFR 813.105(b).

Homeless or homeless individual has the meaning given in section 103 of the McKinney Act (42 U.S.C. 11302).

Indian tribe has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Low-income means an annual income not in excess of 80 percent of the median income for the area, as determined by HUD. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Nonprofit organization has the meaning given in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704). The term nonprofit organization also includes a community mental health center established as a public nonprofit organization.

Participant means an eligible person who has been selected to participate in S+C.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if such person has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care,

treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(3) Notwithstanding the preceding provisions of this definition, the term *person with disabilities* includes, except in the case of the SRO component, two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted under this part, with the deceased member of the household at the time of his or her death. (In any event, with respect to the surviving member or members of a household, the right to rental assistance under this part will terminate at the end of the grant period under which the deceased member was a participant.

Recipient means an applicant approved to receive a S+C grant.

Seriously mentally ill has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a nonprofit organization which owns or leases dwelling units and has contracts with a recipient to make such units available to eligible homeless persons and receives rental assistance payments under the SRA component.

State has the meaning given in section 462 of the McKinney Act (42 U.S.C. 11403g).

Supportive service provider, or service provider, means a person or organization licensed or otherwise qualified to provide supportive services, either for profit or not for profit.

Supportive services means assistance that—

(1) Addresses the special needs of eligible persons; and

(2) Provides appropriate services or assists such persons in obtaining appropriate services, including health care, mental health treatment, alcohol and other substance abuse services, child care services, case management services, counseling, supervision, education, job training, and other services essential for achieving and maintaining independent living. (Inpatient acute hospital care does not qualify as a supportive service.)

Unit of general local government has the meaning given in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302).

Very low-income means an annual income not in excess of 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes.

§ 582.105 [Amended]

4. In § 582.105, paragraph (a) is amended by removing the words "paragraph (f)" and adding, in their place, the words "paragraph (e)"; and paragraph (d)(2) is amended by removing the word "paragraph" and adding, in its place, the words "paragraph (d)".

5. Section 582.200 is revised to read as follows:

§ 582.200 Application and grant award.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of fund availability in the Federal Register in accordance with the requirements of 24 CFR part 4. Applications will be reviewed and screened in accordance with the guidelines, rating criteria and procedures published in the notice.

(b) *Rating criteria.* HUD will award funds based on the criteria specified in section 455(a)(1) through (8) of the McKinney Act (42 U.S.C. 11403d(1)—11403d(8)) and on the following criteria authorized by section 455(a)(9) of the McKinney Act (42 U.S.C. 11403d(9)):

(1) The extent to which the applicant has demonstrated coordination with other Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project, to the extent practicable;

(2) Extent to which the project targets homeless persons living in emergency shelters, supportive housing for homeless persons, or in places not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;

(3) Quality of the project; and

(4) Extent to which the program will serve homeless persons who are seriously mentally ill, have chronic alcohol and/or drug abuse problems, or have AIDS and related diseases.

(Approved by the Office of Management and Budget under control number 2506-0118)

6. Section 582.230 is revised to read as follows:

§ 582.230 Environmental review requirements.

(a) *Responsibility for review.* (1) HUD will perform the environmental review,

in accordance with part 50 of this title, for conditionally selected applications received from PHA applicants and from IHA applicants. HUD is not permitted to approve such applications prior to its completion of this review, nor is the PHA or IHA permitted to enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of this review and approval of the application, except under the SRO component.

(2) Applicants that are States, units of general local government, or Indian tribes must assume responsibility as "responsible entities" for environmental review, decisionmaking, and action for each application for assistance in accordance with part 58 of this title. In addition, for PHA projects and IHA projects under the SRO component, environmental reviews will be performed by State, local government, Indian tribe, or Alaska native village "nonrecipient responsible entities" as provided under part 58 of this title. HUD is permitted to approve such applications subject to the completion of reviews by the applicant in accordance with part 58 of this title. Applicants performing these reviews may adopt relevant and adequate prior reviews conducted by HUD or another governmental entity if the reviews meet the particular requirements of the Federal environmental law or authority under which they would be adopted, and only under certain conditions (e.g., a determination that no environmentally significant changes have occurred since the review was done). Applicants who adopt such relevant and adequate prior reviews may include the environmental certification and Request for Release of Funds with their applications.

(b) *Environmental review by HUD.* With regard to the environmental effects of applications for which HUD performs the review, HUD will undertake its review in accordance with the provisions of NEPA and the related authorities listed in 24 CFR 50.4. HUD may eliminate an application from consideration where the application would require an Environmental Impact Statement (EIS). PHA applicants and IHA applicants (other than under the SRO component) must include in their application an assurance that the applicant will:

(1) Not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to

HUD's completion of the review and approval of the application;

(2) Supply HUD with information necessary for HUD to perform any applicable environmental review when requested under § 582.225(a); and

(3) Carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

(c) *Environmental review by applicants or nonrecipient responsible entities.* (1) An applicant that is required under paragraph (a)(2) of this section to assume environmental review responsibility must include in its application an assurance that the applicant 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 58.5. A PHA or IHA applicant under the SRO component must include in its application an assurance by the nonrecipient responsible entity that the entity 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 58.5.

(2) For applicants required to assume environmental review responsibility and for PHAs and IHAs under the SRO component, the award of funding 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. (This provision does not preclude the applicant from enclosing its environmental certification and Request for Release of Funds with its application.)

(i) Upon completion of the requirements in 24 CFR part 58:

(A) Applicants required to assume environmental review responsibility must certify the completion;

(B) PHA and IHA applicants under the SRO component must submit the nonrecipient responsible entities' certification of completion; and

(C) All applicants must submit a Request for Release of Funds. This submission is not required in cases in which the applicant determines, in accordance with part 58 that its program components are totally exempt.

(ii) HUD will not release grant funds if the recipient or any other party commits grant funds (i.e., incurs any costs or expenditures to be paid or reimbursed with such funds) before the grantee submits and HUD approves its Request for Release of Funds (when such submission is required).

§ 582.300 [Amended]

6. In § 582.300, paragraph (a)(1) is amended by removing the words “§ 582.340(e)” and adding, in their place, the words “§ 582.340(b)”.

§ 582.305 [Amended]

7. In § 582.305, paragraph (a) is amended by removing the words “882.109” and adding, in their place, the words “982.401”.

8. In § 582.310, paragraph (a) is revised to read as follows:

§ 582.310 Resident rent.

(a) *Amount of rent.* Each participant must pay rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(3)(1)), except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act is the same as if the person were being assisted under title XVI of the Social Security Act.

* * * * *

9. Section 582.340 is amended by:

a. Revising paragraph (a)(1);

b. In paragraphs (b)(2) and (b)(3)(iv), removing the words “paragraph (e)(1)”, each place they appear and adding in each place, the words “paragraph (b)(1)”;

c. Revising paragraph (b)(2)(i); and
d. In the introductory text of paragraph (b)(3), removing the words “paragraph (e)(2)” and adding, in their place, the words “paragraph (b)(2)”, to read as follows:

§ 582.340 Other Federal requirements.

(a) * * *

(1) The policies, guidelines, and requirements of OMB Circular No. A-87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and 24 CFR part 84 and A-122 (Cost Principles Applicable to Grants, Contracts and Other Agreements

with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with provisions of the McKinney Act, other Federal statutes, or this part. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503, Telephone 202-395-7332.)

(b) * * *

(2) * * *

(i) For States, units of general local governments, PHAs and IHAs, a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

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Dated: September 23, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96-24875 Filed 9-27-96; 8:45 am]

BILLING CODE 4210-29-P