

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Assistant Secretary for Community Planning and Development****24 CFR Part 574**

[Docket No. FR-4030-F-01]

RIN 2506-AB78

Regulatory Reinvention: Streamlining the Housing Opportunities for Persons With AIDS Program

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 Housing Opportunities for Persons With AIDS (HOPWA) program. In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the HOPWA regulations by eliminating provisions that are duplicative of statutes or are otherwise unnecessary. This final rule will make the regulations more concise.

EFFECTIVE DATE: April 1, 1996.

FOR FURTHER INFORMATION CONTACT: Fred Karnas, Jr., Director, Office of HIV/AIDS Housing, Room 7154, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-1934 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TDD) is available at 1-800-877-8339 (Federal Information Relay Service).

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 of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the HOPWA Program can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the AIDS Housing Opportunity Act (42 U.S.C. 12901). 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 removes repetitious statutory language and replaces it with a citation to the specific statutory section for easy reference.

Similarly, the environmental review procedures section (§ 574.510) contains language that repeats requirements that are stated in 24 CFR 50.3. Therefore, that section is being revised to remove the repetitive language and substitute a cross-reference to the applicable provision in that existing rule. Removal of this language does not alter the procedures to be followed.

In addition, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will more appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

Lastly, two changes are being made to rectify an oversight when the part was recently revised as part of a larger rulemaking (see 61 FR 5198, February 9, 1996). The waiver provision (§ 574.4) is removed, since Departmental waivers were consolidated at 24 CFR part 5. The section dealing with nondiscrimination (§ 574.603) is being revised to reinsert language limiting the application of the provision to persons who are otherwise eligible for the program, i.e., persons who have AIDS or related diseases and their families.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own 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). HUD 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.

Other Matters**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 merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD 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) at the time of development of regulations implementing the HOPWA program. That finding remains applicable to this rule and is 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 existing HUD policies or programs will result from promulgation of this rule.

List of Subjects in 24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development,

Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, part 574 of title 24 of the Code of Federal Regulations is amended, as follows:

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

1. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

§ 574.1 [Removed]

2. Section 574.1 is removed.

§ 574.2 [Removed]

3. Section 574.2 is removed.

4. In § 574.3, the definitions for “City”, “Low-income individual”, “Metropolitan statistical area”, “Project sponsor”, and “State” are revised to read as follows:

§ 574.3 Definitions.

* * * * *

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

* * * * *

Low-income individual has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

Metropolitan statistical area has the meaning given it in section 853(5) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

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Project sponsor means any nonprofit organization or governmental housing agency that receives funds under a contract with the grantee to carry out eligible activities under this part. The selection of project sponsors is not subject to the procurement requirements of 24 CFR 85.36.

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State has the meaning given it in section 853(9) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

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§ 574.4 [Removed]

5. Section 574.4 is removed.

6. Section 574.110 is added, to read as follows:

§ 574.110 Overview of formula allocations.

The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR

part 91, that covers the assistance to be provided under this part. Certain states and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

§ 574.150 [Removed]

7. Section 574.150 is removed.

8. Section 574.200 is amended by adding paragraphs (c) and (d), to read as follows:

§ 574.200 Amounts available for competitive grants.

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(c) The competitive grants are awarded based on applications, as described in subpart C of this part, submitted in response to a Notice of Funding Availability published in the Federal Register. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are eligible to apply for competitive grants to fund other projects.

(d) If HUD makes a procedural error in a funding competition that, when corrected, would warrant funding of an otherwise eligible application, HUD will select that application for potential funding when sufficient funds become available.

§ 574.230 [Removed]

9. Section 574.230 is removed.

10. Section 574.240 is revised to read as follows:

§ 574.240 Application requirements.

Applications must comply with the provisions of the Department’s Notice of Funding Availability (NOFA) for the fiscal year published in the Federal Register in accordance with 24 CFR part 12. The rating criteria, including the point value for each, are described in the NOFA, including criteria determined by the Secretary.

§ 574.250 [Removed]

11. Section 574.250 is removed.

§ 574.310 [Amended]

12. In § 574.310, paragraph (d) is amended by removing from the

introductory text the words, “determined in accordance with section 3(a) of the United States Housing Act of 1937 and 24 CFR 813.106. Under these authorities, each resident must pay as rent”, and adding in their place the words, “which is”.

13. In § 574.320, paragraph (b) is revised to read as follows:

§ 574.320 Additional standards for rental assistance.

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(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

14. Section 574.510 is revised to read as follows:

§ 574.510 Environmental procedures and standards.

Before any amounts under this program are used to acquire, rehabilitate, convert, lease, repair or construct properties to provide housing, HUD shall perform a review in accord with 24 CFR part 50, which implements the National Environmental Policy Act and the related Federal environmental laws and authorities listed under 24 CFR 50.4. In performing its environmental review, HUD may use previously issued environmental reviews prepared by other local, State, or federal agencies for the proposed property. The grantee will cooperate in providing these documents. HUD must, however, conduct the environmental analysis and prepare the environmental review and be responsible for the required environmental findings. An environmental assurance shall be provided by an applicant for formula allocations or competitive awards in accordance with 24 CFR 50.3(i).

15. Section 574.540 is revised to read as follows:

§ 574.540 Deobligation of funds.

HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application or action plan and the requirements of this regulation. HUD may deobligate any

amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

16. Section 574.603 is amended by revising the introductory text, to read as follows:

§ 574.603 Nondiscrimination and equal opportunity.

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 and the following requirements apply:

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Dated: February 21, 1996.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 96-4678 Filed 2-28-96; 8:45 am]

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