

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 791**

[Docket No. FR-4024-F-01]

RIN 2501-AC17

Allocation of Budget Authority for Housing Assistance**AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule amends HUD's regulations for the allocation of budget authority for housing assistance. In an effort to comply with the President's regulatory reform initiatives, this rule streamlines the regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary, making them clearer and more concise.

In addition, this rule revises the regulations to reflect organizational initiatives within Headquarters, as well as the Department's reinvention of the field office structure in Fiscal Year 1994, which eliminated the regional office management layer and delegated the authority to the State and Area offices.

EFFECTIVE DATE: April 15, 1996.

FOR FURTHER INFORMATION CONTACT: For the Public and Indian Housing programs, and the Section 8 voucher, certificate, and moderate rehabilitation programs: Nanci E. Gelb, Director, PIH Budget Division, Room 4230, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Telephone: (202) 708-0614. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-0850.

For other assisted housing programs: Karen Daly, Acting Director, Office of Policy, Assistant Secretary for Housing, Room 9220, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000. Telephone: (202) 708-4135. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-4594.

(These are not toll-free numbers.)

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 "Allocation of Budget Authority for Housing Assistance" can be improved and streamlined by eliminating unnecessary provisions.

Some provisions in the regulations are now obsolete. For instance, this rule removes Subpart B which contains obsolete regulations regarding the Housing Assistance Plan (HAP). The HAP has been superseded by the comprehensive affordability strategy (and consolidated plan). Moreover, the Department now uses a grant mechanism for the Section 202 program as a result of statutory changes in 1990; hence, references in the regulations to loan authority for the Section 202 program, and in general, have been deleted.

Finally, some provisions in the regulations are not statutory requirements. Section 791.403(a) included a statement that the Assistant Secretaries for Housing and for Public and Indian Housing would confer to determine how the available budget authority should be allocated. Given recent appropriations treatment of the Section 8 programs, such consultation is no longer needed. Therefore, this provision has been eliminated.

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 this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule revises existing procedures for the allocation of housing assistance funds and for local government and HUD review of applications for housing assistance, but makes no change in the

economic impact of these procedures on small entities.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in 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. Specifically, this rule will not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and 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, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 791

Grant programs—housing and community development, Indians, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, pursuant to the Secretary's authority under 42 U.S.C. 3535(d), 24 CFR part 791 is revised as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

Subpart A—General Provisions

Sec.

- 791.101 Applicability and scope.
791.102 Definitions.

Subpart B—[Reserved]

Subpart C—Applications for Housing Assistance

- 791.301 General.
791.302 Finding of need for housing assistance.
791.303 Notification of local government.
791.304 Review and comment period.
791.305 HUD review of applications for housing assistance.

Subpart D—Allocation of Budget Authority for Housing Assistance

- 791.401 General.
791.402 Determination of low-income housing needs.
791.403 Allocation of housing assistance.
791.404 Field Office allocation planning.
791.405 Reallocations of budget authority.
791.406 Competition.
791.407 Headquarters Reserve.
Authority: 42 U.S.C. 1439 and 3535(d).

Subpart A—General Provisions

§ 791.101 Applicability and scope.

This part describes the roles and responsibilities of HUD and local governments under section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1437). It applies to the allocation of budget authority, and the review and approval of applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437–1437q), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and with respect to subpart D only, section 202 of the Housing Act of 1959 (12 U.S.C. 1710q), except as follows:

- (a) This part does not apply to programs for public housing operating subsidy, public housing modernization, or rental rehabilitation grant assistance under section 9, 14, or 17 of the United States Housing Act of 1937; and
(b) Subpart D of this part does not apply to the allocation of budget authority for housing development grant assistance under section 17 of the U.S. Housing Act of 1937.

§ 791.102 Definitions.

Act. The Housing and Community Development Act of 1974 (42 U.S.D. 1437), as amended.

Allocation area. A municipality, county, or group of municipalities or counties or Indian areas identified by

the HUD field office for the purpose of allocating housing assistance.

Application for housing assistance. The first submission to HUD for housing assistance under one of the programs identified in § 791.101(a). For the purposes of this part, the term includes an application, a preliminary proposal, or a proposal, so long as it meets the applicable program regulations. For the public housing program, the first application identifying a project site will be considered the application for housing assistance.

Assistant Secretary. The Assistant Secretary for Housing or the Assistant Secretary for Public and Indian Housing, as appropriate to the housing assistance under consideration.

Budget authority. The maximum amount authorized by the Congress for payments over the term of assistance contracts.

Chief executive officer. The elected official or legally designated official who has the primary responsibility for conducting the governmental affairs of a unit of general local government. Examples of the “chief executive officer” include: the elected mayor of a municipality; the elected county executive of a county; the presiding officer of a county commission or board in a county that has no elected county executive; the official designated by the governing body of the local government pursuant to law (e.g., the city manager or city administrator); and the chairman, governor, chief or president of an Indian tribe or Alaskan native village.

Fiscal year. The official operating period of the Federal government, beginning on October 1 and ending on September 30.

Household type. The three household types are: elderly, small family, and large family. References to household type shall mean the household type within the appropriate tenure type.

Housing type. The three housing types are:

- (1) New construction;
- (2) Rehabilitation; and
- (3) Existing housing.

Local government. Any city, county, town, township, parish, village or other unit of general local government which is a general purpose political subdivision of a State or the Commonwealth of Puerto Rico; Guam, the Commonwealth of the Northern Marianas, the Virgin Islands and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary of HUD: the District of Columbia; the former Trust Territories of the Pacific Islands, as applicable ;

Indian tribes, bands, groups and nations, including Alaska Indians, Aleuts and Eskimos; and any Alaskan native village of the United States. The term also includes a State or local public body or agency, community association, or other entity which is approved by HUD to provide public facilities or services to a new community meeting the requirements of Title IV of the Housing and Urban Development Act of 1968 (42 U.S.C. 3901) or Title VII of the Housing and Urban Development Act of 1970 (42 U.S.C. 4501).

Metropolitan area. See MSA.

MSA. A metropolitan statistical area established by the Office of Management and Budget. The term also includes primary metropolitan statistical areas (PMSAs), which are the component parts of larger urbanized areas designated as consolidated metropolitan statistical areas (CMSAs). Where an MSA is divided among two or more field offices, references to an MSA mean the portion of the MSA within the State/Area Office jurisdiction.

Public housing agency. Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

Tenure type. The two tenure types are owners and renters.

Urban county. Any county within a metropolitan area which is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, and which meets the other requirements of 24 CFR 570.307 for qualification as an urban county.

Subpart B—[Reserved]

Subpart C—Applications for Housing Assistance

§ 791.301 General.

This subpart C establishes the policies and procedures governing reviews and determinations, pursuant to section 213(c) of the Act, with respect to applications for housing assistance, under the programs identified in § 791.101(a).

§ 791.302 Finding of need for housing assistance.

With respect to each application for housing assistance, the field office is required to make a determination as to whether there is a need for such housing and whether the public facilities and services available in the area will be adequate to serve the proposed housing.

(a) The initial determination of need for housing assistance within an allocation area is made as part of the allocation process in § 791.404. In making this determination, the field office shall give consideration to the contents of any applicable State or areawide housing plan proposing housing assistance in the area, as well as generally available data on population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions pertaining to low-income housing needs.

(b) Prior to making a determination with regard to a specific application, the field office shall give the local government in which the proposed assistance is to be provided an opportunity to provide comments, during a 30-calendar-day period, concerning the need for housing assistance and the adequacy of public facilities and services. If the local government finding is negative, it must be accompanied by supporting evidence.

§ 791.303 Notification of local government.

(a) The field office shall notify the chief executive officer no later than 10 working days after receipt (or completion of any preliminary review and determination that the application is acceptable for further processing) that an application for housing assistance to be provided in that jurisdiction has been received and is under consideration.

(1) When the application is for housing assistance in newly constructed or rehabilitated housing within the overlapping jurisdictions of more than one local government (e.g., a municipality which is also within a county), the field office shall notify the chief executive officer of each local government.

(2) When the application is for housing assistance in newly constructed or rehabilitated housing within several nonoverlapping political jurisdictions (e.g., a scattered site project), the field office shall notify the chief executive officer of each local government where housing assistance is proposed.

(3) For a Section 8 existing housing, moderate rehabilitation, or housing voucher application submitted in accordance with 24 CFR part 982, the field office shall notify the chief executive officers of the localities that are identified in the application as:

(i) Primary areas from which households to be assisted under the existing housing program will be drawn; or

(ii) Primary areas in which units will be rehabilitated under the moderate rehabilitation program.

(b) The notification to the chief executive officer shall:

(1) Indicate that the field office has received and is considering an application for housing assistance, and identify the housing program, the housing type, the number of units by bedroom size and household type, and the proposed location(s).

(2) Invite the submission, within a period of 30 calendar days from the date of the field office letter, of a statement on behalf of the local government concerning the need for housing assistance and the adequacy of public facilities and services and any other comments which are relevant to a determination by the field office concerning the proposed housing assistance (e.g., comments on the site; whether the project is approvable under local codes and zoning ordinances).

§ 791.304 Review and comment period.

The chief executive officer shall have a 30-calendar day comment period, beginning on the date of the notification letter described in § 791.303, to submit written comments relevant to a determination by the field office concerning the approval of an application for housing assistance. The field office shall consider the comment period closed when the written comments are received. In no case shall the Program Office Director in the field office be obligated to consider subsequent or revised comments unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period. As an alternative to this process, the chief executive officer may submit any comments on the application with the application at the time it is submitted to HUD. Such early comment shall state whether such comment is intended to be the final comment, notwithstanding the 30-day period otherwise provided under this paragraph.

§ 791.305 HUD review of applications for housing assistance.

(a) The field office shall not approve an application for housing assistance prior to either:

(1) Receipt of comments pursuant to § 791.304; or

(2) Expiration of the 30-day comment period, whichever occurs earlier.

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government

including comments submitted by the chief executive officer on behalf of the local government. The field office shall make an independent determination as to whether there is a need for housing assistance and whether facilities and services are adequate before approving the application.

(c) The field office shall promptly notify both the chief executive officer and the applicant of the HUD determination with respect to the approval or disapproval of the application for housing assistance.

Subpart D—Allocation of Budget Authority for Housing Assistance

§ 791.401 General.

This subpart D establishes the procedures for allocating budget authority under section 213(d) of the Act for the programs identified in § 791.101(a). It describes the allocation of budget authority by the appropriate Assistant Secretary to the applicable Program Office Director in the HUD field office, and by the Program Office Director to allocation areas within their jurisdiction.

§ 791.402 Determination of low-income housing needs.

(a) Before budget authority is allocated, the Assistant Secretary for Policy Development and Research shall determine the relative need for low-income housing assistance in each HUD field office jurisdiction. This determination shall be based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies, or from the American Housing Survey.

(b) Except for paragraph (c) of this section, the factors used to determine the relative need for assistance shall be based upon the following criteria:

(1) *Population*. The renter population;

(2) *Poverty*. The number of renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census;

(3) *Housing overcrowding*. The number of renter-occupied housing units with an occupancy ratio of 1.01 or more persons per room;

(4) *Housing vacancies*. The number of renter housing units that would be required to maintain vacancies at levels typical of balanced market conditions;

(5) *Substandard housing*. The number of housing units built before 1940 and occupied by renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census; and

(6) *Other objectively measurable conditions.* Data indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income.

(c)(1) For the section 202 elderly program, the data used shall reflect relevant characteristics of the elderly population. The data shall use the criteria specified in paragraph (b)(1) and (6) of this section, as modified to apply specifically to the needs of the elderly population.

(2) Budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, as measured by the Bureau of Indian Affairs, and by data for non-BIA recognized groups served by the Indian housing program.

(d) Based on the criteria in paragraphs (b) and (c)(1) of this section, the Assistant Secretary for Policy Development and Research shall establish housing needs factors for each county and independent city in the field office jurisdiction, and shall aggregate the factors into metropolitan and nonmetropolitan totals for the field office. The field office total for each metropolitan and nonmetropolitan factor is then divided by the respective national total for that factor. The resulting housing needs ratios under paragraph (b) of this section are then weighted to provide metropolitan and nonmetropolitan housing needs percentages for each field office, using the following weights: Population, 20 percent; poverty, 20 percent; housing overcrowding, 10 percent; housing vacancies, 10 percent; substandard housing, 20 percent; other objectively measurable conditions, 20 percent. For the section 202 elderly program, the two criteria described in paragraph (c)(1) of this section are weighted equally.

(e) The Assistant Secretary for Policy Development and Research shall adjust the housing needs percentages derived in paragraph (d) of this section to reflect the relative cost of providing housing among the field office jurisdictions.

§ 791.403 Allocation of housing assistance.

(a) The total budget authority available for any fiscal year shall be determined by adding any available, unreserved budget authority from prior fiscal years to any newly appropriated budget authority for each housing program. On a nationwide basis, at least 20 percent, but not more than 25 percent, of the total budget authority available for any fiscal year, which is

allocated pursuant to paragraph (b)(2) of this section and any amounts which are retained pursuant to § 791.407, shall be allocated for use in nonmetropolitan areas.

(b) Budget authority available for the fiscal year, except for that retained pursuant to § 791.407, shall be allocated to the field offices as follows:

(1) Budget authority shall be allocated as needed for uses that the Secretary determines are incapable of geographic allocation by formula, including—

(i) Amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing, assistance in support of the property disposition and loan management functions of the Secretary;

(ii) Assistance which is—

(A) The subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated;

(B) Reported in the Operating Plan submitted by HUD to the Committees on Appropriations; or

(C) Included in an authorization statute where the nature of the assistance, such as a prescribed set-aside, is, in the determination of the Secretary, incapable of geographic allocation by formula,

(iii) Assistance determined by the Secretary to be necessary in carrying out the following programs authorized by the Cranston-Gonzalez National Affordable Housing Act: the Homeownership and Opportunity Through HOPE Act under title IV and HOPE for Elderly Independence under section 803.

(2) Budget authority remaining after carrying out allocation steps outlined in paragraph (b)(1) of this section shall be allocated in accordance with the housing needs percentages calculated under paragraphs (b), (c), (d), and (e) of § 791.402. HUD may allocate assistance under this paragraph in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in § 791.101(a) in each fiscal year. If the budget authority for a particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the field

office level, budget authority may be allocated among the ten geographic areas of the country. The funds so allocated will be assigned by Headquarters to the field office(s) with the highest ranked applications within the ten geographic areas.

(c) At least annually HUD will publish a notice in the Federal Register informing the public of all allocations under § 791.403(b)(2).

§ 791.404 Field Office allocation planning.

(a) *General objective.* The allocation planning process should provide for the equitable distribution of available budget authority, consistent with the relative housing needs of each allocation area within the field office jurisdiction.

(b) *Establishing allocation areas.* Allocation areas, consisting of one or more counties or independent cities, shall be established by the field office in accordance with the following criteria:

(1) Each allocation shall be to the smallest practicable area, but of sufficient size so that at least three eligible entities are viable competitors for funds in the allocation area, and so that all applicable statutory requirements can be met. (It is expected that in many instances individual MSAs will be established as metropolitan allocation areas.) For the section 202 program for the elderly, the allocation area must include sufficient units to promote a meaningful competition among disparate types of providers of such housing (e.g., local as well as national sponsors, minority as well as non-minority sponsors). The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act.

(2) Each allocation area shall also be of sufficient size, in terms of population and housing need, that the amount of budget authority being allocated to the area will support at least one feasible program or project.

(3) In establishing allocation areas, counties and independent cities within MSAs should not be combined with counties that are not in MSAs.

(c) *Determining the amount of budget authority.* Where the field office establishes more than one allocation area, it shall determine the amount of budget authority to be allocated to each allocation area, based upon a housing needs percentage which represents the needs of that area relative to the needs of the metropolitan or nonmetropolitan portion of the field office jurisdiction, whichever is appropriate. For each program, a composite housing needs percentage developed under § 791.402

for those counties and independent cities comprising the allocation area shall be aggregated into allocation area totals.

(d) *Planning for the allocation.* The field office should develop an allocation plan which reflects the amount of budget authority determined for each allocation area in paragraph (c). The plan should include a map or maps clearly showing the allocation areas within the field office jurisdiction. The relative share of budget authority by individual program type need not be the same for each allocation area, so long as the total amount of budget authority made available to the allocation area is not significantly reduced.

§ 791.405 Reallocations of budget authority.

(a) The field office shall make every reasonable effort to use the budget authority made available for each allocation area within such area. If the Program Office Director determines that not all of the budget authority allocated for a particular allocation area is likely to be used during the fiscal year, the remaining authority may be allocated to other allocation areas where it is likely to be used during that fiscal year.

(b) If the Assistant Secretary determines that not all of the budget authority allocated to a field office is likely to be used during the fiscal year, the remaining authority may be reallocated to another field office where it is likely to be used during that fiscal year.

(c) Any reallocations of budget authority among allocation areas or field offices shall be consistent with the assignment of budget authority for the specific program type and established set-asides.

(d) Notwithstanding the requirements of paragraphs (a) through (c) of this

section, budget authority shall not be reallocated for use in another State unless the Program Office Director or the Assistant Secretary has determined that other allocation areas within the same State cannot use the available authority during the fiscal year.

§ 791.406 Competition.

(a) All budget authority allocated pursuant to § 791.403(b)(2) shall be reserved and obligated pursuant to a competition. Any such competition shall be conducted pursuant to specific criteria for the selection of recipients of assistance. These criteria shall be contained in a regulation promulgated after notice and public comment or, to the extent authorized by law, a notice published in the Federal Register.

(b) This section shall not apply to assistance referred to in §§ 791.403(b)(1) and 791.407.

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

(1) Unforeseen housing needs resulting from natural and other disasters, including hurricanes, tornadoes, storms, high water, wind driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides, mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in low-income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the field office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the Federal Register, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year in the program under § 791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to § 791.403(b)(2).

Dated: March 7, 1996.

Henry G. Cisneros,
Secretary.

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