

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 583

[Docket No. FR-4616-P-01; HUD-2004-0001]

RIN 2506-AC07

Supportive Housing Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD's Supportive Housing Program regulations. The regulations would be updated to improve the implementation of existing program requirements in conformance with recent statutory changes. The Department believes that the changes made by this proposed rule will promote a better understanding of the Supportive Housing Program by program participants and allow for the full implementation of the Stewart B. McKinney-Vento Homeless Act.

DATES: *Comment Due Date:* September 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying weekdays between 8 a.m. and 5 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

Interested persons are also invited to submit comments electronically through <http://www.epa.gov/fedocket>. Commenters should follow the electronic submission instructions given on that site. A copy of the public comments submitted, and if applicable, other supporting documents will be available for viewing at that time.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone 202 708-1226 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 583 implement the 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-Vento Homeless Assistance Act of 1987 (42 U.S.C. 11381 *et seq.*) (the McKinney-Vento Act). Under the program, HUD provides grants to local governments or nonprofit entities for (1) acquisition, rehabilitation, new construction, and leasing of supportive housing, (2) operating costs in connection with supportive housing, and (3) supportive services provided to homeless persons. Supportive services may include services such as child care, employment assistance, outpatient health services, nutritional counseling, assistance in finding permanent housing, providing security arrangements necessary for the protection of residents and homeless persons using a facility, and providing assistance in obtaining assistance under other federal, state, and local programs.

The current regulations require revision because statutory changes have occurred subsequent to the last regulatory revision in 1996. For example, the current regulations are written to apply to Indian tribes. However, the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) recognized the right of Native American tribes to self-governance by providing for a general federal grant to tribes, which the tribes then can use for various assisted housing programs. As a consequence, NAHASDA eliminated tribal participation in some assistance programs, including programs under the McKinney-Vento Act.

In addition, the Fiscal Year (FY) 1999, 2000, and 2001 HUD appropriations acts (Pub. L. 105-276, approved October 21, 1998; Pub. L. 106-74, approved October 20, 1999; and Pub. L. 106-377, approved October 27, 2000, respectively) added requirements for local matching and permanent housing as a prerequisite for obtaining McKinney-Vento Act funds and modified the requirements regarding environmental reviews. The FY2001 appropriation for the Supportive Housing Program provides that "not less than 30 percent of these funds shall be used for permanent housing, and all funding for services must be matched by 25 percent in funding for each grantee." As a result, in order to obtain funding, grantees must be prepared to meet these requirements.

Current HUD regulations allow grantees in the Supportive Housing Program to use their grant funds to purchase HUD-held, single family properties leased by the grantee for use as facilities for the homeless (see 24 CFR 583.100(b)(5) and 24 CFR part 291). However, HUD suspended leasing under this component of the Supportive Housing Program and has continued this suspension to the present. HUD does not plan currently to reinstate this aspect of the supportive housing program.

In 1992, the Safe Havens for Homeless Individuals Demonstration Program (Safe Havens Program) was enacted into law. (See 42 U.S.C. 11391-11399.) The purpose of the Safe Havens Program is to provide through grants to local nonprofit organizations and governmental entities extremely low-cost housing and supportive services to eligible homeless persons, that is, those who are mentally ill, reside in places not designed for human habitation, and are unwilling to participate in supportive services or mental health counseling. The types of supportive services eligible in the Safe Havens Program are those known as "low demand services and referrals" and include health care, mental health and substance abuse services, medication management, education, counseling, job training, and assistance in obtaining entitlement benefits and other supportive services. Although HUD funded Safe Havens Program activities through notices of funding availability (NOFAs), the program was not referenced specifically in the Supportive Housing Program regulations.

II. This Proposed Rule

This proposed rule would amend 24 CFR part 583 to implement the statutory authority discussed above, as well as to make other changes designed to improve the program.

Matching requirement. The Supportive Housing Program statute and current regulations require grant recipients to match the funds provided by HUD for acquisition, rehabilitation, and new construction of a facility to provide supportive housing or supportive services. (See 42 U.S.C. 11386(e) and 24 CFR 583.145.) In addition to this matching requirement, recent appropriations acts have imposed a grant recipient matching requirement for all supportive services, requiring grantees to pay 25 percent of such costs. (See Pub. L. 105-276, 112 Stat. 2479, approved October 21, 1998; Pub. L. 106-74, 113 Stat. 1063, approved October 20, 1999; and Pub. L. 106-377, 114 Stat.

1441, approved October 27, 2000.) Furthermore, the McKinney-Vento Act provides that grants for annual operating costs may not exceed 75 percent of the annual operating costs for supportive housing.

Consistent with the recent appropriations acts, HUD proposes to revise 24 CFR 583.145 to implement all these statutory provisions. Accordingly, the proposed rule would revise § 583.145 to incorporate the requirement that the grantee pay for the portion of the assistance for supportive services and operating costs not provided by HUD. The proposed rule retains § 583.145(a) of the current regulations, implementing statutory requirements for matching grants for acquisition, rehabilitation, and new construction. The regulations on grants for supportive services and operating costs, §§ 583.120 and 583.125, have been revised to cross-reference the new requirement in § 583.145.

Term of grant. In order to make the program more flexible, this rule proposes to eliminate 24 CFR 583.130. That section currently provides that HUD grant terms for leasing, supportive services, and operating costs not exceed five operating years. Instead, under the proposed rule, HUD grant agreements would be flexible as to operating term for such purposes, as long as the purposes are in compliance with the regulations under 24 CFR part 583.

With respect to funding to construct, rehabilitate, or acquire structures, the rule retains the requirement of 24 CFR 583.305 (proposed § 583.355). This section requires that grantees receiving grants for new construction for supportive housing, or for acquisition or rehabilitation of buildings to provide supportive housing or supportive services, agree to continue to operate the supportive housing or supportive services for 20 years after the date of initial occupancy or initial provision of services. This period could be shortened upon a determination by HUD that the structure was no longer needed for supportive housing or supportive services and HUD's approval of its conversion for another use for the direct benefit of low-income persons. The proposed rule strengthens the 20-year commitment by requiring the grantee to record a deed restriction or covenant running with the land embodying this restriction, as well as a lien against the property in favor of HUD to secure HUD's interest in the repayment of the grant if the facility is not used for its intended purpose for the prescribed time.

Relationship between grantee and other project sponsor. This proposed

rule would include a new section to specify the relationship between the supportive housing grantee or other project sponsor, and the residents, a matter on which the current regulations are silent. Proposed 24 CFR 583.325 provides that project sponsors not be required to enter into a landlord-tenant relationship with the residents, but may enter into an "occupancy agreement" containing a procedure for termination of residency. The minimum requirements for such a procedure are written notice containing a clear statement of reasons for the termination, an opportunity for review of the termination decision before a person other than the person or persons who made the original decision, and prompt written notice to the resident of the final decision to terminate the occupancy agreement.

The proposed rule would add a provision to clarify the administration of grants where the grantee is not the project sponsor, but rather contracts with another entity to operate the supportive housing project. In such a case, proposed 24 CFR 583.400 would provide that the grantee and project sponsor enter into a written agreement that contains the following basic elements: A statement of work; an agreement that the project sponsor follow 24 CFR part 583; an agreement as to records and reports that the project sponsor must maintain and prepare; the procedures and duties incumbent on the grantee; a requirement that the grantee monitor the goals and performance of the project sponsor; and a provision for suspension or termination of the project sponsor, if the sponsor materially fails to comply with any term of the grant. In addition, the grant agreement must incorporate the provisions of proposed § 583.355. New § 583.355 would, in the case of a grant for acquisition, new construction, or rehabilitation of a facility where there is a 20-year commitment, provide a schedule for the repayment of unused grant amounts and would prevent undue benefit to the grantee in the event the project is sold. If appropriate, the grant agreement also would incorporate the provisions of new § 583.155. Section 583.155 (§ 583.150(b) of the current regulations) would govern grants to primarily religious organizations. Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-profit Organizations," specifies allowable and unallowable costs.

Safe Havens Program. The proposed rule incorporates the Safe Havens Program as an activity for which recipients may use grant funds. (See 42 U.S.C. 11391-11399.) The Safe Havens

Program is designed to reach the population of homeless persons who are unwilling or unable to receive mental health treatment or other supportive services. While the Safe Havens Program, enacted in 1992, was not previously incorporated into the Supportive Housing Program regulations, homeless assistance funds for this purpose have been made available through the NOFA process. The proposed rule adds safe havens as a component under proposed 24 CFR 583.3 (former § 583.1(b)), and a definition for safe havens in § 583.5. The rule also adds safe havens as a permissible use of grant assistance under § 583.100(c).

Program Income and Grant Closeout. The proposed rule adds two sections to clarify (1) disposition of program income, and (2) grant closeout procedures. Proposed § 583.420 specifies that program income received prior to closeout of the grant generally must be treated as supportive housing funds, except for occupancy charges, which are governed by § 583.330(b). Section 583.330(b) allows occupancy fees to be used to assist residents of transitional housing to move to permanent housing. Program income received after grant closeout need not be so treated except where the project involved is renewed with a new grant, in which case the program income is treated as income of the renewed project, in accordance with § 583.420.

Proposed § 583.425 deals with grant closeout procedures. The criteria for closeout are based on usage of the grant funds as well as on completion of the activities for which the grant was provided. Section 583.425 also specifies the actions to be taken after the closeout, including grantee submission of all financial, final performance, and other reports as required within 90 days, deobligation of any unused grant amounts, which are returned to HUD, and repayment to HUD of disallowed costs, if any. Section 583.425 further provides that HUD will prepare a closeout agreement regarding any final obligations remaining after the grant closeout (e.g., identification of closeout costs eligible to be paid with supportive housing funds).

Proposed § 583.505 deals with nondiscrimination and equal opportunity requirements. Currently the regulations, at § 583.325, recite that projects may serve designated populations of disabled persons without further explanation. Section 583.505 clarifies the rights of persons with disabilities to be assisted in a particular project. In very limited circumstances, a project may lawfully establish a

preference for serving a specified type of disability. (See 24 CFR 8.4(b)(iv).) This may be done only if the preference was proposed in the initial application to HUD, the project will provide services appropriate for the intended population, and if excluding other persons is necessary to serve the intended population as effectively as others are served elsewhere. HUD will determine the necessity on a case-by-case basis, from information provided in the application. HUD anticipates that, in many cases, addiction treatment projects will be able to meet the necessity test. In projects with an established preference, the provider will be able to hold space open in the project for persons meeting the established preference.

Projects that either do not seek or do not receive approval to establish a preference for a type of disability may still advertise themselves as offering services for a particular type of disability, which the rule calls "targeted" projects. If there is space available in a targeted project, it may not be held open for someone with the targeted disability. HUD expects that a person with a different type of disability who wishes to participate in the services will be offered the available space.

Notwithstanding the establishment of these two categories of projects, HUD expects the majority of projects to serve persons with all types of disabilities and remind grantees and project sponsors that the McKinney-Vento Act requires them, to the extent practicable, to allow project participants to design the services provided by the project.

Additionally, § 583.505(b)(2) is updated to include reference to the provisions of Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, issued by the president on December 12, 2002 (67 FR 77141, December 16, 2002).

Miscellaneous additional proposed changes. A number of additional changes are proposed to take into consideration new legal developments, such as removing references to Indian tribes, which are now covered by grants under (1) NAHASDA rather than under the Supportive Housing Program, and (2) HUD-owned single family housing, since such housing is not currently being made available for supportive housing. In addition, a number of sections are being amended for clarification or organizational purposes. For example, §§ 583.105(b) and 583.110(b) are proposed to be revised to clarify that the funding limitations in those sections apply to each structure to be acquired, rehabilitated, or built.

Other sections proposed to be revised or amended for clarification or organizational purposes are the following:

Section 583.105 clarifies that rehabilitation funds cannot be used on leased properties.

Section 583.120 would be revised to reflect that only a portion of the supportive services costs may be funded under the Supportive Housing Program.

Section 583.125(b) has a definition of "operating costs" that differs from the definition of the same term in § 583.5. This rule proposes to amend

§ 583.125(b) to cross-reference the definition of operating costs in § 583.5.

Section 583.140, which addresses technical assistance, is revised to update and clarify this section.

Section 583.150 is revised to change the title from "limitations on use of assistance" to "maintenance of effort".

Section 583.150(b) is redesignated as a new section, § 583.155, but makes no changes to the regulatory text. The full text of what is now being redesignated as § 583.155 was published in the final rule of September 30, 2003 (68 FR 56396).

Section 583.230, captioned "Environmental Review," is changed to show that for FY2001 and later, grants provided to private nonprofit organizations and limited or special purpose governmental agencies, including housing agencies under the Supportive Housing Program, are governed by section 443 of the McKinney-Vento Homeless Assistance Act as amended by the FY2001 HUD Appropriations Act (Pub. L. 106-377, approved October 27, 2000). The FY2001 Appropriations Act provides for the assumption of environmental responsibilities by a state or unit of local government, regardless of whether or not it is the recipient for such grants for FY2001 and later.

New § 583.210 (former § 583.235) is amended to remove references to non-competitive renewal grants since these grants are now subject to the competitive award process.

New § 583.300 is amended to add a paragraph (d) on participant control of site.

Section 583.505 identifies the eligibility of projects serving disabled persons and allows for targeting and establishing preferences for certain subpopulations.

Subpart D is amended to change its title to "Project Implementation," which more accurately identifies the subject of the subpart.

The following existing sections are proposed to be redesignated for organizational purposes, in some cases

moving subsections, which were substantively separate topics, into their own sections, making the rule easier to read:

Section 583.150(b) is redesignated as § 583.155 (the section title also is changed).

Section 583.155, regarding the consolidated plan, is redesignated as § 583.220, to conform to redesignations of other sections (also amended to remove references to the former comprehensive housing affordability strategy (CHAS), which has been replaced by the consolidated plan).

Section 583.235 is redesignated as § 583.210 to conform to the redesignation above.

Section 583.300 is redesignated as § 583.305 and the section title is changed to "Property Standards," with each topic broken out into a separate section.

Section 583.300(c), which addresses meals, is redesignated as § 583.316.

Section 583.320, which addresses site control, is redesignated as § 583.300.

All sections in subpart E are redesignated to accommodate new sections.

Sections 583.310, 583.325, and 583.330 are reorganized into a new subpart F, "Other Program Requirements," for easier reference.

The proposed rule removes § 583.130, regarding commitment of grant amounts for leasing, supportive services and operating costs, because grant terms are now flexible. The rule adds the following new definitions in § 583.5 for "project sponsor," "program income," and "safe haven" to reflect how the Supportive Housing Program has changed over the years. The rule also clarifies the definitions of "homeless persons," "operating costs," "date of initial occupancy," "transitional housing," and "permanent housing."

III. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The information collection requirements contained in 24 CFR part 583 were approved previously by OMB under section 3507(d) of the Paperwork Reduction Act of 1995, and assigned OMB control number 2506-0145. This rule adds two new collections of information requirements at §§ 583.420 and 583.425, which have been submitted to OMB for review under section 3507(d)). These new collection

of information requirements are not effective until such time as OMB grants its approval. The approval numbers will be published in the **Federal Register** by

separate notice. Information on these requirements is provided as follows:

Estimates of the total reporting and recordkeeping burden that will result

from the collection of information are as follows:

REPORTING AND RECORDKEEPING BURDEN

Section No. and procedure	No. of persons affected	No. of minutes per procedure	Burden hours
24 CFR 583.420, recording program income	Dependent on grantee, but average 20	15	5
24 CFR 583.425, Grantee's annual progress report.	Dependent on grantee, but average 20	60	20

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must be received within sixty days from the date of publication of this rule. Comments must refer to the rule by name and docket number (FR-4616) and must be sent to:

Mark D. Menchik, HUD Desk Officer,
Office of Management and Budget,
New Executive Office Building,
Washington, DC 20503
and

Sheila Jones, Reports Liaison Officer,
Office of the Assistant Secretary for
Community Planning and
Development, Department of Housing
& Urban Development, 451 7th Street,
SW., Room 7232, Washington, DC
20410-7000.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-5000.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would update existing regulations of a program that provides grants for State and local governments and nonprofit corporations to operate supportive housing for homeless persons. These revisions will not result in a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, nor on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.235.

List of Subjects in 24 CFR Part 583

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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 583 as follows:

PART 583—SUPPORTIVE HOUSING PROGRAM

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

Authority: 42 U.S.C. 3535(d), 11381-11389.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.

583.1 Purpose and scope.

583.3 Components.

583.5 Definitions.

§ 583.1 Purpose and scope.

The Supportive Housing Program is authorized by title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381-11389) (McKinney-Vento Act). The Supportive Housing Program is designed to promote the development of supportive housing and supportive services for homeless persons to enable them to live as independently as possible.

§ 583.3 Components.

Funds under this part may be used for:

(a) Transitional housing to facilitate the movement of homeless individuals and families to permanent housing;

(b) Permanent housing that provides long-term housing for homeless persons with disabilities;

(c) Housing that is, or is part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless persons;

(d) Supportive services for homeless persons not provided in conjunction with supportive housing; or

(e) Safe havens as defined in § 583.5.

§ 583.5 Definitions.

As used in this part:

Applicant means a State, metropolitan city, urban county, governmental entity, private nonprofit organization, or community mental health association that is a public nonprofit organization that is eligible to receive and submits an

application for assistance under this part. 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. If the assistance is for an existing homeless facility, the date of initial occupancy is the date that housing or 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. This definition applies only to projects funded under this part that do not provide supportive housing.

Disability means:

(1) A disability as defined in section 223 of the Social Security Act (42 U.S.C. 423);

(2) Having a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes an individual's ability to live independently; and

(iii) Is of such a nature that such a disability could be improved by more suitable housing conditions;

(3) A developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 15002); or

(4) The disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiological agent for acquired immunodeficiency syndrome. This paragraph shall not be construed to limit eligibility under paragraphs (1), (2), and (3) of this definition or the provisions referred to in those paragraphs.

Homeless person means:

(1) An individual or family who resides in places not meant for human habitation, such as cars, parks, streets, sidewalks, and abandoned buildings;

(2) An individual or family who resides in an emergency shelter;

(3) An individual or family who resides in transitional or supportive housing for homeless persons who previously resided in places categorized

in paragraphs (1) and (2) of this definition;

(4) An individual who resides in any of the places listed in paragraphs (1) through (3) of this definition but is spending up to 30 consecutive days in a hospital or other institution;

(5) An individual or family who is being evicted within the week from a private dwelling unit and no subsequent residence has been identified and the individual or family lacks the resources and support networks needed to obtain housing upon eviction; or

(6) An individual who is being discharged within the week from an institution in which the individual has been a resident for more than 30 consecutive days and no subsequent residence has been identified and the individual lacks the resources and support networks needed to obtain housing upon discharge.

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 means expenses incurred by a grantee operating supportive housing with respect to:

(1) Day-to-day management (including staff salaries), maintenance, repair, and security for the supportive housing;

(2) Utilities, insurance, fuel, furnishings, and equipment for the supportive housing;

(3) Relocation assistance under § 583.500, including payments and services; and

(4) Other costs associated with operating the supportive housing.

Permanent housing for homeless persons with disabilities means community-based housing for homeless persons with disabilities that provides long-term housing and supportive services for not more than:

(1) Eight such persons in a single-family structure or contiguous single-family structures;

(2) Sixteen such persons in a multifamily structure, but only if not more than 20 percent of the units are designated for such persons; or

(3) More than 16 persons, if the applicant demonstrates that local market conditions dictate the development of a large project and such development will achieve the neighborhood integration objectives of

the program within the context of the affected community.

Private nonprofit organization means an organization:

(1) No part of the net earnings of which may inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

Program income means gross income received by the grantee or project sponsor directly generated from the use of Supportive Housing Program funds.

Project, except as provided in § 583.500(h), means a supportive services only project or a structure or structures (or portion of such structure or structures) that is acquired, rehabilitated, constructed, or leased with assistance provided under this part or to which assistance for operating costs or supportive services are provided under this part. A project may provide supportive housing or supportive services in single room occupancy dwelling units that do not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing or in projects containing some or all such dwelling units. A project may be for supportive housing or supportive services only. (Supportive services only projects are defined separately.)

Project sponsor means the organization that is responsible for carrying out the daily operation of the project, if the organization is an entity other than the grantee. A project sponsor is a State, metropolitan city, urban county, governmental entity, private nonprofit organization, or community mental health association that is a public nonprofit organization.

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.

Safe haven means supportive housing in a structure, or clearly identifiable portion of a structure, that meets the following criteria: It—

(1) Serves hard-to-reach homeless persons who have a severe mental illness, are on the streets, and have been

unable or unwilling to receive supportive services;

(2) Provides 24-hour residence for an unspecified duration;

(3) Provides private or semi-private accommodations; and

(4) Has overnight occupancy limited to 25 persons. A safe haven may also provide supportive services on a drop-in basis to eligible persons who are not residents.

State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Supportive housing (1) Supportive housing means housing in conjunction with which supportive services are provided for homeless persons if the housing:

(i) Is transitional housing;

(ii) Is permanent housing for homeless persons with disabilities;

(iii) Is a safe haven; or

(iv) Is or is a part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless persons.

(2) In a supportive housing project, a project sponsor provides housing in one or more structures and delivers services, or arranges with other organizations to deliver services, to the residents.

Supportive services means services designed to address the special needs of the homeless persons to be served by the project. Supportive services include, but are not limited to, providing:

(1) Child care services for homeless families;

(2) Employment assistance;

(3) Outpatient health services, food, and case management;

(4) Assistance in obtaining permanent housing, employment counseling, and nutritional counseling;

(5) Assistance in obtaining other Federal, State, and local assistance available including mental health benefits, employment counseling, veterans' benefits, medical assistance, but not including major medical equipment, and income support assistance, such as supplemental security income benefits, general assistance, and food stamps; and

(6) Other services as appropriate.

Supportive services only project means a project in which a sponsor delivers services to homeless persons, but the sponsor does not provide housing to the same persons receiving the services. Supportive services can be delivered from a structure or they can be delivered independent of a structure (e.g., by street outreach).

Technical assistance means the facilitating of skills and knowledge in

planning, developing, and administering activities under the Supportive Housing Program for entities that may need, but do not possess, such skills and knowledge.

Transitional housing means housing designed for homeless persons to reside in for at least three months that will facilitate movement to permanent housing within 24 months or within a longer period as described in § 583.325. Emergency shelters are not considered transitional housing.

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.

3. Sections 583.100, 583.105, 583.110, 583.115, 583.120, and 583.125 are revised to read as follows:

§ 583.100 Types and uses of assistance.

(a) *Grant Assistance.* Assistance in the form of grants is available for acquisition of structures, rehabilitation of structures, new construction for supportive housing, leasing, operating costs for supportive housing, and supportive services, as described in §§ 583.105 through 583.125 of this part.

(b) *Beneficiaries of grant assistance.* Grants must be used to assist projects, including supportive services only projects, which provide assistance to homeless persons only.

(c) *Uses of grant assistance.* Grant assistance may be used to:

(1) Establish new supportive housing facilities or new facilities to provide supportive services;

(2) Expand existing facilities in order to increase the number of homeless persons served;

(3) Bring existing facilities up to a level that meets State and local government health and safety standards;

(4) Provide additional supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(5) Continue funding supportive housing where the grantee has received funding under this part for leasing, supportive services, or operating costs;

(6) Construct, rehabilitate, acquire, lease, or operate a structure for use as a safe haven for supportive housing; or

(7) Replace the loss of nonrenewable funding from private, Federal, or other sources except from the State or local government. Grants may not be used to replace State or local government funds previously used, or designated for use, to assist homeless persons (except as provided in § 583.150).

(d) *Structures used for multiple purposes.* Structures used to provide

supportive housing or supportive services may also be used for other purposes, except that assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services.

(e) *Technical assistance.* HUD may offer technical assistance, as described in § 583.140.

§ 583.105 Grants for acquisition and rehabilitation.

(a) *Use.* HUD may grant funds to:

(1) Pay a portion of the cost of the acquisition of structures and real property for use in the provision of supportive housing (other than emergency shelter) or supportive services, including the repayment of any outstanding debt on a loan made to purchase property that has not been used previously as supportive housing or for supportive services; or

(2) Pay a portion of the cost of rehabilitation of structures to provide supportive housing or supportive services, including cost-effective energy measures and bringing an existing structure to a level that meets State and local government health and safety standards.

(b) *Amount.* Except as provided in paragraph (c) of this section, the maximum grant available for acquisition, rehabilitation, or acquisition and rehabilitation is the lower of:

(1) \$200,000 per structure; or

(2) The total cost of the acquisition, rehabilitation, or acquisition and rehabilitation minus the grantee's contribution toward these costs.

(c) *Increased amounts.* In areas determined by HUD to have high acquisition and rehabilitation costs, grants of not more than \$400,000 per structure may be available.

(d) *Limitation.* Rehabilitation Funds shall not be used to rehabilitate leased properties.

§ 583.110 Grants for new construction.

(a) *Use.* HUD may grant funds to pay a portion of the cost of new construction, including cost-effective energy measures, and the cost of land associated with that construction, for use in the provision of supportive housing. If the grant funds are used for new construction, the grantee must demonstrate that the costs associated with new construction are substantially less than the costs associated with rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs associated with

rehabilitation or new construction may include the cost of real property acquisition.

(b) *Amount.* The maximum grant available for new construction is the lower of:

- (1) \$400,000 per structure; or
- (2) The total cost of the new construction, including the cost of land associated with that construction, minus the grantee's contribution toward the cost of same.

§ 583.115 Grants for leasing.

(a) *General.* HUD may provide grants to pay for the actual costs of leasing a structure or structures (including security deposits), or portions thereof, used to provide supportive housing or supportive services. Under no circumstances may leasing funds be used to lease units or structures owned by the project sponsor, the grantee, their parent organization, a partnership of which the sponsor or grantee is a member, or any other related organization.

(b) *Leasing structures.* Where grants are used to pay rent for all or part of a structure, the rent paid must be reasonable in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable space.

(c) *Leasing individual units.* Where grants are used to pay rent for an individual housing unit, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rent may not exceed rents currently being charged by the same owner for comparable unassisted units, and the portion of rent paid with grant funds may not exceed the HUD-determined fair market rent. Grantees may use grant funds in an amount up to one month's rent to pay the landlord for any damages by homeless participants to a leased unit.

§ 583.120 Grants for supportive services costs.

(a) *General.* HUD may provide grants to pay a portion (as described in § 583.145(b)) of the actual costs of supportive services for homeless persons. Homeless persons receiving supportive services need not be residents of supportive housing. All or part of the supportive services may be provided directly by the grantee or project sponsor or by arrangement with public or private service providers.

(b) *Supportive services costs.* Costs associated with providing supportive

services include salaries paid to providers of supportive services and any other cost directly associated with providing such services. Supportive services costs also include the costs of services provided to former residents of supportive housing to assist in their adjustment to independent living. Such services may be provided for up to six months after the former residents leave the supportive housing facility.

§ 583.125 Grants for operating costs.

(a) *General.* HUD may provide grants to pay a portion (as described in § 583.145(c)) of the actual operating costs of supportive housing.

(b) *Operating costs.* Operating costs are as defined in § 583.5.

§ 583.130 [Removed]

4. Section 583.130 is removed.

5. Sections 583.135, 583.140, and 583.145 are revised to read as follows:

§ 583.135 Administrative costs.

(a) *General.* Up to five percent of any grant awarded under this part may be used for the purpose of paying costs of administering the assistance.

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

§ 583.140 Technical assistance.

(a) *General.* HUD may set aside funds annually to provide technical assistance either directly by HUD staff or indirectly through third-party providers. This technical assistance is for the purpose of promoting the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

(b) *Uses of technical assistance.* HUD may use these funds to provide technical assistance to prospective applicants, applicants, grantees, project sponsors, or other providers of supportive housing or supportive services for homeless persons.

(c) *Selection of providers.* As HUD determines the need, HUD may advertise and competitively select providers to deliver technical

assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance.

§ 583.145 Matching requirements.

(a) *Grantee share of acquisition, rehabilitation, and new construction costs.* The grantee must match the funds provided by HUD for grants for acquisition, rehabilitation, and new construction with an equal amount of funds from other sources for these activities.

(b) *Grantee share of supportive services costs.* Assistance for supportive services will be available for 80 percent of the total supportive service costs. The grantee must contribute 20 percent of the total supportive services costs. At the end of each operating year, the grantee must demonstrate that it has met its share of the costs for that year. While the grantee's contribution equals 20 percent of the total supportive services costs, it simultaneously represents 25 percent of the HUD Supportive Housing Program assistance requested for supportive services.

(c) *Grantee share of operating costs.* Assistance for operating costs will be available for up to 75 percent of the total operating costs. The grantee must contribute 25 percent of the total operating costs. At the end of each operating year, the grantee must demonstrate that it has met its share of the costs for that year.

(d) *Cash resources.* The matching funds must be cash resources provided to the project by one or more of the following: The grantee, the Federal government, State government, local government, or private resources.

§ 583.155 [Removed]

6. Section 583.155 is removed.

7. Section 583.150 is amended as follows:

a. Revise the section heading to read as set forth below;

b. Remove the paragraph (a) designation and amend the paragraph by adding to the end of the paragraph the words "except when State or local government funds were used as interim or emergency funding to continue a project which was unsuccessful in seeking renewal."

c. Remove paragraph (c);

d. Remove the heading of paragraph (b) and redesignate paragraph (b) as new § 583.155;

e. Add a section heading to new § 583.155 to read as set forth below; and

f. In § 583.155, former paragraphs (b)(1) through (6) are redesignated as paragraphs (a) through (f).

§ 583.150 Maintenance of effort.

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§ 583.155 Grants involving primarily religious organizations.

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8. Revise subparts C, D, E, and F to read as follows:

Subpart C—Application and Grant Award Process

Sec.

583.200 Application and grant award.

583.210 Renewal grants.

583.220 Consolidated plan.

583.230 Environmental review.

§ 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-Vento Act (42 U.S.C. 11386) and the guidelines, selection criteria, and procedures published in the NOFA.

§ 583.210 Renewal grants.

(a) *General.* Grants made under this part, and grants made under subtitles C and D (Supportive Housing Demonstration and Supplemental Assistance for Facilities to Assist the Homeless (SAFAH), respectively) of the McKinney-Vento Act as in effect before October 28, 1992, may be renewed on a competitive or noncompetitive basis to continue ongoing leasing, operations, and supportive services for additional years beyond the initial funding period. To be considered for renewal funding for leasing, operating costs, or supportive services, recipients must submit a request for such funding in the form specified by HUD, must meet the requirements of this part, and must submit requests within the time period established by HUD.

(b) *Assistance available.* Assistance during each year of the renewal period, subject to maintenance of effort requirements under § 583.100(c)(6) and § 583.150 of this part, may be for up to the average annual amount awarded for leasing, operations, and supportive services in the previous grant.

(c) *HUD review.* HUD will review and screen applicants in accordance with the requirements of section 426 of the McKinney-Vento Act (42 U.S.C. 11386) and the guidelines, selection criteria, and procedures published in the NOFA.

(d) *Term of renewal grant.* The grant term may be up to three years.

§ 583.220 Consolidated plan.

(a) *Applicants that are States or units of general local government.* An applicant must have a HUD-approved complete or abbreviated consolidated plan, in accordance with 24 CFR part 91, and must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Applicants that are not States or units of general local government.* An applicant must submit a certification by the jurisdiction in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the State, in accordance with the consistency certification provisions of the consolidated plan regulations, 24 CFR part 91, subpart F.

(c) *The Insular Areas of Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.* Notwithstanding any other provision of this section, these entities are not required to have a consolidated plan or to make consolidated plan certifications. (For a project that will be located on a reservation of an Indian tribe, a consolidated plan certification will not be required.)

(d) *Timing of consolidated plan certification submissions.* Unless otherwise set forth in the NOFA, the required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

§ 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. Activities under this part are subject to HUD's environmental regulations in 24 CFR part 58, except that HUD will perform an environmental review in accordance with 24 CFR part 50 prior to its approval of any conditionally selected applications for fiscal year 2000 and prior years that were received directly from private nonprofit entities and governmental entities with special or limited purpose powers. For activities under a grant that generally would be subject to review under 24 CFR part 58,

HUD may make a finding in accordance with 24 CFR 58.11 and may itself perform the environmental review under the provisions of 24 CFR part 50. Among other reasons, this action may be initiated if the recipient objects in writing to the responsible entity performing the review under 24 CFR part 58. Irrespective of whether the responsible entity in accordance with 24 CFR part 58 (or HUD in accordance with 24 CFR part 50) performs the environmental review, the recipient shall supply all available, relevant information necessary for the responsible entity (or HUD, if applicable) to perform for each property any environmental review required by this part. The recipient also shall carry out all mitigating measures required by the responsible entity (or HUD, if applicable) or select alternate eligible property. HUD may eliminate from consideration any application that would require an environmental impact statement (EIS).

(b) The recipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until the responsible entity (as defined in 24 CFR 58.2) has completed the environmental review procedures required by 24 CFR part 58 and the environmental certification and request for release of funds (RROF) have been approved or HUD has performed an environmental review under 24 CFR part 50 and the recipient has received HUD approval of the property. 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 recipient submits and HUD approves its RROF (where such submission is required).

Subpart D—Project Implementation

Sec.

583.300 Site control.

583.305 Property standards.

583.310 Ongoing assessment of supportive services.

583.315 Residential supervision.

583.316 Provision for meals.

583.320 Participation of homeless persons in decisionmaking.

583.325 Relationship between grantee and supportive housing residents.

583.330 Occupancy charge.

583.335 Limitation of stay in transitional housing.

583.340 Confidentiality.

583.345 Records and reports.

583.350 Annual assurances.

583.355 Period of commitment; repayment of grants; prevention of undue benefits.

§ 583.300 Site control.

(a) *Site control.* Where grant funds will be used for acquisition, rehabilitation, or new construction to provide supportive housing or supportive services, or where grant funds will be used for operating costs of supportive housing, or where grant funds will be used to provide supportive services except where grantee and project sponsor will provide services at sites not operated by the grantee or project sponsor, the grantee or project sponsor must demonstrate site control before HUD will execute a grant agreement (e.g., through a deed or other proof of ownership, executed lease agreement, executed contract of sale, executed option to purchase or lease). For projects financed by use of Low Income Housing Tax Credits, site control may be demonstrated by a limited partnership wherein the grantee or project sponsor is the general partner or owns a controlling interest in the general partner. If site control is not demonstrated within one year after initial notification of the award of assistance under this part, the grant will be deobligated as provided in paragraph (c) of this section.

(b) *Site change.* (1) A grantee or project sponsor may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements under this part for suitable sites.

(2) If the acquisition, rehabilitation, acquisition and rehabilitation, or new construction costs for the substitute site are greater than the amount of the grant awarded for the site specified in the application, the grantee or project sponsor must provide for all additional costs. If the grantee or project sponsor is unable to demonstrate to HUD that it is able to provide for the difference in costs, HUD may deobligate the award of assistance.

(c) *Failure to obtain site control within one year.* HUD will recapture or deobligate any award for assistance under this part if the grantee or project sponsor is not in control of a suitable site before the expiration of one year after initial notification of an award.

(d) *Participant control of site.* The site control requirement in paragraph (a) of this section does not apply where a project assists homeless families or individuals in obtaining a lease (which may include assistance with rent payments and receiving supportive services), after which time the family or

individual remains in the same housing without further assistance under this part. Such projects may not receive assistance for acquisition, rehabilitation, or new construction.

§ 583.305 Property standards.

(a) *State and local requirements.* Each grantee or project sponsor under this part must provide housing or services that are in compliance with all applicable State and local housing codes, licensing requirements, and any other requirement in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the housing or services.

(b) *Habitability standards.* Except for such variations as are proposed by the grantee and approved by HUD, supportive housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as to protect the residents from the elements and not pose any threat to their health or safety.

(2) *Location.* The housing must be capable of being utilized without unauthorized use of other private properties. Structures must provide alternative means of egress in case of fire.

(3) *Space and security.* Each resident must be afforded adequate space and security for himself/herself and his/her belongings. Each resident must be provided an acceptable place to sleep.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating or (as appropriate to the climate) cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(11) *Fire safety.* (i) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by a hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(ii) The public areas of all housing must be equipped with a sufficient number, but no fewer than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

§ 583.310 Ongoing assessment of supportive services.

Each grantee under this part must conduct an ongoing assessment of the supportive services required by program participants, as well as the availability of such services, and make adjustments as appropriate.

§ 583.315 Residential supervision.

Each grantee or project sponsor under this part must provide residential supervision as necessary throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full-or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

§ 583.316 Provision for meals.

Each grantee under this part that provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

§ 583.320 Participation of homeless persons in decisionmaking.

(a) Each grantee or project sponsor must provide for the participation of no fewer than one homeless person or formerly homeless person on the board of directors or equivalent policy-making entity, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a grantee or project sponsor is unable to meet it and presents to HUD and obtains HUD's approval of a plan to consult otherwise

with homeless or formerly homeless persons in considering and making policies and decisions. (See also § 583.525.)

(b) Each grantee or project sponsor 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.

§ 583.325 Relationship between grantee and supportive housing residents.

(a) Grantees or project sponsors using grant funds to provide supportive housing are not required to create a landlord-tenant relationship with residents of that supportive housing. Grantees or project sponsors may require residents to execute an occupancy agreement establishing conditions for residency.

(b) Occupancy agreements shall include a process for termination of participation, which shall, at a minimum, consist of:

(1) Written notice to the participant containing a clear statement of the reasons for termination;

(2) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or subordinate of that person) who made or approved the termination decision; and

(3) Prompt written notice of the final decision to the participant.

§ 583.330 Occupancy charge.

(a) *Calculation of occupancy charge.* Homeless persons residing in supportive housing may be required to pay an occupancy charge in an amount determined by the grantee that may not exceed the highest of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(b) *Use of occupancy charge.* The occupancy charge may be used in the operation of the project or may be reserved, in whole or in part, to assist residents of transitional housing in moving to permanent housing.

(c) *Fees.* In addition to resident rent, residents may be charged reasonable fees for services not paid with grant funds.

§ 583.335 Limitation of stay in transitional housing.

A homeless individual or family is expected to move to permanent housing within 24 months after entering transitional housing. However, the homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in the project longer than 24 months.

§ 583.340 Confidentiality.

Each grantee or project sponsor that provides family violence prevention or treatment services must develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided services and that the address or location of any project assisted will not be made public, except with written authorization of the person or persons responsible for the operation of the project.

§ 583.345 Records and reports.

Each grantee or project sponsor under this part must keep any records and make any reports (including those pertaining to race, ethnicity, gender, and disability status data) that HUD may require within the timeframe specified. At a minimum, this includes an annual progress report.

§ 583.350 Annual assurances.

Grantees or project sponsors that receive assistance restricted to leasing, operating costs, or supportive services costs must provide an annual assurance for each year such assistance is received that the project will be operated for the purpose specified in the application.

§ 583.355 Period of commitment; repayment of grants; prevention of undue benefits.

(a) *Period of commitment and conversion.* All grantees receiving assistance for acquisition, rehabilitation, or new construction must agree to operate the supportive housing or supportive services in accordance with the regulations in this part for a period of at least 20 years from the date of initial occupancy or the date of initial service provision. If HUD determines during the 20-year period that a project

is no longer needed for use as supportive housing or to provide supportive services and approves a different use of the project for the direct benefit of low-income persons pursuant to a request for such use by the grantee, HUD may authorize the grantee to convert the project for such use for the remaining time.

(b) *Repayment of grant.* If the facility is not operated as supportive housing or to provide supportive services for homeless persons for 10 years following the date of initial occupancy or date of initial service provision, HUD shall require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized by HUD under paragraph (a) of this section. If the supportive housing or supportive services facility is used for homeless persons for more than 10 years, the grantee's repayment amount will be reduced by 10 percent for each full year beyond the 10-year period in which the project is used for homeless persons.

(c) *Prevention of undue benefits.* If the assisted structure is sold or otherwise disposed of within the 20-year period, the grantee must comply with any terms or conditions that HUD may prescribe to prevent the grantee from unduly benefiting from the sale or disposition. HUD will not impose any terms or conditions when the sale or disposition results in the subsequent use of the assisted structure for the direct benefit of very low-income persons (below 50 percent of area median) or all the proceeds are used to provide supportive housing meeting the requirements of this part 583.

(d) *Recordation.* Grantees shall be required to execute and file for record a deed restriction, covenant running with the land, or similar provision that will ensure, to HUD's satisfaction, compliance with the twenty-year term of commitment. In addition, grantees shall record a lien against the property, in a form to be prescribed by HUD, to secure HUD's interest in the repayment of the grant.

Subpart E—Administration

Sec.	
583.400	Grant agreement.
583.405	Agreement with project sponsor.
583.410	Program changes.
583.415	Obligation and deobligation of funds.
583.420	Program income.
583.425	Grant closeout procedures.

§ 583.400 Grant agreement.

(a) *General.* The duty to provide supportive housing or supportive

services as described in the application and in accordance with the requirements of this part will be incorporated in a grant agreement executed by HUD and the grantee.

(b) *Enforcement.* HUD will enforce the obligations in the grant agreement through such action as may be appropriate, including requiring repayment of funds that have already been disbursed to the grantee.

§ 583.405 Agreement with project sponsor.

(a) Before disbursing any Supportive Housing Program funds to a project sponsor, the grantee shall sign a written agreement with the project sponsor. The agreement shall remain in effect during the grant period.

(b) At a minimum, the written agreement with the project sponsor shall include the following:

(1) *Statement of work.* The agreement shall contain a description of the project's activities, time schedule, performance measures, program income, and budget, in accordance with the approved application and the Supportive Housing Program regulations. The agreement also shall state the overall goals of the McKinney-Vento Act homeless assistance programs—to help homeless persons achieve residential stability, increase their skill levels or incomes, and obtain greater self-determination.

(2) *Agreement to follow part 583.* The agreement shall specify that the project sponsor will abide by the regulations in this part.

(3) *Records and reports.* The agreement shall specify the particular records the project sponsor must maintain and the particular reports the project sponsor must submit to assist the grantee in meeting its recordkeeping and reporting requirements.

(4) *Grantee duties.* The agreement shall specify procedures and any other information pertinent to the grantee's release of grant funds to the project sponsor.

(5) *Monitoring.* The agreement shall state that the grantee will monitor the performance of the project sponsor against the goals and performance standards in the agreement with the project sponsor. The agreement also shall state that contract suspension or termination procedures will be initiated if the project sponsor does not correct substandard performance within a reasonable period of time after being notified by the grantee.

(6) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the project sponsor materially fails to

comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(7) *Commitment, repayment and undue benefits.* The agreement shall specify the term of commitment, repayment of grants, and the prevention of undue benefits or exceptions as set forth in § 583.355.

(8) *Uniform administrative requirements.* The agreement shall include a statement that the project sponsor will comply with the requirements and standards of OMB Circular A-122. A copy of the document shall be attached to the agreement with the project sponsor.

(9) *Conditions for religious organizations.* Where applicable, the conditions prescribed in § 583.155 for use of Supportive Housing Program funds by religious organizations shall be included in the agreement.

§ 583.410 Program changes.

(a) *HUD approval.* (1) A grantee may not make any significant changes to an approved project without prior HUD approval. Significant changes include, but are not limited to, a change in the grantee, a change in the project site, additions or deletions in the types of activities listed in § 583.100 approved for the project, a shift of more than 10 percent of funds from one approved type of activity to another, or a change in the category of participants to be served. Depending on the nature of the change, HUD may require a new certification of consistency with the consolidated plan (see § 583.220).

(2) Approval for a change is contingent upon whether the proposed change would not reduce or lower the quality of the original project on any rating factor. HUD will not approve a change that departs from the integrity of the project as proposed in the application.

(b) *Documentation of other changes.* Any change to an approved program that does not require prior HUD approval must be fully documented in the grantee's records.

§ 583.415 Obligation and deobligation of funds.

(a) *Obligation of funds.* When HUD and the applicant execute a grant agreement, funds are obligated to cover the amount of the approved assistance under subpart B of this part.

(b) *Increases.* After the initial obligation of funds, HUD will not make revisions to increase the amount obligated.

(c) *Deobligation.* (1) HUD may deobligate all or parts of grants:

(i) If the actual cost is less than the total cost anticipated in the application; or

(ii) If proposed activities for which funding was approved are not begun within three months, or residents do not begin to occupy the facility within nine months after grant execution.

(2) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, as well as other sanctions that may be imposed.

(d) *Readvertisement.* HUD may readvertise the availability of funds that have been deobligated under this section in a NOFA under § 583.200, or award deobligated funds to applications previously submitted in response to the most recently published NOFA.

§ 583.420 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in § 583.5 shall be recorded as part of the financial transactions of the project.

(b) *Disposition of program income.* (1) Program income received before grant closeout must be treated as additional Supportive Housing Program funds (except for occupancy charges) subject to all applicable requirements governing the use of Supportive Housing Program funds. Program income received before grant closeout must be used for previously approved eligible activities in the project. (See § 583.330(b) regarding the use of resident rent.)

(2) Program income received before grant closeout must be used before additional cash withdrawals are made from the Supportive Housing Program grant account.

(3) Program income received after closeout shall not be governed by the provisions of this part, except that, if the grant from which the program income was generated is renewed under Supportive Housing Program, funds received after closeout of the grant being renewed shall be treated as program income of the renewal project.

(c) *Disposition of program income received by project sponsors.* The written agreement between the grantee and the project sponsor, as required by § 583.405, shall specify that program income is to be used by the project sponsor according to § 583.420(b).

§ 583.425 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when HUD determines, in consultation with the grantee, that the following criteria have been met:

(1) The grant term has expired and has not been extended.

(2) All costs to be paid with Supportive Housing Program funds have

been incurred, with the exception of closeout costs (e.g., audit costs) and costs from contingent liabilities described in the closeout agreement in paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the grantee, as well as related administrative costs.

(3) With respect to activities that are financed with Supportive Housing Program funds (excluding program income), the activities have actually been completed.

(4) Other responsibilities of the grantee under the grant agreement and applicable laws and regulations have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the grant term expiration date or earlier completion of the grant activities, the grantee shall submit to HUD its financial, final performance, and other reports, as required by the terms and conditions of the award.

(2) Based on the information provided in the final performance report and other relevant information, HUD, in consultation with the grantee, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will deobligate any unused portion of the awarded grant, as required by the signed grant closeout agreement. Any unused grant funds that are in the possession of the grantee shall be refunded to or recaptured by HUD.

(4) The grantee may be required to repay HUD any disallowed costs based on HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligation remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by HUD in consultation with the grantee. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Supportive Housing Program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the grantee's responsibility after closeout for:

(i) Compliance with all program requirements, certifications, and assurances in using program income on

deposit at the time the closeout agreement is signed and in using any other remaining Supportive Housing Program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Supportive Housing Program funds in accordance with the terms of commitment and principles described in § 583.355;

(iii) Use of personal property purchased with Supportive Housing Program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout, as described in § 583.420.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (c)(4) of this section. The agreement shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the grantee, in HUD's consideration of any future grant award under this part.

Subpart F—Other Program Requirements

Sec.

583.500 Displacement, relocation, and acquisition.

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§ 583.500 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.*

Consistent with the other goals and objectives of this part, grantees must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of supportive housing assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (URA) and implementing regulations at 49 CFR part 24.

(c) *Real property acquisition requirements.* The acquisition of real property for supportive housing is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Responsibility of grantee.* (1) The grantee must certify (i.e., provide assurance) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with provisions of this section.

(e) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A low-income person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Definition of displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently as a direct result of acquisition, rehabilitation, or demolition for a supportive housing project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after the date the grantee submits to HUD the application or application amendment designating the project site;

(ii) Any person, including a person who moves before the date described in paragraph (f)(1)(i) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves permanently from the building or complex on or after the date of the "initiation of negotiations" (see paragraph (g) of this section), if the move occurs before the tenant has been provided written notice offering him or

her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the initiation of negotiations and estimated average utility costs; or

(B) 30 percent of gross household income. If the initial rent is at or near the maximum, there must be a reasonable basis for concluding at the time the project is initiated that future rent increases will be modest.

(iv) A tenant of a dwelling who is required to relocate temporarily, but does not return to the building or complex, if either:

(A) A tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant of a dwelling who moves from the building or complex permanently after having been required to move to another unit in the same building or complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, local, or tribal law, or for other good cause, 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 property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (*e.g.*, the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section), if the project were approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition of the project.

(3) The grantee may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the grantee and HUD.

(h) *Definition of project.* For purposes of this section, the term "project" means an undertaking paid for in whole or in part with assistance under this part. Two or more activities that are integrally related, each essential to the others, are considered a single project, whether or not all component activities receive assistance under this part.

§ 583.505 Nondiscrimination and equal opportunity requirements.

(a) *Projects serving persons with disabilities.* (1) *General.* Generally, all projects must be available to all eligible persons without regard to their type of disability.

(2) *Targeted.* A grantee or project sponsor may advertise its project as offering services for a particular type of disability, however, the project shall be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

(3) *Established preference.* If proposed in the application, the grantee or project sponsor may establish a preference for individuals with specific types of disabilities in accordance with 24 CFR part 8 if:

(i) The project offers services appropriate for that population; and

(ii) Serving this population in this manner is necessary to provide qualified individuals with disabilities housing, aid, benefit, or services that are as effective as those provided to others.

(b) *Other requirements in effect.* (1) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) The requirements of Executive Order 11246 (3 CFR 1964–65, Comp., p. 339) (Equal Employment Opportunity), as amended by Executive Order 13279 (67 FR 77141, December 2, 2002) (3 CFR, 2002 Comp., p. 258) (Equal Protection of the Law for Faith-based and Community Organizations) and the regulations issued under the order at 41 CFR chapter 60.

(3) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135.

(4) The requirements of Executive order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 39) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprises Development); and Executive Order 12138 (3 CFR, 1977 Comp., p. 393) (Women's Business Enterprises). Consistent with HUD's responsibilities under these orders, grantees must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(c) *Procedures.* (1) If the procedures that the grantee intends to use to make known the availability of the supportive housing are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or handicap who may qualify for admission to the housing, the grantee must establish additional procedures that will ensure that such persons can obtain information concerning availability of the housing.

(2) The grantee must adopt procedures to make available information on the existence and locations of facilities and services that are accessible to persons with a handicap and maintain evidence of implementation of the procedures.

(d) *Accessibility requirements.* The grantee must comply with the new construction accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, and the reasonable accommodation and rehabilitation accessibility requirements of section 504 as follows:

(1) All new construction must meet the accessibility requirements of 24 CFR 8.22 and, as applicable, 24 CFR 100.205: and

(2) Projects of 15 or more units in which costs of rehabilitation are 75 percent or more of the replacement cost of the building must meet the requirements of 24 CFR 8.23(a). Other rehabilitation must meet the requirements of 24 CFR 8.23(b).

§ 583.510 Applicability of OMB Circulars.

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), 24 CFR part 84, and 24 CFR part 85 apply to the award, acceptance, and use of assistance under this program by governmental entities. OMB Circular Nos. A-110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) 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 the provisions of the McKinney-Vento Act, other Federal statutes, or this part. (Copies of OMB Circulars may be obtained from E.O.P. Publications, Room 2200, New Executive Office Building, Washington, DC 20503-0009; telephone (202) 395-7332 (this is not a toll-free number). There is a limit of two free copies.

§ 583.515 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

§ 583.520 Conflicts of interest.

(a) In addition to the conflict of interest requirements in 24 CFR part 84 and part 85, a person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee and who either exercises or has exercised any functions or responsibilities with respect to assisted

activities or is in a position to participate in a decision-making process or gain inside information with regard to such activities, may not obtain a personal or financial interest or benefit from the activity, nor have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself/herself or for those with whom he/she has family or business ties, during his/her tenure or for one year thereafter. Participation in policy or decision-making under § 583.320 by a homeless individual who is also a participant under the program does not constitute a conflict of interest.

(b) Upon the written request of the grantee, HUD may grant an exception to the provisions of paragraph (a) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the program and the effective and efficient administration of the grantee's project. An exception may be considered only after the grantee has provided the following:

(1) For states and other governmental entities, 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

(2) For all grantees, an opinion of the grantee's attorney that the interest for which the exception is sought would not violate State or local law.

(c) In determining whether to grant a requested exception after the grantee has satisfactorily met the requirement of paragraph (b) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the project that would otherwise not be available;

(2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from the functions or responsibilities or from the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;

(5) Whether undue hardship will result either to the grantee or to the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant consideration.

§ 583.525 Audits.

The financial management systems used by grantees under this program must provide for audits in accordance with 24 CFR part 44 or part 45, as applicable. HUD may perform or require additional audits as it finds necessary or appropriate.

§ 583.530 Davis-Bacon wage rates.

Assistance under this part does not require payment of prevailing wage rates determined under the Davis-Bacon Act. Such wage rates may apply if a Supportive Housing Program project is also assisted with additional funds that carry a Davis-Bacon requirement.

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Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

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