

DEPARTMENT OF AGRICULTURE**Rural Housing Service****7 CFR Part 1944****DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 700**

[Docket No. FR-4033-F-01]

RIN 2501-AC21

**Congregate Housing Services
Program: Streamlining; Final Rule**

AGENCY: Rural Housing Service, (USDA), and Office of the Secretary, HUD.

ACTION: Final common rule.

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

EFFECTIVE DATE: September 18, 1996.

FOR FURTHER INFORMATION CONTACT:

With respect to HUD's Congregate Housing Services Program: Carissa Janis, Program Analyst, Room 6176, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-3291 (this is not a toll-free number). With respect to the Rural Housing Service's Congregate Housing Services Program: Sue M. Harris-Green, Senior Loan Officer, Rural Housing Service, Department of Agriculture, 14th and Independence Avenue, S.W., room 5343, Washington, D.C., 20250, telephone number (202) 720-1660. Hearing- and speech-impaired persons may access these telephone numbers via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD and USDA have determined that the regulations for CHSP can be improved and streamlined by eliminating unnecessary provisions.

Several provisions in the regulations repeat statutory language from the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD and USDA must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference. Readers of 24 CFR part 700 must have copies of the appropriate sections of both Acts readily available in order to effectively read and understand this regulation.

Several other provisions in the regulations apply to more than one program, and therefore HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these provisions is cumbersome and often creates confusion. Therefore, this final rule will consolidate these duplicative provisions, maintaining appropriate cross-references for the reader's convenience.

Justification for Final Rulemaking

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

Other Matters**Regulatory Flexibility Act**

The Secretary concerned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary

provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, established requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing CHSP. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program". It is the determination of the RHS that the proposed action does not constitute a major Federal order significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of

1969, Pub. L. 91–190, an environmental impact statement is not required.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

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

Text of Final Common Rule

The text of the final common rule, as adopted by the agencies in this document, appears below:

PART _____—CONGREGATE HOUSING SERVICES PROGRAM

Sec.

- _____.100 Purpose.
- _____.105 Definitions.
- _____.110 Announcement of fund availability, application process and selection.
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§ _____.100 Purpose.

The requirements of this part augment the requirements of section 802 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Public Law 101–625) (42 U.S.C. 8011),

(hereinafter, section 802), as amended by the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), which authorizes the Congregate Housing Services Program (hereinafter, CHSP or Program).

§ _____.105 Definitions.

In addition to the definitions in section 802(k), the following definitions apply to CHSP:

Activity of Daily Living (ADL) means an activity regularly necessary for personal care. (1) The minimum requirements of ADLs include:

(i) Eating (may need assistance with cooking, preparing or serving food, but must be able to feed self);

(ii) Dressing (must be able to dress self, but may need occasional assistance);

(iii) Bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self);

(iv) Grooming (may need assistance in washing hair, but must be able to take care of personal appearance);

(v) Getting in and out of bed and chairs, walking, going outdoors, using the toilet; and

(vi) Household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.)

(2) Each of the Activities of Daily Living noted in paragraph (1) of this definition includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed himself or herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding himself or herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only

with regard to determination of a person's eligibility to receive *supportive services* paid for by CHSP and is not a determination of eligibility for occupancy;

Adjusted income means adjusted income as defined in 24 CFR parts 813 or 913.

Applicant means a State, Indian tribe, unit of general local government, public housing authority (PHA), Indian housing authority (IHA) or local nonprofit housing sponsor. A State, Indian tribe, or unit of general local government may apply on behalf of a local nonprofit housing sponsor or a for-profit owner of eligible housing for the elderly.

Area agency on aging means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

Assistant Secretary means the HUD Assistant Secretary for Housing-Federal Housing Commissioner or the HUD Assistant Secretary for Public and Indian Housing.

Case management means implementing the processes of: establishing linkages with appropriate agencies and service providers in the general community in order to tailor the needed services to the program participant; linking program participants to providers of services that the participant needs; making decisions about the way resources are allocated to an individual on the basis of needs; developing and monitoring of case plans in coordination with a formal assessment of services needed; and educating participants on issues, including, but not limited to, supportive service availability, application procedures and client rights.

Eligible housing for the elderly means any eligible project including any building within a mixed-use project that was designated for occupancy by elderly persons, or persons with disabilities at its inception or, although not so designated, for which the eligible owner or grantee gives preference in tenant selection (with HUD approval) for all units in the eligible project (or for a building within an eligible mixed-use project) to eligible elderly persons, persons with disabilities, or temporarily disabled individuals. For purposes of this part, this term does not include projects assisted under the Low-Rent Housing Homeownership Opportunity program (Turnkey III (24 CFR part 905, subpart G)).

Eligible owner means an owner of an eligible housing project.

Excess residual receipts mean residual receipts of more than \$500 per unit in the project which are available and not committed to other uses at the time of application to HUD for CHSP. Such receipts may be used as matching funds and may be spent down to a minimum of \$500/unit.

For-profit owner of eligible housing for the elderly means an owner of an eligible housing project in which some part of the project's earnings lawfully inure to the benefit of any private shareholder or individual.

Grantee or Grant recipient means the recipient of funding under CHSP. Grantees under this Program may be states, units of general local government, Indian tribes, PHAs, IHAs, and local nonprofit housing sponsors.

Local nonprofit housing sponsor means an owner or borrower of eligible housing for the elderly; no part of the net earnings of the owning organization shall lawfully inure to the benefit of any shareholder or individual.

Nonprofit includes a public housing agency as that term is defined in section 3(b)(6) of the United States Housing Act of 1937.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult who has a disability. (1) A person shall be considered to have a disability if such person is determined under regulations issued by the Secretary to have a physical, mental, or emotional impairment which:

- (i) Is expected to be of long-continued and indefinite duration;
- (ii) Substantially impedes his or her ability to live independently; and
- (iii) Is of such a nature that the person's ability could be improved by more suitable housing conditions.

(2) A person shall also be considered to have a disability if the person has a developmental disability as defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-7).

Notwithstanding the preceding provisions of this paragraph, the terms "person with disabilities" or "temporarily disabled" include two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary of HUD) to be essential to their care or well-being, and the surviving member or members of any household where at least one or more persons was an adult with a disability who was living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

Program participant (participant) means any project resident as defined in section 802(e)(1) who is formally accepted into CHSP, receives CHSP services, and resides in the eligible housing project served by CHSP grant.

Qualifying supportive services means those services described in section 802(k)(16). Under this Program, "health-related services" mean non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with state law, and non-medical components of adult day care. The Secretary concerned may also approve other requested supportive services essential for achieving and maintaining independent living.

Rural Housing Service (RHS) means a credit agency for rural housing and rural development in the U.S. Department of Agriculture (USDA).

Secretary concerned means (1) The Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by HUD; and

(2) The Secretary of Agriculture with reference to programs administered by the Administrator of the Rural Housing Service.

Service coordinator means CHSP staff person responsible for coordinating Program services as described in section _____.130.

Service provider means a person or organization licensed or otherwise approved in writing by a State or local agency (e.g., Department of Health, Department of Human Services or Welfare) to provide supportive services.

State agency means the State or an agency or instrumentality of the State.

State agency on aging means the single agency designated by the Governor to administer the program described in Title III of the Older Americans Act of 1965 (See 45 CFR part 13).

§ _____.110 Notice of funding availability, application process and selection.

(a) *Notice of funding availability.* A Notice of Funding Availability (NOFA) will be published periodically in the Federal Register by the Secretary concerned containing the amounts of funds available, allocation or distribution of funds available among eligible applicant groups, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria, review and selection process. The Secretary concerned will designate the maximum allowable size for grants.

(b) *Selection criteria* are set forth in section 802(h)(1) and shall include

additional criteria specified by the Secretary concerned.

§ _____.115 Program costs.

(a) *Allowable costs.* (1) Allowable costs for direct provision of supportive services includes the provision of supportive services and others approved by the Secretary concerned for:

- (i) Direct hiring of staff, including a service coordinator;
- (ii) Supportive service contracts with third parties;
- (iii) Equipment and supplies (including food) necessary to provide services;
- (iv) Operational costs of a transportation service (e.g., mileage, insurance, gasoline and maintenance, driver wages, taxi or bus vouchers);
- (v) Purchase or leasing of vehicles;
- (vi) Direct and indirect administrative expenses for administrative costs such as annual fiscal review and audit, telephones, postage, travel, professional education, furniture and equipment, and costs associated with self evaluation or assessment (not to exceed one percent of the total budget for the activities approved); and
- (vii) States, Indian tribes and units of general local government with more than one project included in the grant may receive up to 1% of the total cost of the grant for monitoring the projects.

(2) Allowable costs shall be reasonable, necessary and recognized as expenditures in compliance with OMB Cost Policies, i.e., OMB Circular A-87, 24 CFR 85.36, and OMB Circular A-128.

(b) *Nonallowable costs.* (1) CHSP funds may not be used to cover expenses related to any grantee program, service, or activity existing at the time of application to CHSP.

(2) Examples of nonallowable costs under the program are:

- (i) Capital funding (such as purchase of buildings, related facilities or land and certain major kitchen items such as stoves, refrigerators, freezers, dishwashers, trash compactors or sinks);
- (ii) Administrative costs that represent a non-proportional share of costs charged to the Congregate Housing Services Program for rent or lease, utilities, staff time;
- (iii) Cost of supportive services other than those approved by the Secretary concerned;
- (iv) Modernization, renovation or new construction of a building or facility, including kitchens;
- (v) Any costs related to the development of the application and plan of operations before the effective date of CHSP grant award;
- (vi) Emergency medical services and ongoing and regular care from doctors

and nurses, including but not limited to administering medication, purchase of medical supplies, equipment and medications, overnight nursing services, and other institutional forms of service, care or support;

(vii) Occupational therapy and vocational rehabilitation services; or

(viii) Other items defined as unallowable costs elsewhere in this part, in CHSP grant agreement, and OMB Circular A-87 or 122.

(c) *Administrative cost limitation.*

Grantees are subject to the limitation in section 802(j)(4).

§ _____.120 Eligible supportive services.

(a) Supportive services or funding for such services may be provided by state, local, public or private providers and CHSP funds. A CHSP under this section shall provide meal and other qualifying services for program participants (and other residents and nonresidents, as described in § _____.125(a)) that are coordinated on site.

(b) Qualifying supportive services are those listed in section 802(k)(16) and in section _____.105.

(c) Meal services shall meet the following guidelines:

(1) *Type of service.* At least one meal a day must be served in a group setting for some or all of the participants; if more than one meal a day is provided, a combination of a group setting and carry-out meals may be utilized.

(2) *Hot meals.* At least one meal a day must be hot. A hot meal for the purpose of this program is one in which the principal food item is hot at the time of serving.

(3) *Special menus.* Grantees shall provide special menus as necessary for meeting the dietary needs arising from the health requirements of conditions such as diabetes and hypertension. Grantees should attempt to meet the dietary needs of varying religious and ethnic backgrounds.

(4) *Meal service standards.* Grantees shall plan for and provide meals which are wholesome, nutritious, and each of which meets a minimum of one-third of the minimum daily dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (or State or local standards, if these standards are higher). Grantees must have an annual certification, prepared and signed by a registered dietitian, which states that each meal provided under CHSP meets the minimum daily dietary allowances.

(5) *Food stamps and agricultural commodities.* In providing meal services grantees must apply for and use food

stamps and agricultural commodities as set forth in section 802(d)(2)(A).

(6) *Preference for nutrition providers:* In contracting for or otherwise providing for meal services grantees must follow the requirements of section 802(d)(2)(B). These requirements do not preclude a grantee or owner from directly preparing and providing meals under its own auspices.

§ _____.125 Eligibility for services.

(a) *Participants, other residents, and nonresidents.* Such individuals are eligible either to participate in CHSP or to receive CHSP services, if they qualify under section 802(e)(1), (4) and (5). Under this paragraph, temporarily disabled persons are also eligible.

(b) *Economic need.* In providing services under CHSP, grantees shall give priority to very low income individuals, and shall consider their service needs in selecting program participants.

§ _____.130 Service coordinator.

(a) Each grantee must have at least one service coordinator who shall perform the responsibilities listed in section 802(d)(4).

(b) The service coordinator shall comply with the qualifications and standards required by the Secretary concerned. The service coordinator shall be trained in the subject areas set forth in section 802(d)(4), and in any other areas required by the Secretary concerned.

(c) The service coordinator may be employed directly by the grantee, or employed under a contract with a case management agency on a fee-for-service basis, and may serve less than full-time. The service coordinator or the case management agency providing service coordination shall not provide supportive services under a CHSP grant or have a financial interest in a service provider agency which intends to provide services to the grantee for CHSP.

(d) The service coordinator shall:

(1) Provide general case management and referral services to all potential participants in CHSP. This involves intake screening, upon referral from the grantee of potential program participants, and preliminary assessment of frailty or disability, using a commonly accepted assessment tool. The service coordinator then will refer to the professional assessment committee (PAC) those individuals who appear eligible for CHSP;

(2) Establish professional relationships with all agencies and service providers in the community, and develop a directory of providers for use

by program staff and program participants;

(3) Refer proposed participants to service providers in the community, or those of the grantee;

(4) Serve as staff to the PAC;

(5) Complete, for the PAC, all paperwork necessary for the assessment, referral, case monitoring and reassessment processes;

(6) Implement any case plan developed by the PAC and agreed to by the program participant;

(7) Maintain necessary case files on each program participant, containing such information and kept in such form as HUD and RHS shall require;

(8) Provide the necessary case files to PAC members upon request, in connection with PAC duties;

(9) Monitor the ongoing provision of services from community agencies and keep the PAC and the agency providing the supportive service informed of the progress of the participant;

(10) Educate grant recipient's program participants on such issues as benefits application procedures (e.g. SSI, food stamps, Medicaid), service availability, and program participant options and responsibilities;

(11) Establish volunteer support programs with service organizations in the community;

(12) Assist the grant recipient in building informal support networks with neighbors, friends and family; and

(13) Educate other project management staff on issues related to "aging-in-place" and services coordination, to help them to work with and assist other persons receiving housing assistance through the grantee.

(e) The service coordinator shall tailor each participant's case plan to the individual's particular needs. The service coordinator shall work with community agencies, the grantee and third party service providers to ensure that the services are provided on a regular, ongoing, and satisfactory basis, in accordance with the case plan approved by the PAC and the participant.

(f) Service coordinators shall not serve as members of the PAC.

§ _____.135 Professional assessment committee.

(a) *General.* (1) A professional assessment committee (PAC), as described in this section, shall recommend services appropriate to the functional abilities and needs of each eligible project resident. The PAC shall be either a voluntary committee appointed by the project management or an agency in the community which provides assessment services and

conforms to section 802(e)(3)(A) and (B). PAC members are subject to the conflict of interest provisions in section _____.175(b).

(2) The PAC shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services affords individuals fair treatment, due process, and a right of appeal of the determination of eligibility, and shall ensure the confidentiality of personal and medical records.

(3) The dollar value of PAC members' time spent on regular assessments after initial approval of program participants may be counted as match. If a community agency discharges the duties of the PAC, staff time is counted as its imputed value, and if the members are volunteers, their time is counted as volunteer time, according to sections _____.145(c)(2) (ii) and (iv).

(b) *Duties of the PAC.* The PAC is required to:

(1) Perform a formal assessment of each potential elderly program participant to determine if the individual is frail. To qualify as frail, the PAC must determine if the elderly person is deficient in at least three ADLs, as defined in section _____.105. This assessment shall be based upon the screening done by the service coordinator, and shall include a review of the adequacy of the informal support network (*i.e.*, family and friends available to the potential participant to assist in meeting the ADL needs of that individual), and may include a more in-depth medical evaluation, if necessary;

(2) Determine if non-elderly disabled individuals qualify under the definition of person with disabilities under section _____.105. If they do qualify, this is the acceptance criterion for them for CHSP. Persons with disabilities do not require an assessment by the PAC;

(3) Perform a regular assessment and updating of the case plan of all participants;

(4) Obtain and retain information in participant files, containing such information and maintained in such form, as HUD or RHS shall require;

(5) Replace any members of the PAC within 30 days after a member resigns. A PAC shall not do formal assessments if its membership drops below three, or if the qualified medical professional leaves the PAC and has not been replaced.

(6) Notify the grantee or eligible owner and the program participants of any proposed modifications to PAC procedures, and provide these parties with a process and reasonable time period in which to review and

comment, before adoption of a modification;

(7) Provide assurance of nondiscrimination in selection of CHSP participants, with respect to race, religion, color, sex, national origin, familial status or type of disability;

(8) Provide complete confidentiality of information related to any individual examined, in accordance with the Privacy Act of 1974;

(9) Provide all formal information and reports in writing.

(c) *Prohibitions relating to the PAC.*

(1) At least one PAC member shall not have any direct or indirect relationship to the grantee.

(2) No PAC member may be affiliated with organizations providing services under the grant.

(3) Individuals or staff of third party organizations that act as PAC members may not be paid with CHSP grant funds.

(d) *Eligibility and admissions.* (1) Before selecting potential program participants, each grantee (with PAC assistance) shall develop a CHSP application form. The information in the individual's application is crucial to the PAC's ability to determine the need for further physical or psychological evaluation.

(2) The PAC, upon completion of a potential program participant's initial assessment, must make a recommendation to the service coordinator for that individual's acceptance or denial into CHSP.

(3) Once a program participant is accepted into CHSP, the PAC must provide a supportive services case plan for each participant. In developing this plan, the PAC must take into consideration the participant's needs and wants. The case plan must provide the minimum supportive services necessary to maintain independence.

(e) *Transition-out procedures.* The grantee or PAC must develop procedures for providing for an individual's transition out of CHSP to another setting. Transition out is based upon the degree of supportive services needed by an individual to continue to live independently. If a program participant leaves the program, but wishes to retain supportive services, he or she may do so, as long as he or she continues to live in an eligible project, pays the full cost of services provided, and management agrees (section 802(e)(4) and (5)). A participant can be moved out of CHSP if he or she:

(1) Gains physical and mental health and is able to function without supportive services, even if only for a short time (in which case readmission, based upon reassessment to determine

the degree of frailty or the disability, is acceptable);

(2) Requires a higher level of care than that which can be provided under CHSP; or

(3) Fails to pay services fees.

(f) *Procedural rights of participants.*

(1) The PAC must provide an informal process that recognizes the right to due process of individuals receiving assistance. This process, at a minimum, must consist of:

(i) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(ii) 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 a subordinate of that person) who made or approved the termination decision; and

(iii) Prompt written notification of the final decision to the participant.

(2) Procedures must ensure that any potential or current program participant, at the time of initial or regular assessment, has the option of refusing offered services and requesting other supportive services as part of the case planning process.

(3) In situations where an individual requests additional services, not initially recommended by the PAC, the PAC must make a determination of whether the request is legitimately a needs-based service that can be covered under CHSP subsidy. Individuals can pay for services other than those recommended by the PAC as long as the additional services do not interfere with the efficient operation of the program.

§ _____.140 Participatory agreement.

(a) Before actual acceptance into CHSP, potential participants must work with the PAC and the service coordinator in developing supportive services case plans. A participant has the option of accepting any of the services under the case plan.

(b) Once the plan is approved by the PAC and the program participant, the participant must sign a participatory agreement governing the utilization of the plan's supportive services and the payment of supportive services fees. The grantee annually must renegotiate the agreement with the participant.

§ _____.145 Cost distribution.

(a) *General.* (1) Grantees, the Secretary concerned, and participants shall all contribute to the cost of providing supportive services according to section 802(i)(A)(i). Grantees must contribute at least 50 percent of program cost, participants must contribute fees that in total are at least 10 percent of program

cost, and the Secretary concerned will provide funds in an amount not to exceed 40 percent.

(2) Section 802(i)(1)(B)(ii) creates a cost-sharing provision between grantee and the Secretary concerned if total participant fees collected over a year are less than 10 percent of total program cost. This provision is subject to availability of appropriated grant funds. If funds are not available, the grantee must assume the funding shortfall.

(b) *Prohibition on substitution of funds and maintenance of existing supportive services.* Grantees shall maintain existing funding for and provision of supportive services prior to the application date, as set forth in section 802(i)(1)(D). The grantee shall ensure that the activities provided to the project under a CHSP grant will be in addition to, and not in substitution for, these previously existing services. The value of these services do not qualify as matching funds. Such services must be maintained either for the time the participant remains in CHSP, or for the duration of CHSP grant. The grantee shall certify compliance with this paragraph to the Secretary concerned.

(c) *Eligible matching funds.* (1) All sources of matching funds must be directly related to the types of supportive services prescribed by the PAC or used for administration of CHSP.

(2) Matching funds may include:

(i) Cash (which may include funds from Federal, State and local governments, third party contributions, available payments authorized under Medicaid for specific individuals in CHSP, Community Development Block Grants or Community Services Block Grants, Older American Act programs or excess residual funds with the approval of the Secretary concerned),

(ii) The imputed dollar value of other agency or third party-provided direct services or staff who will work with or provide services to program participants; these services must be justified in the application to assure that they are the new or expanded services of CHSP necessary to keep the program participants independent. If services are provided by the state, Indian tribe, unit of general local government, or local nonprofit housing sponsor, IHA, PHA, or for-profit or not-for-profit owner, any salary paid to staff from governmental sources to carry out the program of the grantee and any funds paid to residents employed by the Program (other than from amounts under a contract under section _____.155) is allowable match.

(iii) In-kind items (these are limited to 10 percent of the 50 percent matching amount), such as the current market

value of donated common or office space, utility costs, furniture, material, supplies, equipment and food used in direct provision of services. The applicant must provide an explanation for the estimated donated value of any item listed.

(iv) The value of services performed by volunteers to CHSP, at the rate of \$5.00 an hour.

(d) *Limitation.* (1) The following are not eligible for use as matching funds:

(i) PHA operating funds;

(ii) CHSP funds;

(iii) Section 8 funds other than excess residual receipts;

(iv) Funds under section 14 of the U.S. Housing Act of 1937, unless used for service coordination or case management; and

(v) Comprehensive grant funds unless used for service coordination or case management;

(2) Local government contributions are limited by section 802(i)(1)(E).

(e) *Annual review of match.* The Secretary concerned will review the infusion of matching funds annually, as part of the program or budget review. If there are insufficient matching funds available to meet program requirements at any point after grant start-up, or at any time during the term of the grant (i.e., if matching funds from sources other than program participant fees drop below 50 percent of total supportive services cost), the Secretary concerned may decrease the federal grant share of supportive services funds accordingly.

§ _____.150 Program participant fees.

(a) *Eligible program participants.* The grantee shall establish fees consistent with section _____.145(a). Each program participant shall pay CHSP fees as stated in paragraphs (d) and (e) of this section, up to a maximum of 20 percent of the program participant's adjusted income. Consistent with section 802(d)(7)(A), the Secretary concerned shall provide for the waiver of fees for individuals who are without sufficient income to provide for any payment.

(b) *Fees shall include:* (1) Cash contributions of the program participant;

(2) Food Stamps; and

(3) Contributions or donations to other eligible programs acceptable as matching funds under section _____.145(c).

(c) *Older Americans Act programs.* No fee may be charged for any meals or supportive services under CHSP if that service is funded under an Older Americans Act Program.

(d) *Meals fees:* (1) For full meal services, the fees for residents receiving more than one meal per day, seven days

per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(2) The fees for residents receiving meal services less frequently than as described in paragraph (d)(1) of this section shall be in an amount equal to 10 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(e) *Other service fees.* The grantee may also establish fees for other supportive services so that the total fees collected from all participants for meals and other services is at least 10 percent of the total cost of CHSP. However, no program participants may be required to pay more than 20 percent of their adjusted incomes for any combination of services.

(f) *Other residents and nonresidents.* Fees shall be established for residents of eligible housing projects (other than eligible project residents) and for nonresidents who receive meals and other services from CHSP under section _____.125(a). These fees shall be in an amount equal to the cost of providing the services.

§ _____.155 Grant agreement and administration.

(a) *General.* HUD will enter into grant agreements with grantees, to provide congregate services for program participants in eligible housing projects, in order to meet the purposes of CHSP.

(b) *Term of grant agreement and reservation of amount.* A grant will be for a term of five years and the Secretary concerned shall reserve a sum equal to the total approved grant amount for each grantee. Grants will be renewable at the expiration of a term, subject to the availability of funds and conformance with the regulations in this part, except as otherwise provided in section _____.160.

(c) *Monitoring of project sites by governmental units.* States, Indian tribes, and units of general local government with a grant covering multiple projects shall monitor, review, and evaluate Program performance at each project site for compliance with CHSP regulations and procedures, in such manner as prescribed by HUD or RHS.

(d) *Reports.* Each grantee shall submit program and fiscal reports and program budgets to the Secretary concerned in such form and at such times, as the Secretary concerned requires.

(e) *Enforcement.* The Secretary concerned will enforce the obligations of the grantee under the agreement through such action as may be

necessary, including terminating grants, recapturing grant funds, and imposing sanctions.

(1) These actions may be taken for:

(i) A grantee's non-compliance with the grant agreement or HUD or RHS regulations;

(ii) Failure of the grantee to provide supportive services within 12 months of execution of the grant agreement.

(2) Sanctions include but are not limited to the following:

(i) Temporary withholding of reimbursements or extensions or renewals under the grant agreement, pending correction of deficiencies by the grantee;

(ii) Setting conditions in the contract;

(iii) Termination of the grant;

(iv) Substitution of grantee; and

(v) Any other action deemed necessary by the Secretary concerned.

(f) *Renewal of grants.* Subject to the availability of funding, satisfactory performance, and compliance with the regulations in this part:

(1) Grantees funded initially under this part shall be eligible to receive continued, non-competitive renewals after the initial five-year term of the grant.

(2) Grantees will receive priority funding and grants will be renewed within time periods prescribed by the Secretary concerned.

(g) *Use of Grant Funds.* If during any year, grantees use less than the annual amount of CHSP funds provided to them for that year, the excess amount can be carried forward for use in later years.

§ _____.160 Eligibility and priority for 1978 Act recipients.

Grantees funded initially under 42 U.S.C. 8001 shall be eligible to receive continued, non-competitive funding subject to its availability. These grantees will be eligible to receive priority funding under this part if they comply with the regulations in this part and with the requirements of any NOFA issued in a particular fiscal year.

§ _____.165 Evaluation of Congregate Housing Services Programs.

(a) Grantees shall submit annually to the Secretary concerned, a report evaluating the impact and effectiveness of CHSPs at the grant sites, in such form as the Secretary concerned shall require.

(b) The Secretaries concerned shall further review and evaluate the performance of CHSPs at these sites and shall evaluate the Program as a whole.

(c) Each grantee shall submit a certification with its application, agreeing to cooperate with and to provide requested data to the entity

responsible for the Program's evaluation, if requested to do so by the Secretary concerned.

§ _____.170 Reserve for supplemental adjustment.

The Secretary concerned may reserve funds subject to section 802(o). Requests to utilize supplemental funds by the grantee shall be transmitted to the Secretary concerned in such form as may be required.

§ _____.175 Other Federal requirements.

In addition to the Federal Requirements set forth in 24 CFR part 5, the following requirements apply to grant recipient organizations in this program:

(a) *Office of Management and Budget (OMB) Circulars and Administrative Requirements.* The policies, guidelines, and requirements of OMB Circular No. A-87 and 24 CFR part 85 apply to the acceptance and use of assistance under this program by public body grantees. The policies, guidelines, and requirements of OMB Circular No. A-122 apply to the acceptance and use of assistance under this program by non-profit grantees. Grantees are also subject to the audit requirements described in 24 CFR part 44 (OMB Circular A-128).

(b) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A-87 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the applicant, and who exercises or has exercised any function or responsibilities with respect to activities assisted with CHSP grant funds, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or any proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure, or for one year thereafter. CHSP employees may receive reasonable salary and benefits.

(c) *Disclosures required by Reform Act.* Section 102(c) of the HUD Reform Act of 1989 (42 U.S.C. 3545(c)) requires disclosure concerning other government assistance to be made available with respect to the Program and parties with a pecuniary interest in CHSP and submission of a report on expected sources and uses of funds to be made available for CHSP. Each applicant shall include information required by 24 CFR part 12 on form HUD-2880 "Applicant/Recipient Disclosure/Update Report," as

required by the Federal Register Notice published on January 16, 1992, at 57 FR 1942.

(d) *Nondiscrimination and equal opportunity.* (1) The fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109);

(2) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108; and

(3) Racial and ethnic collection requirements—Recipients must maintain current data on the race, ethnicity and gender of program applicants and beneficiaries in accordance with section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(e) *Environmental requirements.* Support services, including the operating and administrative expenses described in section _____.115(a), are categorically excluded from the requirements of the National Environmental Policy Act (NEPA) of 1969. These actions, however, are not excluded from individual compliance requirements of other environmental statutes, Executive Orders, and agency regulations where appropriate. When the responsible official determines that any action under this part may have an environmental effect because of extraordinary circumstances, the requirements of NEPA shall apply.

Adoption of the Final Common Rule

The agency specific adoption of the final common rule, which appears at the end of the common preamble, appears below:

RURAL HOUSING SERVICE

7 CFR Part 1944

List of Subjects in 7 CFR Part 1944

Farm labor housing, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural rental housing.

Dated: July 18, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

Title 7 of the Code of Federal Regulations, part 1944 is amended as follows:

1. The authority citation for subpart F continues to read as follows:

Authority: 42 U.S.C. 1480, 8011 and 5 U.S.C. 301.

2. Subpart F, consisting of §§ 1944.251 [_____.100] through

1944.266 [_____.175], is revised to read as set forth at the end of the common preamble.

PART 1944—HOUSING

Subpart F—Congregate Housing Services Program

- Sec.
- 1944.251 Purpose.
 - 1944.252 Definitions.
 - 1944.253 Announcement of fund availability, application process and selection.
 - 1944.254 Program costs.
 - 1944.255 Eligible supportive services.
 - 1944.256 Eligibility for services.
 - 1944.257 Service coordinator.
 - 1944.258 Professional assessment committee.
 - 1944.259 Participatory agreement.
 - 1944.260 Cost distribution.
 - 1944.261 Program participant fees.
 - 1944.262 Grant agreement and administration.
 - 1944.263 Eligibility and priority for 1978 Act recipients.
 - 1944.264 Evaluation of Congregate Housing Services Programs.
 - 1944.265 Reserve for supplemental adjustment.
 - 1944.266 Other Federal requirements.
3. The words “this part” are revised to read “this subpart” in the following

places: §§ 1944.100, 1944.105 in the definition for “*Eligible housing for the elderly*”, 1944.115(b)(2)(viii), 1944.155 (b) introductory text, (f) introductory text and (f)(1), 1944.160, and 1944.175(e).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 700

List of Subjects in 24 CFR Part 700

Aged, Grant programs—housing and community development, Individuals with disabilities, Low and moderate income housing, Nutrition, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Supportive services.

Title 24 of the Code of Federal Regulations is amended by revising part 700 to read as set forth at the end of the common preamble.

Dated: March 14, 1996.
Henry G. Cisneros,
Secretary.

PART 700—CONGREGATE HOUSING SERVICES PROGRAM

- Sec.
- 700.100 Purpose.
 - 700.105 Definitions.
 - 700.110 Announcement of fund availability, application process and selection.
 - 700.115 Program costs.
 - 700.120 Eligible supportive services.
 - 700.125 Eligibility for services.
 - 700.130 Service coordinator.
 - 700.135 Professional assessment committee.
 - 700.140 Participatory agreement.
 - 700.145 Cost distribution.
 - 700.150 Program participant fees.
 - 700.155 Grant agreement and administration.
 - 700.160 Eligibility and priority for 1978 Act recipients.
 - 700.165 Evaluation of Congregate Housing Services Programs.
 - 700.170 Reserve for supplemental adjustment.
 - 700.175 Other Federal requirements.

Authority: 42 U.S.C. 3535(d) and 8011.

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