DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 91, 92, 570, 574, 576, and 968

[Docket No. R–94–1731; FR–3611–F–02]

RIN 2501–AB72

Consolidated Submission for Community Planning and Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the Department's existing regulations to completely replace the current regulations for Comprehensive Housing Affordability Strategies (CHAS) with a rule that consolidates into a single consolidated submission the planning and application aspects of the Department's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons With AIDS (HOPWA) formula programs with the requirements for the CHAS. This new consolidated submission will replace the current CHAS, the HOME program description, the Community Development plan and the CDBG final statement, and the ESG and HOPWA applications. The rule also consolidates the reporting requirements for these programs, replacing five general performance reports with one performance report. Thus, in total, the consolidated plan and consolidated report will replace 12 documents.

Although this rule does not incorporate the public housing Comprehensive Grant process into the consolidated planning and application process, it makes a modification to the Comprehensive Grants rule to encourage cooperation in the development of the Comprehensive Grant plan and the consolidated plan. The changes are intended to ensure that the needs and resources of public housing authorities are included in a comprehensive planning effort to revitalize distressed neighborhoods and help low-income residents locally.

In addition, the rule amends the separate regulations for the CDBG, HOME, ESG, and HOPWA programs to remove some duplicative provisions, cross-reference the new provisions, and to conform terminology to that used in the consolidated plan rule (revised part 91).

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Policy Coordination, Office of Community Planning and Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.) Copies of this rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements for the planning process, the application process, and the reporting process contained in this rule have been reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520) and assigned approval number 2506–0117, which expires on March 31, 1995.

II. Background

This final rule providing for a consolidated plan and a single performance report for all HUD community planning and development formula grant programs reflects the Department's view that the purpose to be served by the submissions is to enable States and localities to examine their needs and design ways to address those needs that are appropriate to their circumstances. The planning activities embodied in the rule are those of the Comprehensive Housing Affordability Strategy (CHAS) requirements, enacted by the Cranston-Gonzalez National Affordable Housing Act (NAHA, at 42 U.S.C. 12701), and of the Community Development Plan requirements, added to the CDBG program by NAHA (42 U.S.C. 5304).

The consolidated plan was a result of discussions with local jurisdictions and community groups all over the United States representing many different viewpoints. The intent of this rule is to (1) promote citizen participation and the development of local priority needs and objectives by providing comprehensive information on the jurisdiction that is easy to understand; (2) coordinate these statutory requirements in such a manner as to achieve the purposes of the Acts in a comprehensive way, while reducing paperwork and minimizing the federal intrusion into State and local planning activities and to simplify the process of requesting and obtaining federal funds available to the jurisdictions on a formula basis; (3) promote the development of an action plan that provides the basis for assessing performance; and (4) encourage consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions. In addition, HUD is providing software for jurisdictions to facilitate meeting the planning, application and reporting requirements, helping to move us into the 21st century.

In keeping with this approach, the rule emphasizes the role citizens and community groups should play in identifying their needs and recommending actions government should take in addressing those needs. Thus, the outcome is determined at the level of government closest to the affected persons. However, to assure that a jurisdiction does not ignore identified needs, the rule includes the language from the CHAS instructions to require that the consolidated plan contain a comparative analysis of the needs identified, and explain how the jurisdiction determined priority needs and include proposed actions that address the identified needs.

The proposed rule for the consolidated plan was published on August 5, 1994 (59 FR 40129). During the process of developing both the proposed and final rule, the Department has indicated its intent to apply the new rule to Federal Fiscal Year 1995 funding. Therefore, affected jurisdictions have been in contact with HUD about the expectations for speedy publication of a final rule that would permit them to start preparation of this new consolidated plan in time to make the projected deadlines.

Another proposed rule was published in August of 1994 that would affect some of the provisions dealing with the CDBG program that are covered by this rule. That rule, ''Community Development Block Grant Program: Miscellaneous Amendments to Correct Identified Deficiencies'' (59 FR 41196, August 10, 1994), proposed changes to the citizen participation process and in treatment of CDBG ''float-funded activities,'' for example. This rule makes changes covering both of these topics (discussed below) but leaves other provisions of that ''CDBG miscellaneous amendments'' rule untouched, for final disposition through that separate rulemaking. In fact, the performance standards for the certification found in this rule that a jurisdiction is ''following'' its HUD-approved consolidated plan will be included in that final rule. In light of the emphasis on economic development in the CDBG program, HUD will shortly issue a final

rule on economic development guidelines for the CDBG program.

A proposed rule on citizen participation for the CDBG Entitlement program was published on March 28, 1990 (55 FR 11556). This rule reflects consideration of the public comments on that rule, and constitutes the final rule for that rulemaking.

III. Public Comments

The proposed rule drew 138 public comments from 38 local governments or groups representing their interests, 19 States or groups representing State interests, 62 groups advocating for the interests of low-income persons, 15 groups advocating for the interests of persons with disabilities, three professional organizations with no apparent client constituency, and one individual.

In addition, the Department officials have talked by telephone to representatives of 19 national groups that had submitted written comments, to more fully understand their views. These groups are: National Association for County Community and Economic Development, Council Of State Community Development Agencies, National Community Development Association, Local Initiatives Support Corporation, National Association of Housing and Redevelopment Officials, Housing Assistance Council, AIDS Council, National Coalition for the Homeless, Center for Community Change, National Low Income Housing Coalition, National Alliance to End Homelessness, National Council of State Housing Agencies, Corporation for Supportive Housing, Enterprise Foundation, United Cerebral Palsy, Coalition for Low Income Community Development, Lawyers Committee for Civil Rights under Law, National Association for Developmental Disabilities, and the National Housing Law Project. Low-income advocates, cities and States often had diametrically opposing views on the rule.

The general views of the low-income and disability advocacy groups were that data requirements concerning needs had been removed from the CHAS to produce the consolidated plan; a stronger linkage between need, strategy, and action should be required to be stated in the plan; ''worst case'' needs should be addressed on the basis of a ''fair share'' of the funds to be made available from HUD; the citizen participation process should be augmented and adequate notice should be provided for hearings. Many of these concerns apply equally to the CHAS process as to the consolidated plan. Many low-income advocates also expressed concern about the requirement making the consolidated plan applicable for Fiscal Year 1995 funding of the formula programs, with the short deadlines that this will require for jurisdictions—and the impact it would have on their clients.

To respond to these concerns, the Department has added a clearer statement of specific data requirements on needs (including a specific description of the needs of non-homeless persons with disabilities), a statement on how the priorities in the strategic plan relate to the statement of needs, and a clearer statement on how the activities proposed in the action plan relate to the strategic plan. Citizen participation has been strengthened in a number of places, including improved guidelines for providing adequate notice.

The Entitlement communities responded to the rule with diverse concerns. Some objected to the use of and reporting on ''extremely low-income'' category particularly with regard to CDBG. Many expressed concern about the usefulness of estimating needs for community development facilities in terms of the dollars to address those needs.

Although the term ''extremely low-income'' (0–30 percent) was retained in the plan, since this category was familiar in the CHAS, the reporting burden for CDBG has been reduced by requiring reporting on beneficiaries by income only where income data is required for CDBG eligibility. Language has been added codifying the field office authority to grant exceptions and extensions for FY 1995 for good cause. To meet concerns of these communities that the rule has gone beyond the statute and become too prescriptive, suggestions for revisions that would have added significant detail to the plan were rejected. Other changes to accommodate entitlement community concerns are to require that the basis be assigned for relative priority to each category of needs in the strategic plan rather than each separate need; that flexibility be provided for consortia; that more flexible amendment language be provided; and that the time period for comments on performance reports be reduced to 15 days.

A number of States had a particular concern about being required to implement the plan in FY 1995, particularly those with early program years. Other States wanted specific guidance on citizen participation specifically for the States because of their unique situation. They felt that it was inappropriate to offer technical assistance directly to low-income groups under the citizen participation plan at the State level. Several States suggested that HUD and the Department of Health and Human Services should get together with regard to making estimates of homeless needs. Several States said that the priority needs tables, goals, and target dates for completion are too detailed for the States since they have less degree of control over what actions are taken than entitlement jurisdictions do. Other States felt that it was unrealistic that States show how funds were distributed geographically since most States distributed funds by competition for different categories of assistance and cannot control geographical distribution.

Most States have been in contact with the appropriate HUD field office about the timing and content of their submissions for FY 1995. In most cases, agreement has already been reached on both matters. With respect to tables, the States are expected to complete the information to the extent that they are able to do so. The requirement for information about geographic distribution is included because it is a CHAS statutory requirement. To the extent that funds are distributed by competition and a prediction of the ultimate geographic distribution cannot be made, the State should so indicate. A separate section on citizen participation has been added that applies just to States. The Department believes that it is responsive to the comments of the States, including the request to remove the technical assistance provision.

In order to provide technical assistance, HUD intends to issue supplemental guidance on effective ways to undertake consolidated planning, prepare adequate submissions, and implement subsequent projects and activities. In addition, the Department will issue supplemental guidance on various cross-cutting concerns. These include historic preservation, the role of community based organizations, urban design and strategic planning, environmental justice, viable communities and sustainable development.

One comment that was made by both low-income advocates and local governments was that the status of the guidelines should be clarified. The commenters noted that the regulations specify the requirements for the consolidated plan, and the guidelines appear to state the recommendations for the plan. They asked, ''How closely will grantees be held to the 'recommendations'?''

The Department agrees that this subject needs clarification. The

regulations state the requirements. The guidelines contain the tables and instructions for data submissions, which constitute the ''required format'' referenced in the regulations. Therefore, these tables and instructions are required, but the specific format may be modified with HUD approval. Other suggestions or recommendations included in the guidelines are to assist jurisdictions in the preparation of the plan.

A county and a State complained about the Department's Federalism Impact discussion. They stated that the rule requires duplication of effort by State and local governments, since both will be preparing consolidated plans for their jurisdiction. They argued that consolidation has resulted in overregulation of previously less regulated programs. They suggested that the Department seek legislative change to really streamline the requirements.

The Department believes that there is not much duplication of effort between State and local consolidated plans, since the State plans focus on the nonentitlement areas of the State that are not covered by the consolidated plan of a locality. In creating a new framework for submissions for the CPD formula grant programs covered, a few requirements, such as the more detailed citizen participation requirements, have been applied to programs not previously covered. However, the consolidation will give governments and citizens the advantage of looking at the needs to be addressed by HUD programs all at once. Legislative changes have been sought to combine the McKinney Act programs, but those changes have not been enacted. Statutory change is not necessary just to coordinate the submissions for the different programs.

The following is a section by section summary of comments received and HUD responses.

Section 91.1 Purpose

This section states the goals of the community development and planning programs covered by the part and the function of the consolidated plan. There were four primary areas of comment on the goals portion (§ 91.1(a)) of this section.

First, a low-income advocacy group and the State of Florida took stands on the Department's attempt to restate and consolidate the statutory goals of the various programs covered. The low-income advocacy group praised the broad discussion of goals, while the State criticized the language as confusing and failing to reflect all the goals of the covered programs. For example, the State said that the CDBG goal of eliminating slum and blight is not included. It also stated that the NAHA goal of increasing the supply of decent housing that is accessible to job opportunities has been converted to ''provision of jobs accessible to housing affordable to low-income persons.'' Obviously, the low-income advocacy group recommended preserving the language, while the State advocated citing the specific legislative language of goals to be served by the specific programs.

The Department believes that this statement of broad goals is useful. The language concerning job accessibility mirroring the NAHA statutory language is included in the paragraph on decent housing, while the economic development language of the CDBG statute is reflected in the paragraph on expansion of economic opportunity. Elimination of slum and blight is implicit in the language of the goals provision pertaining to improving the safety and livability of neighborhoods.

Second, several disabilities groups objected to the phrasing of the goals section on supportive housing, stating that it is potentially stigmatizing, because it assumes that all persons with special needs require housing with special features, unlike other housing that exists in the community. The potentially offending section reads ''* * * Decent housing also includes increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.'' These commenters suggested modifying the sentence to read ''* * * Decent housing also includes increasing the supply of housing, which may or may not require certain unique structural features and which can be linked to on-site or community based services desired by persons with special needs.''

The Department does not disagree with the point that many disabled persons may require housing which does not need structural modifications. Jurisdictions are free to provide such housing for persons with disabilities. However, the statement of purpose on this item was taken directly from purposes section of the National Affordability Housing Act, and it is not necessary to change this statement.

Third, several disability groups advocated changing the language about ''assisting homeless persons to obtain appropriate housing'' to include the concept of ''permanent housing.'' The Department agrees that among the actions taken to address the needs of homeless persons is providing permanent housing (along with providing emergency and transitional shelter). Such an approach is part of a total homeless strategy laid out in the strategic plan. However, to carry out this plan, it is not necessary to change the statement of purpose to focus on only one element of this approach. Therefore, the final rule contains no change in response to this request.

Fourth, several States objected to the impact on them of the expanded definition of ''suitable living environment'' and ''economic opportunity'' found in the goals section. They indicated that the requirement that the State's short and long term goals ''must be developed in accordance with the statutory goals described in § 91.1'' puts greater emphasis on these goals than is desirable, from their point of view. They also note that the goals emphasize low-income housing and the effort to tie public facility and economic development activities to low income and public housing, while objectives set forth in the CDBG statute are missing. States indicated that the emphasis on expanding economic opportunity including job creation creates a linkage to community development that is often made at the local level rather than being imposed from the State. States will explore these new linkages in community building, but where such linkages are not appropriate or possible, neither the State nor its grantees should be penalized.

The description of what is meant by expanded economic opportunity is consistent with the current CDBG program requirements for States at § 570.483(b)(4). This language should not limit grantees' flexibility, and therefore, it is not being changed in the final rule.

Section 91.5 Definitions

a. Income Categories

The proposed rule used the terms ''very low-income household'' and ''low-income household'' for the households traditionally identified in the CDBG program as ''low-income households'' and ''moderate-income households.'' This change drew two types of comments. First, a State pointed out that a CDBG proposed rule published on August 10, 1994 used the traditional CDBG terms, and the two rules should be consistent. Second, a city, county, and a professional organization of government CDBG administrators, recommended that the consolidated plan rule should use the terms traditionally used in the CDBG program. They argued that to do otherwise is damaging to the perception of the program in cities that are

struggling to keep income balance in their community, whose citizens are more willing to see CDBG funds devoted to income groups that appear to be more inclusive of average families.

The Department believes that the consolidated plan must use uniform definitions of income categories for all programs covered by the plan. The terms chosen in the proposed rule (as in the CHAS) were drawn from the Cranston-Gonzalez National Affordable Housing Act, which created the Comprehensive Housing Affordability Strategy (that is applicable to all the CPD formula grant programs) and the HOME program. However, we believe that the comments have merit. Therefore, this final rule returns to the Housing and Community Development Act of 1974 terms: ''low-income'' (does not exceed 50 percent of median income) and ''moderate-income'' (does not exceed 80 percent of median income). This rule adds a new term ''middle income'' to encompass the group described as ''moderate income'' in the proposed rule, to fulfill the responsibility under the CHAS statute to consider affordable housing needs for this category of families and to include impact on them in the performance report.

The ''extremely low-income'' category of 0–30 percent of median income was praised by low-income advocacy groups and some States, while local jurisdictions and some States took issue with its addition to the evaluation of needs and performance reports as not statutorily required and too burdensome.

The purpose of including this income category is to assure that jurisdictions consider the needs of the households that have the least ability to improve their access to affordable housing on their own. It is a category that was addressed in the CHAS tables and there was much support from low-income advocates for its use in the consolidated plan.

The data for the needs assessment is census data provided by HUD that has been used under the CHAS rule. The data for the performance report is similarly available. To accommodate the concern about data availability, the language has been changed to require reporting on the number of extremely-low, low-, moderate-income, and middle-income persons served by each activity only where information on income by family size is required to determine the eligibility of the activity.

b. Definitions of Terms That Were in the CHAS

Two local jurisdictions stated that the rule should contain definitions for terms that are used in § 91.205(b) of the rule—moderate income, elderly, large family, cost burden, and severe cost burden—and which were defined in the CHAS rule. An advocate for low-income households stated that the rule needs definitions for additional terms: assisted family, disabled family, federal preference, and overcrowding. These definitions are needed to define ''worst case'' housing needs, which another low-income advocacy group wanted included in the defined terms. (''Worst case needs'' was a term defined only in the CHAS guidelines; it was not a term found in the CHAS rule.)

The terms mentioned above that are essential to the consolidated plan rule are being added in the final rule. Those terms are ''moderate income,'' ''elderly person,'' ''person with disability,'' ''large family,'' ''cost burden,'' ''severe cost burden,'' and ''overcrowding.'' The last three terms are derived from the census, and the definitions used in the rule are, therefore, those of the census. The other definitions being added follow the definitions provided for those terms in the CHAS rule.

One disability group advocate urged HUD to adopt the definition of ''persons with disabilities'' used in the Americans with Disabilities Act. The definition used in the CHAS rule is consistent with the one required for use in the assisted housing programs. The Department sees no reason to abandon this definition.

The terms ''assisted family,'' ''federal preference,'' and ''worst case'' are not being used in the rule, and therefore no definitions for them are needed.

c. Homeless

Legal service agencies, homeless and low-income advocates, and various disability and public interest organizations were concerned that the rule's definition of ''homeless'' was not identical to the definition of that term in the Stewart B. McKinney Homeless Assistance Act. The definition requires the individual or family to both lack ''a fixed, regular, and adequate nighttime residence; and [have] a primary nighttime residence that is [a supervised emergency shelter]; * * * an institution that provides a temporary residence for individuals intended to be institutionalized; or a * * * place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.'' The commenters argued that the McKinney Act defines a homeless individual as either one who lacks a fixed, regular, and adequate nighttime residence or one whose primary nighttime residence is one of the three described types. Their point seems to be that families that are overcrowded, because more than one original family unit resides in a housing unit intended for one, should be considered ''homeless.''

The Department agrees that the definition used in this rule should be essentially the same as the definition in the McKinney Act. This change does not, however, signal that the Department is altering its position that the definition must read within the context of the findings and purpose section of the McKinney Act. It is clear to the Department that the McKinney Act was enacted in 1987 to assist the rapidly growing numbers of persons living on the streets and in shelters. It was not enacted for the purpose of assisting the substantially larger number of persons who unfortunately live in substandard housing or with others in so-called doubled-up arrangements because of the problem of a lack of affordable housing. The latter problems have been the subject of legislation since 1934, and the Department administers many programs designed to address these problems. Persons living in substandard housing or in doubled-up arrangements are not homeless, although they may be at high risk of becoming homeless. Although the Department is not changing the core definition of homelessness in the McKinney Act, it should be noted that the prevention of homelessness is an essential part of a larger homeless program and the homeless plan includes actions to help low-income families avoid becoming homeless. This would include persons who are precariously housed.

The Department does believe that the wording of the definition for ''homeless family'' in the proposed rule was confusing. Therefore, the definition has been renamed ''homeless family with children,'' and the language has been clarified.

d. Other Definitions

A local jurisdiction pointed out that the definition of ''consolidated plan'' indicates that it is a document submitted annually. Only parts of it are submitted annually—the action plan and the certifications. The Department agrees that the definition of consolidated plan needs to be clarified so that it does not appear that every element must be submitted annually. A modification of the proposed language

that adds references to provisions of the rule has been adopted in the final rule.

Local and State governments suggested that the definitions of income categories need to be clarified with respect to whether they apply to ''household'' or ''family.'' The terms seem to be used interchangeably, although they have distinct demographic meanings resulting in different median incomes.

The final rule defines the income categories in terms of ''family''. For planning purposes, the definition HUD uses for that term in its assisted housing programs is used in this rule (in accordance with the definition that is adopted by the Cranston-Gonzalez National Affordable Housing Act). The connection between data supplied by the Census, which uses a different definition of ''family'', is explained in the Guidelines. The individual program definitions govern the actual use of the funds and reporting on beneficiaries.

The District of Columbia points out that the definition of ''State'' includes the District of Columbia and the definition ''unit of general local government'' excludes the District of Columbia; however, the District is defined as an entitlement jurisdiction (local government) for purposes of the CDBG and ESG programs. These definitions should not adversely impact grant allocations or application requirements. The final rule removes reference to the District of Columbia from the definitions, and adds a new section to the rule to specify consolidated plan requirements for the District of Columbia.

A State suggests that the definition of ''jurisdiction'' should be clarified to assure that it includes only those jurisdictions receiving funds directly from HUD. It states that the rule, as written, appears to apply directly to the units of general local government that are State recipients of HOME and CDBG funds. The applicability section, § 91.2(b), states that ''[a] jurisdiction must have a consolidated plan that is approved by HUD as a prerequisite to receiving funds from HUD under the following programs. * * *.'' The provision does not state that a jurisdiction must have such a plan in order to receive funds from a State. However, the section has been revised to clarify its applicability rather than to revise the definition of ''jurisdiction.''

Section 91.10 Program Year

Representatives of county officials and local governments commented on the requirement that a jurisdiction must have one program year for all four of its CPD formula programs. One city praised this change as ''a positive step in streamlining the application process.'' It went on to say that the flexibility of permitting the jurisdiction to select this program year also is beneficial. On the other hand, an organization of county officials stated that the change of program year will cause additional administrative costs. It proposed that HUD permit waiver of the cap on administrative costs in the first year under this rule to accommodate the additional cost of changing program years.

The administrative cap is statutory.

Section 91.15 Submission date

One concern of States, local governments, disability group advocates, and low-income advocates was the timing of the deadline for submission of the first consolidated plan. The proposed rule states that the consolidated plan must be submitted to HUD ''at least 45 days before the start of its program year.'' Since the Department has made it known that it plans to implement the rule for Federal Fiscal Year 1995 funds, many commenters have indicated that there is insufficient time before the required submission date to comply with the process required under the rule. More specifically, they indicate that the stated submission deadlines do not provide for the negotiation of exceptions to a jurisdiction's implementation of the consolidated plan for FY 1995, as expected.

Several alternatives were suggested: (1) Delay implementation until FY 1996 or make implementation optional in FY 1995; (2) implement the new rule by a demonstration, giving incentive grants to several jurisdictions to gain experience with the process; (3) start implementation with jurisdictions that have a program year beginning 180 days following the effective date of the rule; or (4) give explicit authority in the rule to HUD field offices to provide exceptions to the submission deadline where they are warranted. One large city commented that it is pleased with the apparent expanded role of local HUD offices in granting exceptions and would like the criteria for their action to be stated in the final rule.

The Department has chosen option number 4. The rule has been revised to add a provision, § 91.20, that explicitly authorizes HUD field offices to grant three types of exceptions: from the requirement to submit all or part of the consolidated plan in FY 1995 (and permit submission of a CHAS annual update plus the individual program submissions), from the deadline for submission, and from the guidelines. Exceptions to requirements found in the guidelines require that no statutory or regulatory requirements may be overridden and that there must be a finding of good cause by the HUD field office, documented by sending written memoranda periodically to HUD Headquarters stating the authorized exception and the basis for the exception.

Commenters who suggested option number 4 commended HUD for empowering its field offices, a change that will allow local HUD staff to more effectively coordinate the process to accommodate local needs. One commenter recommended that the exception provision state what steps must be taken by a jurisdiction in order to request an exception. The rule does not deal with the procedure in this level of detail. However, any interested jurisdiction should contact its HUD field office for the specific information to be contained in a particular request.

Many States have been in contact with their HUD field offices and have worked out agreed upon schedules for complying with the requirements of this rule. It is anticipated that most jurisdictions will work out arrangements that are mutually agreeable for the submission of a consolidated plan that comes close to that envisioned in this rule for this fiscal year.

Another deadline stated in the proposed rule (§ 91.15(a)(2)) is the date required by the CDBG statute: ''Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled.'' State, county and local government entities stated that this provision does not appear to encompass the flexibility expected from HUD, based on discussions with HUD field office staff. They recommend that the rule allow some flexibility on HUD's part not to penalize jurisdictions that may have a bona fide problem in making the complete submission in any given year.

The August 16 date for CDBG submissions has been established pursuant to section 116(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5316) as the final date for submission of final statements for each fiscal year.

Section 91.100 Consultation

a. Adjacent Local Governments

Several local governments criticized the proposed rule's requirement to notify adjacent local governments regarding priority nonhousing community development needs and

suggested that it should be deleted. On the other hand, two low-income advocates expressed support for the regulatory section providing that the jurisdiction should consult with adjacent local governments.

One local government believed the provision on consultation should be deleted because it is burdensome, particularly for large local governments which have dozens of adjacent local governments. The needs of its own residents are overwhelming and will use all available resources. Consultation with adjacent local governments would unreasonably raise expectations for services and assistance.

Another local government wanted clarification regarding whether consultation with local governments is required or optional and the subject of the consultation. Another local government said the language regarding notification and consultation is vague and the purpose to be served by ''notifying'' another jurisdiction is unclear.

The consultation provision with respect to adjacent local governments is statutorily required. The CDBG statute (section 104(m)(2)(A)) of the HCDA (42 U.S.C. 5304(m)) states, that in preparing the community development plan (''CD plan'') describing the jurisdiction's priority nonhousing community development needs, the jurisdiction must, ''to the extent practicable, notify adjacent units of general local government and solicit the views of citizens on [these] needs.'' The following paragraph of the statute requires submission of the CD plan to the State or any other unit of general local government within which the jurisdiction is located, as well as to HUD.

From the statutory context, the Department presumes that the views of adjacent jurisdictions are to be welcomed on the validity of the needs identified by these governments, just as the comments of the citizens are to be considered. Consultation with adjacent jurisdictions is not to be assumed to entail taking financial responsibility for satisfying the needs of the adjacent jurisdictions, but only reflects the perspective that adjacent jurisdictions may have occasion to know of needs of their neighbors.

With respect to the burden of notifying a multitude of adjacent jurisdictions, the rule does not require personal meetings with each one. The burden of mailing a document that has been prepared by the jurisdiction to a number of adjacent jurisdictions should be minimal.

An urban county asked for clarification on how this provision applies to an urban county. If there is no adjacent unit of general local government, the intergovernmental consultation requirement requires only submission of the CD plan to the State. (The language concerning submission of the CD plan to the State was not included in the proposed rule but has been added to the section in this final rule.)

Two local governments recommended that all jurisdictions in areas that receive funding under the HOPWA program should assist the jurisdiction responsible for submitting the HOPWA allocation in the preparation of its consolidated plan. This is the type of issue that was intended to be covered by the rule's provision concerning consultation for problems that go beyond a single jurisdiction, found in the penultimate sentence of § 91.100(a).

The Department has determined that the provision concerning consultation for problems and solutions that go beyond a single jurisdiction should have one more element added: consultation with ''agencies with metropolitan-wide planning responsibilities where they exist.''

b. Public and Private Service Providers

One county commented that the regulation should recommend, rather than require, consultation with public and private agencies because the current CDBG citizen participation process is sufficient to ensure an open process for citizen participation. On the other side of the issue, several nonprofit disability advocates commented that the regulation should mandate, rather than encourage, consultation with public and private agencies. They suggest that the consultation should be undertaken at least 30 days before the jurisdiction develops its proposed consolidated plan.

The CHAS statute (section 105(b)(17), 42 U.S.C. 12705(b)(17)) requires a jurisdiction to consult with public and private agencies concerning programs and services to be provided in accordance with the housing strategy. Consequently, the proposed rule required such consultation. Section 91.100(a) provides: ''When preparing the plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities—including HIV/AIDS, homeless persons) during preparation of the plan.'' However, the Department does not want to prescribe the precise timetable for these consultations. Presumably, the consultation will take place well in advance of the jurisdiction's submission of its proposed consolidated plan.

Homeless and low-income advocates recommended that the regulation specifically mention consultation with specific entities. Most of the suggested groups are already included in the categories stated in the proposed rule. In addition, as residents, any persons not contacted as part of the consultation process will receive notice of and have the opportunity to participate in the development of the consolidated plan as part of the citizen participation process, described in § 91.105. In fact, residents in public and assisted housing developments are specifically mentioned in paragraph (a)(3) of that section. The Department believes it is unnecessary to lengthen the list of entities consulted.

A homeless advocate suggested adding a new paragraph to this section dealing with consultation on homeless needs. The advocate wanted the regulation to require the jurisdiction to convene a local board whose members are appointed by the jurisdiction and a majority of whom are currently or formerly homeless or nonprofit providers serving the homeless. The local board would be responsible for completing the homeless portions of the consolidated plan, which would be submitted to the jurisdiction for inclusion in the overall plan. The board would be responsible for considering comments on the homeless portion of the plan. This proposal may be authorized by legislative change; however, there is no statutory basis for it now. Elsewhere, the Department is encouraging communities to establish coordinating boards to carry out a homeless plan, but it is inappropriate to require it now in this rule.

c. Public Housing Agency

Paragraph (c) of this section of the proposed rule requires the jurisdiction ''to consult with the local public housing agency participating in an approved Comprehensive Grant program concerning consideration of public housing needs and planned Comprehensive Grant program activities.'' One large housing authority commented that there should be a mutual exchange of information between the jurisdiction and the housing authority needed for the housing authority's Comprehensive Grant Program plan and for the jurisdiction's consolidated plan.

One local government interest group commented that HUD should be

sensitive to the difficulties involved in the requirement of consultation and interagency coordination, particularly with public housing authorities over which the jurisdiction has no control. They recommended that HUD pursue public housing regulation which require public housing agencies (PHAs) to work with the department of the jurisdiction that has responsibility for the consolidated plan. One city commented that the Comprehensive Grant program regulations already provide for local government cooperation in providing resident program and services to low-income public housing residents. The proposed rule contained a change in that regulation (§ 968.320) designed to have exactly the effect suggested by the first commenter.

d. Lead-Based Paint Consultation

The consultation requirement for the portion of the consolidated plan concerning lead-based paint hazards is to consult with State or local health or child welfare agencies and ''examine health department data on the addresses of housing units in which children have been identified as lead poisoned.'' One city stated that the information it receives from its health department is related to areas or blocks in which lead-poisoning cases have been identified, not specific ''addresses,'' due to Privacy Act concerns about making information available to the public.

The CHAS statute (section 105(e)(2), 42 U.S.C. 12705(e)(2)) is stated in terms of requiring the jurisdiction to consult with the agencies and to ''examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.'' The statute does not pre-empt the Privacy Act, and the approach taken in this particular jurisdiction is reasonable. In addition, neither the statute nor the regulation requires the jurisdiction to provide data regarding the addresses to the public. The consolidated plan section for lead-based paint hazards under the housing needs assessment requires the plan to estimate the number of housing units that are occupied by low- and moderate-income families and that contain lead-based paint hazards.

Several low-income advocates point out that the regulation fails to restate the statutory language concerning consultation for lead-based paint hazards to examine ''existing data related to lead-based paint hazards and poisonings,'' although the regulation does include the statutory language to examine data on the addresses of housing units in which children have been identified as lead poisoned. The rule has been revised to include the missing statutory language.

e. Description of the Consultation Process

Disability community and low-income community advocates recommend that the consolidated plan require a description of the consultation process and an identification of those who participated in the process. Such a description is required under the CHAS regulations (§ 91.15, as published on September 1, 1992). The rule has been revised to include such a provision.

Section 91.105 Citizen Participation (''CP'') Plan

a. General

An urban county recommends that a section be added for urban county programs, enabling urban counties to complete a consortium-wide citizen participation plan, instead of a separate plan for each municipality. No change is needed. An urban county is the jurisdiction, and the regulation requires only one citizen participation plan for the jurisdiction.

One State commented that the regulation is not clear regarding what is applicable or required for State governments. The regulation seems to impose additional requirements for the planning process over and above CDBG requirements. The State believes that in the CDBG program, the State passes citizen participation requirements to local governments, which actually propose and carry out activities. It comments that the requirements imposed by the proposed rule are excessive and impractical at the State level.

Two States and two State interest groups commented that the guidelines indicate that States do not have to provide a detailed citizen participation plan for citizens, but must have such a plan for units of general local government. The regulations detail a laundry list of requirements and do not mention the fact that States are exempt from this requirement. Clarification is needed.

One State agency commented that it would be difficult to implement the regulatory provision that encourages the participation of all citizens, including minorities, non-English speaking persons, and persons with disabilities. The State action plan does not require the State to identify the geographic areas within the state that will receive funds or the specific activities to be funded. Therefore, such participation would be required by every potentially involved geographic area of the state and every potentially affected population. The agency suggested that the rule permit States to develop citizen participation plans that include participation of citizens and groups representative of potentially affected geographic areas (i.e., rural, urban and/or suburban) or potentially affected populations.

Two State agencies commented on the provision requiring the jurisdiction to provide information to the public housing agency about housing and community development plan activities related to its development and surrounding communities, so the housing agency can make this information available at the public hearing required under the Comprehensive Grant program. One State said that the provision does not make sense for States and should not apply to States. Another State explained that it does not currently have ties with every public housing authority throughout the State, although it is developing these relationships.

A citizen participation process is statutorily required for the CDBG program and the CHAS. Under the CDBG program, citizen participation requirements are imposed by the statute for both the State and the local governments. The rule has been revised to have a separate section on the citizen participation plan for States, which takes into account the unique situation of States, eliminating the requirement that information be furnished to the public housing agency for its use in developing its Comprehensive Grant program.

One local government thought that this section was extremely confusing; it is not clear whether hearings and comments pertain to the citizen participation plan, the consolidated plan, or both. The Department agrees that the language needs to be more precise. This section has been reorganized and clarified.

Low-income advocates commented that HUD should give clear and precise minimum standards to jurisdictions in terms of time periods for each step in the process and the type of notice, in order to avoid confusion as to whether or not the jurisdiction is complying with HUD's purpose and to ensure meaningful citizen participation. Expressing a different point of view, one local government commented that the requirement for more citizen and agency participation may complicate an already lengthy consultative process. This local government already has a nine month process to include citizens and agencies in determining the elements of the CDBG application; adding components

could significantly slow down an already unwieldy process. On balance, the Department has decided not to prescribe additional detailed minimums for all elements, since that would reduce the flexibility of the jurisdictions. It is up to the jurisdictions to adopt a detailed citizen participation plan (with citizen input) that fits local conditions.

The Department notes that the statutes require more extensive citizen participation for the proposed CHAS/final statement/consolidated plan than for amendments and reports, which only require notice and an opportunity to comment. The final rule has been revised to distinguish the citizen participation required for the consolidated plan from the citizen participation required for reports and amendments.

One local government requested that the rule address the citizen participation process in a jurisdiction where separate agencies administer homeless services and housing services. The city would like to be able to continue to use two separate citizen participation processes and to incorporate the homeless plan into the consolidated plan. The Department believes that two separate processes would hinder a key premise of the consolidated plan, i.e., to require the jurisdiction to comprehensively consider and address the housing and community development needs of all persons within the jurisdiction.

b. Applicability

This section of the regulation requires the jurisdiction to adopt a citizen participation plan for the consolidated plan process before a jurisdiction's start of the next program year. The rule also provides that any amendment of a jurisdiction's current citizen participation plan for the CDBG program to satisfy these requirements must be completed before the beginning of the program year, if it starts on or after 180 days after the effectiveness of the final rule.

Several low-income and disability community advocates recommended that the regulation must clearly provide that the citizen participation plan must be adopted by the jurisdiction before the development of the proposed consolidated plan, and the plan must describe the jurisdiction's specific efforts to ensure participation of housing consumers, including people with mental retardation and other disabilities and their advocates. One individual commenter stated that the new citizen participation plan must be adopted as soon as possible, not after the initial consolidated submission is submitted.

Since the Department is eager to implement the consolidated plan expeditiously, the rule does not require that the citizen participation plan be developed, approved, and used, before any consolidated planning process begins. It merely requires that the citizen participation plan be completed, in accordance with this rule, before the first program year under the consolidated plan begins. In the first year, the jurisdiction must follow the substance of the citizen participation plan requirements, but it does not have to have a written citizen participation plan that follows the specific provisions of § 91.105 if its program year starts within 180 days of the effective date of the rule. In the following years, the new written citizen participation plan will be used in developing the consolidated plan.

Several disability and low-income community advocates suggested that the regulation set forth the process for developing and adopting the citizen participation plan, e.g., publish the citizen participation plan for comment, require one or more public hearings on the plan, require a 30 day comment period, and publish the final plan. The proposed rule's provision requires only a ''reasonable opportunity'' to comment, not a hearing process. The Department has concluded, after listening to the suggestions of jurisdictions, that it should not impose greater procedural requirements on the development of the citizen participation plan, although we have made a few modifications to the citizen participation requirements to reflect improved notice to citizens.

Two local governments commented that it is unclear whether the citizen participation plan is a specific, written document that must be submitted for approval, or whether the jurisdiction may merely report on its activities to meet the requirements of the citizen participation plan. The regulation suggests a separate document is required, but the guidelines are unclear. A separate document is required; however, the citizen plan is not required to be submitted to HUD. The requirement for a citizen participation plan came from the CDBG statute.

c. Affected Citizens

Several disability and low-income community advocates requested that the regulation state that the plan must ''provide for'', not just ''encourage'', participation by residents of low and moderate income neighborhoods. They also wanted the word ''although'' stricken from the beginning of paragraph (a)(2) because it diminishes the importance of the first part of the sentence. These changes have been made.

Several low-income community advocates supported the regulatory language encouraging the participation by minorities, non-English speakers, persons with mobility, visual, or hearing impairments, and public housing residents. One disability community advocate wanted the language broadened to include ''persons with disabilities,'' not just those with physical impairments. Although it may be more difficult for a jurisdiction to determine how to provide for participation of persons with disabilities other than the physical ones specified, the Department agrees that the obligation should relate to the whole category of persons with disabilities. The rule has been revised accordingly.

Several low-income community advocates said that the regulation does not sufficiently address the statutory requirement that ''affected citizens'' must be given a reasonable opportunity to examine the contents of the proposed consolidated plan and to submit comments. They want the regulation to state that ''extremely low and very low-income'' people are among those most ''affected.'' They want the regulation to require the jurisdictions to take additional actions to publicize/give notice to *these* affected citizens, e.g., notice should be in the non-legal section of major daily newspapers, in major non-English newspapers, and in public service announcements on TV and radio.

The rule is written in terms of all citizens, rather than just ''affected'' citizens. One could certainly argue that all citizens in the jurisdiction are affected. This comment is just another way of saying that the citizen participation requirements should be stated in greater detail. That level of detail will be provided not in this section of the HUD rule but in the citizen participation plan prepared by the jurisdiction.

d. Information To Be Provided

This section of the rule requires that, before it adopts a consolidated plan, a jurisdiction must make available to the public ''information that includes the amount of assistance the jurisdiction expects to receive and the range of activities that may be undertaken, including the amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced.''

Fearing that jurisdictions will make this information available the day before a consolidated plan is adopted, low-income advocates urged that the regulation specify a time period for the jurisdiction to make information available to the public. The commenters suggested various periods of 10 to 30 days before the consolidated plan is prepared, and at least 30 days or 60 days before the consolidated plan is adopted.

This requirement is derived from both the CDBG statute and the CHAS statute. Since the Department is not aware of any controversy concerning the implementation of the CDBG requirement to furnish information, it declines to impose a time limit in this rule, whose purpose is to consolidate requirements—not to impose more strict timeframes on jurisdictions. Again, the jurisdiction's citizen participation plan is the appropriate place for these timeframes.

Local governments and local government interest groups supported the regulation for permitting publication of a summary of the proposed consolidated plan, rather than the entire plan. Low-income and disability community advocates indicated disapproval of this proposal. One local government requested that the regulation should list precise content requirements for the plan summary to avoid lengthy disputes about what content is acceptable. The Department continues to believe that publication of a summary of the consolidated plan is more meaningful to stimulate general interest in the process than publication of the lengthy and complicated document. However, the rule is not being revised to specify its precise contents.

Low-income and disability community advocates indicated that the entire draft consolidated plan, plan amendments, and the performance reports, must be made available to citizens within a period such as two working days free of charge. The Department agrees that the documents needed for public comment must be made available without charge in a timely fashion. This requirement is being added to the rule.

Low-income advocates want the consolidated plan computer software to be made available to community-based organizations. They suggested that one local grassroots organization could be chosen to act as a lead and to share the software with other such organizations. The software should also be made available at no or reduced cost to local libraries. Among the options that HUD is considering at this point are participating in a number of demonstrations with city-wide low income coalitions where HUD would provide the software and providing reduced cost copies of the software to various groups.

One local government asked when the period begins for access to records and information relating to the jurisdiction's use of program assistance during the preceding five years. The commenter also said that the CDBG program only requires records to be maintained for three years and suggests the regulation be amended to give access to records for the preceding three years. The current CDBG program regulation requires records to be maintained for three years after the date of submission of the performance report in which the specific activity is reported on for the final time. The CHAS statute requires access to records regarding assistance received during the preceding five year period. Blending these provisions to cover all the programs requires use of the five-year period.

Accordingly, the program regulations are being amended in this rule to require records to be retained for a longer period than is currently required. Since performance reports are submitted after the program year, retention of records for four years after the activity is last included in a performance report yields a five-year retention period. For the CDBG program, the retention period has been changed to four years after the CDBG activity is last included in the performance report. Since program closeout would occur no earlier than the end of the program year in which the activity is initiated, retention of records for four years after closeout yields a five-year retention period. For programs other than the CDBG program, the retention period has been changed to four years after closeout.

e. Notice

Some low-income advocates support the requirements in the proposed regulation for the kind of citizen participation required, but virtually all of the advocates believe that the regulation fails to provide sufficient specificity regarding ''publish'' and ''notice'' and reasonable opportunity to comment.

Suggestions for specific elements to be included in the rule were the following: how notice is given; what groups and populations must receive notice; time period for advance notice before issuance of the draft plan (45 days); and responses provided in draft plan to all oral and written comments received at or before the first public hearing. The notice should be in the non-legal section of major daily newspapers, in major non-English newspapers, and in public service announcements on TV and radio. The jurisdiction should maintain a mailing list of interested individuals, nonprofit organizations, low-income neighborhood organizations, and other interested parties and be required to send written notice of the opportunity to comment on the proposed consolidated plan, as well as a copy of the final plan. Copies also should be available at public and private agencies that provide assisted housing, health services, and social services. In addition, a reasonable number of copies are to be provided without charge to citizens and groups that request a copy.

The Department declines to add all of these elements to the rule. However, recognizing that citizen notice of hearings is critical to success of citizen participation, the Department has added language to indicate that publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Also, the examples provided by commenters are excellent examples of how to provide notice, and they will be included in the Guidelines issued to assist jurisdictions in implementing the rule.

The proposed rule contained three provisions related to accessibility of the process to persons with disabilities: the statement about encouraging the participation in the citizen participation process in paragraph (a)(2), discussed above, the statement that accommodations for persons with disabilities must be made at public hearings in paragraph (b)(5), and the statement about accessibility of the citizen participation plan in paragraph (c).

Several disability community advocates commented that section 504 of the Rehabilitation Act (29 U.S.C. 794) requires each jurisdiction to make the content of the proposed plan available to persons with disabilities in a form that is accessible to them. Further, they stated that it is essential that announcements, materials, training sessions, and hearings related to the plan are accessible to persons with disabilities.

Several cities asked whether the format accessible to persons with disabilities had to be available regardless of demand for the format. Two cities suggested that the regulatory provision for the citizen participation plan to be made available in a format accessible to persons with disabilities should be based upon a specific request. One city based this suggestion on the fact that taped or Braille version of information had not been requested in

the past 20 years. The rule has been revised to require provision of the materials in accessible form, upon request.

f. Comment Period

Comments were received about the appropriateness of the 30-day comment period on the consolidated plan, as well as on the 30-day comment period for plan amendments and for performance reports. Several local governments believe that the 30-day comment period for the consolidated plan is reasonable. Several low-income advocates want the minimum period for the jurisdiction to receive comment from citizens on the consolidated plan to be increased from 30 days to 60 days to give residents more adequate opportunity to research, discuss, and comment on the proposed consolidated plan.

The opportunity to comment on the consolidated plan derives from the CHAS statute, section 107(a), which requires that a jurisdiction provide a reasonable opportunity to examine the content of the proposed housing strategy and to submit comments on the proposed housing strategy and from the CDBG statute, section 104(a)(2)(B), which requires CDBG grantees to provide a reasonable opportunity to examine the content of the proposed statement of CDBG activities and to submit comments on the proposed statement. The Department believes the 30-day period specified in the rule for this process is appropriate, especially given the comments from both sides of the issue.

Thirty days was stated to be too long and burdensome a comment period for amendments by several local governments. The commenters suggested a 15-day comment period for amendments to the plan or suggest that the regulation not prescribe the period and instead required a ''reasonable period.''

One local government stated the 30 day period for receiving comments on reports is a new requirement and is infeasible because the report is due 90 days after the end of the program year and the report will require information on all the formula programs. Two other local governments agreed that the requirement for notification and a 30 day comment period for performance reports is time consuming, redundant, and should be eliminated. Others suggested a 15-day period for the performance report or a ''reasonable period.''

A public comment period is required for substantial amendments and performance reports in accordance with the CHAS statute, section 107(b). Section 91.62 of the current CHAS rule contains this same requirement. The requirement, therefore, is not totally new, although jurisdictions may not have been required to submit performance reports concerning formula grant programs for public comment before submitting them to HUD.

We note that not all changes in activities constitute a ''substantial amendment'' that will trigger this public comment process. See the provision that permits the jurisdiction's citizen participation plan to determine what type of change requires a substantial amendment.

The final rule has been revised to provide that the comment period for performance reports is 15 days, instead of 30 days, and the deadline for submission of the reports is preserved at 90 days after the end of the program year.

Several low-income community advocates also suggested that the regulation specify a period between the end of the comment period and the submission of the plan so that the jurisdiction will be able to make changes in plan based on citizen comments. Different timeframes were suggested: at least 10 working days, 30 days. The final rule has been reorganized so that the provision requiring a minimum 30 day public comment period also requires that the jurisdiction must consider the comments. The jurisdictions need to give themselves adequate time to consider the comments, but the regulation does not prescribe this time period.

g. Technical Assistance

Paragraph (b)(4) of the proposed rule requires that the citizen participation plan ''must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction.''

One State and one State interest group asked for clarification of how this provision would apply to States. They indicated that since some States do not develop proposals for CDBG and HOME programs, but instead receive requests from local governments for funds for what they determine to be their local needs, the States would not be in a position to provide this type of technical assistance. A local government wanted clarification regarding whether this requirement is statutory, and suggested eliminating it if it is not statutorily required.

This provision comes from the CDBG statute and has applied to the CDBG State and Entitlement programs since 1988, so it cannot be eliminated. However, the CDBG rule has applied the requirement to States via the local governments' citizen participation plans (see § 570.486(a)(4)). The final rule has been revised to treat it the same way in the separate States provision on citizen participation.

Two states commented that the regulation is unclear on the extent of the technical assistance that is to be provided. Government interest groups and a local government expressed support for the regulation language, which requires the jurisdiction to determine the level and type of technical assistance. There is no change to the final rule on this issue, although more guidance is provided on it in the Guidelines.

Two agencies from one State wanted to know the source of funds to provide the technical assistance and requested that the regulation specifically permit federal administrative funds to cover the costs of providing technical assistance. One low-income advocate also asked whether funds will be available to jurisdictions to provide this technical assistance to them. Another State also wanted to know the extent of any tracking of such assistance that might be required. Technical assistance is an eligible administrative expense under the CDBG and HOME programs.

One low-income advocate suggested that technical assistance available to groups representative of very low and low-income people should be advertised via mailings to all such groups in the jurisdiction. Available technical assistance should include written guidance, telephone contact and one-on-one meetings. Low-income and disability community advocates want HUD to provide funding to their organizations to develop materials and training for citizen groups to allow for meaningful participation. The rule does not prescribe the forms of technical assistance, but the implementing guidelines will include suggestions.

h. Public Hearings

Local government interest groups stated that they believe that public hearings are not the most effective way to obtain citizen views. One city and low-income advocate recommended neighborhood meetings as useful in the process. The rule follows the statute in requiring public hearings, but is open to other forms of involving the public.

One local government suggested that HUD interpret ''public hearing'' to mean traditional public hearings, as well as, public meetings. This would give jurisdictions flexibility to use public meetings and other public forums to gather citizen comments. Formal public hearings in local government require city council members to be present and for comments to be tape recorded. The requirement for public hearing has been in the CDBG statute for many years, and HUD has not found it necessary to define what this means. Public hearings are governed by state and local law.

The question of how many hearings are required and at what point was raised by a number of commenters. Several local government representatives read the regulation to require two public hearings during the plan development process and believe only one should be required. The low-income advocates commented that the regulation should require three hearings, instead of two, each program year, indicating that they believe the CDBG statute requires three hearings. Various timeframes for these hearings were also suggested.

The proposed rule was based on the requirements of the CDBG statute, which requires (at 42 U.S.C. 5304(a)(3)((D)) that a jurisdiction have a citizen participation plan that

> Provides for public hearings to obtain citizen views and respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance * * *

One local government requested that the regulation clearly say how many hearings are required and what topics are required to be covered. In an attempt to give jurisdictions as much flexibility as possible, the regulation requires a minimum of two public hearings, since the statutory language uses the plural ''hearings,'' to be conducted at two different stages of the process. Under this wording, the jurisdiction may combine the hearing on needs for the coming year's planning with the hearing on the previous year's performance, for example. However, a jurisdiction may choose to hold one public hearing on needs, a second on the draft consolidated plan, and a third on the draft performance report.

One advocate wanted the regulation to require the hearing on needs to be expanded to permit citizens the opportunity to respond to proposals and questions. The rule has been revised to reflect the CDBG statutory language requiring response to proposals and questions.

The low-income and disability community advocates stated that the development of needs in the consolidated plan must be based on determination of housing needs made after public hearings. Several disability community advocates commented that the timeframes for citizen participation through the public hearing process do not require citizen participation in the earliest stages of the consolidated planning process, when ''worst case'' housing needs can be identified. They argued that timeframes permitted by the regulation significantly reduce the likelihood that meaningful housing needs information or housing strategies will be sought from persons with disabilities, advocates, or service providers as the consolidated plan is developed. The rule does require that the hearing on needs be conducted before the proposed consolidated plan is published.

One nonprofit and several low-income advocates stated that HUD must assure that meeting places and times are convenient to the persons most affected by these programs, by providing guidance in the rule. The rule requires the citizen participation plan to provide that hearings be held at times and locations convenient to potential and actual beneficiaries.

A local government interest group commended HUD for not prescribing how the needs of non-English speaking residents will be met. The rule does require that the citizen participation plan specify how the jurisdiction will meet these needs.

Clarification was requested by jurisdictions on whether flexibility is also permitted to meet the needs of disabled persons. Disability advocates stated that the physical accessibility of meeting or hearing sites should be ensured. Since accommodation for persons with disabilities is required by the CDBG statute (42 U.S.C. 5304(a)(3)(D)), by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and by the Americans with Disabilities Act (42 U.S.C. 12101–12213) and implementing regulations, it does not seem necessary for the rule to spell out exactly what is required for accommodation in this rule.

i. Comments and Complaints

Local governments and local government interest groups believe that the requirement to attach a summary of public comments or views and set forth the reasons for not accepting comments should be eliminated because it is not statutory, is too burdensome, and creates additional paperwork. One low income advocate wanted the regulation to require detailed summaries of comments indicating the number of comments for each constituency type and responding appropriately to each comment that was not incorporated into the final version of the consolidated plan.

Section 107(c) of the CHAS statute, 42 U.S.C. 12707(c), requires the jurisdiction to consider comments and views and to attach a summary. Although the statute does not require a discussion of the consideration of the views/comments, the Department believes that such a provision strengthens the citizen participation process.

Low-income advocates suggested that the regulation include a time period from close of the comment period to submission of the consolidated plan to ensure that the jurisdiction has adequate time to consider the comments. The Department is reluctant to specify additional time periods that must be honored, but citizens can certainly seek addition of this element to a local government's citizen participation plan.

One large city and one local government interest group commented that the regulation should not require ''substantive responses'' to every citizen complaint within 15 days because it is not practicable in its city to respond to every comment individually within 15 days. HUD should delete the reference to 15 days in the rule and allow local control over public response time. The CDBG statute and the consolidated plan regulation specify the 15 day period, ''where practicable.''

Several low-income advocates stated that the regulatory requirement for a timely substantive written response to written complaints is not sufficient to provide resolution of the complaints. Advocates also wanted the regulation to set forth an appeals process to HUD on complaints and on comments on the consolidated plan.

The CDBG statute (section 104)(a)(3)(E)) requires a ''written answer,'' while the CHAS statute (section 107(d)) requires a jurisdiction to follow HUD-established ''procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints.'' The rule requires each jurisdiction to specify in its citizen participation plan the procedures it has determined are ''appropriate and practicable'' to resolve complaints. A system involving an appeal to HUD would not be possible, given the limited staff available.

One state agency commented that it is unclear whether each commenter on the consolidated plan is required to be sent an individual response, separately from

the responses that must be prepared as a part of the consolidated plan document. If so, this would be burdensome. The provision on responses to complaints was not intended to cover comments on the consolidated plan. The rule has been revised to have a separate paragraph for comments and a separate paragraph for complaints.

j. Criteria for Amendments

One state interest group commented on behalf of a state that the citizen participation plan is very idealistic and will restrict states' flexibility to amend individual programs. The regulation requires the citizen participation plan to specify the criteria that the jurisdiction will use to determine what constitutes a ''substantial change'' which necessitates citizen participation to amend the consolidated plan.

k. Adoption of Citizen Participation Plan

One state commenter believes that HUD presents no rationale for the provision requiring citizen input on the citizen participation plan and it exceeds the statute. The state is also concerned that the need to allow for input on the citizen participation plan will require a much earlier initiation of actions than may have been contemplated by many states.

The Department believes that input by citizens and their advocates is necessary for a meaningful citizen participation plan that will meet the needs of citizens in the jurisdiction, particularly those who are the intended beneficiaries of programs covered by the consolidated plan. The regulation does not require adoption of a new citizen participation plan each year.

l. Pending CDBG Rule on Citizen Participation

The citizen participation requirements in the consolidated plan regulation incorporate the citizen participation requirements of the CDBG program and supersede the pending rulemaking on citizen participation for the CDBG Entitlement program. In that rulemaking, a proposed rule was published on March 28, 1990 (55 FR 11556). Publication of a final CDBG regulation on citizen participation was delayed primarily by a moratorium on rulemaking.

HUD received comments on citizen participation requirements in the proposed CDBG program from eight commenters. Some of the comments on public hearings duplicated comments made on the proposed consolidated plan regulation and are addressed above. Comments that apply equally to citizen participation under the consolidated plan have been considered by HUD in the development of the final consolidated plan regulation as follows.

Two commenters expressed concern about the proposed requirements that grantees must provide citizens an opportunity to comment on the original citizen participation plan and any amendments to the plan, and must make the plan public. The comments expressed the view that these requirements were duplicative and would only serve to increase costs of compliance with little benefit to the objective of public participation.

The Department disagrees. Because the plan sets forth the detailed mechanisms for involving citizens in the development and review of the grantee's CDBG program and consolidated plan, it must certainly be made public. But it is also important that the citizens, who will be so much affected by the approaches selected by the grantee for involving them, be given the opportunity to comment on the development and amendment of that plan. Although this will be more costly than simply making the plan public, it is largely a one-time added expense and is fully justified in light of the importance placed on meaningful involvement of citizens in the development and review of local CDBG programs and the consolidated plan.

One of the commenting citizen organizations recommended that the rule require that hearings be held each time a final statement is proposed to be amended and that language be added to encourage the use of hearings for the purpose of enabling citizens to participate in project design and implementation. Neither of the suggestions was adopted. The Department believes that to require hearings to discuss amendments would be very costly, since a grantee could be expected to have several amendments during a program year. It is also highly questionable that holding a hearing to discuss an amendment would be more effective in getting citizen views than the current requirement of providing citizens the opportunity to comment in writing. It is reasonable to assume that many citizens would be willing to submit comments in writing about a proposal but would not be willing or able to attend a hearing to register those comments.

In a related matter, another commenter recommended the removal of the requirement that the hearings be held at different times during the year. This requirement is statutory.

A commenter recommended that the requirement that the grantee provide ''reasonable'' notice of public hearings be replaced with the need for providing ''adequate'' notice, noting that the statute had used the word ''adequate'' for this purpose. The Department believes that there is little difference between the meaning of the two words in this application. Accordingly, the final rule uses the word contained in the statute. The commenter also recommended that the rule set a standard for ''adequate notice,'' suggesting as a model what the Department of Treasury has established for small-issue private purpose industrial revenue bonds. The final rule does not contain such a model, since HUD believes that each grantee should be given the flexibility to meet the notice requirement in its own way, describing in its plan how it will provide adequate notice.

One commenter questioned the inclusion of the requirement that grantees provide ''timely notice of local meetings'' (other than for public hearings) in addition to the requirement that they provide ''reasonable and timely access to local meetings, information, and records * * *''. The commenter noted that the requirement to provide timely notice went beyond the provision in the statute, and appeared to require formal legal notices in daily newspapers. Believing this to be unnecessary and costly, the commenter suggested that the regulation simply retain the statutory language. This suggestion is adopted in the final rule.

A large city expressed concern about the need for targeting citizen participation to low- and moderate-income persons residing in certain areas. This requirement is statutory and cannot be removed from the rule. This commenter also objected to the requirement that the citizen participation plan contain information on the types and levels of assistance to be provided to persons who may be displaced by CDBG-assisted activities. It was noted that this information is already required to be made public and the need to duplicate it in another document would be costly. The regulations do not duplicate requirements concerning plans for displacement. Instead, the citizen participation requirements in the proposed CDBG regulation and in the consolidated plan regulation combine all citizen participation requirements, including the requirement the plan for displacement, into a single citizen participation plan.

One of the citizen organizations suggested that grantees be required to

maintain all of the key CDBG materials together in several locations throughout the community to make it easier for citizens to involve themselves in the program. HUD is unwilling to require this of all grantees, but notes that local citizen groups having particular problems in this regard may want to press their grantee to do this on a voluntary basis.

One commenter recommended that grantees be required to identify the amount of ''unexpended'' funds allocated in previous years at the time it provides information to citizens about the amount of CDBG funds available in the coming year. The expressed objectives of this suggestion were that it would help citizens identify problem areas (presumably with performance) and would highlight that certain needs will not have to be addressed in the coming year's program because of earlier allocation decisions.

The Department does not believe that such a change would be appropriate, since the rule already requires sufficient disclosure of performance. (The rule requires that performance be covered at a public hearing and that the grantee's performance report be subjected to public review and comment.)

Section 91.205 Housing and homeless needs assessment

a. Categories of Persons Affected

Numerous low-income and disability community advocates commented that the proposed rule does not require the level of detail on subpopulations that was required in the CHAS Table 1C. They argue that this information is essential to illustrate the needs of special populations. A disability group advocate indicates that the rule fails to create a comprehensive, inclusive and detailed needs analysis for programs that address the needs of persons living with HIV/AIDS. The commenter states that all jurisdictions are likely to be affected by the HIV epidemic and should have a needs assessment for residents in their areas who are living with HIV/AIDS, even if they are not seeking funds under the HOPWA program.

The low-income advocates also note that the proposed rule does not require that the needs of single, non-elderly or households of nonrelated individuals be identified. Also missing is the requirement to identify needs of nonhomeless people with disabilities, especially those with AIDS.

The Department has revised the rule to specify that the needs must be estimated for the number and type of families by income groups and tenure. The requirement now includes specific reference to single persons. Nonelderly persons presumably fall into the general categories of persons whose needs are identified. Households of nonrelated individuals are covered by the HUD definitions.

Nonhomeless people with special needs are now the subject of a separate paragraph (d) in § 91.205. This category covers elderly, frail elderly, persons with disabilities (mental, physical developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and any other categories the jurisdiction may specify.

We note that with regard to identification of special needs populations, the use of HOME tenant-based rental assistance to be used exclusively for assistance to one subpopulation of the disabled will only be permitted if the grantee can demonstrate that (1) the need has been documented in its consolidated plan, and (2) the reason for their preferential treatment is to narrow the gap in available benefits and services to the group. Therefore, this element is essential to the consolidated plan.

The Department declines to require all the information contained in CHAS Table 1C, because that would be contrary to our efforts to avoid unnecessary requirements and detailed tables. However, we have attempted to assure that the categories of special need to be served by the Department's programs are adequately addressed in the assessment of need.

Low-income advocates also stated that an indicator of need which should be included is analysis of the public housing and Section 8 waiting lists. We are including this suggestion in the implementing Guidelines.

Several public interest groups and local government commenters questioned the requirement to collect data on ''extremely low-income'' families, indicating that this information was not statutorily required, not required by the four grant programs included in the proposed rule for targeting program assistance, and not required in the past. As described above in the discussion of definitions, the term ''extremely low-income'' has been preserved in the final rule.

b. Disproportionate Need

Two local governments disagreed with the methodology on disproportionate need, indicating that it should be weighted for population size. Several low-income advocacy commenters thought the approach was excellent. The Department is preserving the language on calculation of disproportionate need from the proposed rule.

c. Lead-Based Paint Hazards

Several local government commenters requested that they not be required to provide data on lead-based paint hazards, since it was not easily available. One local government commenter suggested a rough analysis between Census data on pre-1970 housing and low-income occupancy data as a way to yield a pool of units likely to have some of lead-based paint.

The requirement to provide this information is statutory. The commenter's suggestion for a method to estimate the scope of hazard is not unreasonable. However, the consultation section (§ 91.100) does require consultation with local health and child welfare agencies and examination of health department data on this subject in the preparation of the consolidated plan.

d. Homeless

Several low-income advocates and disability community advocates complained about the deletion of the CHAS rule's more detailed homeless needs assessment. Commenters indicated that the rule should spell out in detail the data required to be submitted. The proposed rule requires that a homeless needs table be included in the plan that is prescribed by HUD. This follows the statutory language. The final rule preserves this provision intact.

e. Racial Impact

A number of low-income advocates stated that racial impact should be addressed in the needs assessment. In fact, several groups advocated that if this rule were implemented without the anticipated Fair Housing Plan rule it should contain consideration of racial impact in every element of the consolidated plan.

The Department has decided to deal with the more comprehensive issue of a Fair Housing Plan in a separate proposed rule, which is expected to be published shortly. To assure that some minimal requirements for compliance with the statutorily required certification that a jurisdiction is affirmatively furthering fair housing, this rule includes, in the certification section, the requirement that an analysis of impediments be done and that the steps to address the impediments be described, mirroring the language added to the CDBG regulations on the same subject. In addition, the performance report now includes for all programs the element of data on race and ethnicity of beneficiaries.

Section 91.210 Housing Market Analysis

a. General Characteristics

A few low-income advocates suggested that a description of housing stock be related to income, race and neighborhoods and ranked as housing needs are. The language of the rule does require the description to relate to income, race, and neighborhoods. Since this section does not deal with needs, but with the available stock, ranking would be inappropriate.

There were several comments on redundancy between what must be reported in the market analysis section and what must be reported in the strategy, especially on coordination, institutional structure and barriers to affordable housing. The final rule has been revised by consolidating the provisions on coordination and institutional structure with the provisions on the same subject in the strategy section. However, the provision on barriers to affordable housing is seen as necessary to an analysis of the housing market and have been retained in this section.

Two commenters suggested that a description of the housing market should include information on vacancy rates and the availability of credit. Such language is not being added to the rule, but it will be included in the implementing Guidelines.

Local definitions of areas of low-income and minority concentrations may be inconsistent with the fair housing rule once it is published, local government commenters suggested. They requested the ability to choose either local or HUD's definitions. This rule will permit local definitions. However, when the Fair Housing Plan rule is published as a final rule, it will prescribe use of its definitions for this purpose.

One low-income advocacy commenter suggested that a city should be required to assess whether it has sufficient sites to meet the low-income housing needs in its community. The consolidated plan rule is not being expanded to require this assessment in this section. However, the Department does plan to address the question of site selection in a later proposed rule.

b. Public and Assisted Housing

Eight disability community advocates indicated that jurisdictions must assess the loss of public housing units which will occur because of the implementation of Title VI of Housing and Community Development Act of 1992. They recommended that an analysis of these issues be required by reviewing the PHA's allocation plan and identifying the number of units lost to persons with disabilities. The provision to which the commenters refer is the provision that permits public housing and Section 8 housing projects to be designated for only elderly families, only disabled families, or for either. The Department is considering how to encourage balancing the resources available for these different groups. If special funding is announced to further this end, applicants will need to supply such information.

c. Barriers to Affordable Housing

Several local government and government interest group commenters objected to the provision requiring cities to identify public policies that affect the cost or incentive to develop affordable housing. They should not be required to do a self-analysis but only relate criticisms they have received. Cities suggested that they be required to list Federal policies that create barriers.

This element is statutorily required, so it has not been eliminated. The Department believes that listing of Federal policies in this part of the local plan is not appropriate. However, HUD will work with localities to assess the impact of HUD policies separately.

Section 91.215 Strategies, Priority Needs, and Objectives

a. General

The majority of low-income and disability community advocates recommended inclusion of the link between needs and priorities, with the worst case needs being given the highest priority. Several commenters wanted to restore the comparative analysis required by the CHAS at 91.19(b)(1), matching housing inventory with severity of needs and types of housing problems of each priority category. Some recommended that the rule require that a jurisdiction commit to providing a ''fair share'' of its resources to meet the ''worst case'' needs.

The Department agrees with the low-income and disability community advocates that the strategy must explain how the priorities have been established and how the strategic plan addresses the needs identified in the needs assessment. The rule has been strengthened to require a comparative analysis of the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners. The rationale for establishing the priorities and determining the relative priorities should flow logically from this analysis. The title of the section has been revised to ''Strategic Plan'' to emphasize the cohesive nature of this section of the document.

The Department declines, however, the suggestion to adopt a ''fair share'' approach. The Department's goal for this rule is to provide the framework for communities to have meaningful plans, serving low-income families. The Department does not want to substitute its judgment for locally developed plans and priorities framed through a strong citizen participation process.

However, by establishing a stronger rationale for relating priorities to needs, the Department hopes to discourage such situations as the following: A major city identified a large need for housing by low-income groups and homeless persons and proposed actions to address these needs. Then the city council overturned these proposals and built a high profile ''trophy'' project which completely ignored those needs.

Several commenters were critical about the level of detail which seems to be required about specific objectives at 91.215(a)(2). This section seems to require localities to quantify and geographically locate Federal grant budget resources for a 3 to 5 year period in the consolidated plan. They claimed this level of specificity is only practical for an annual plan. There was a fear that a listing of projects would preclude the funding of other worthwhile projects not on the list.

The burden of the analysis has been decreased by focusing the discussion of the basis for assigning the relative priority given to priority needs by category of priority needs instead of by each priority need. In addition, the information is to be provided for a specific period of time, which is determined by the jurisdiction.

Some low-income and disability advocacy groups have argued that priority needs of non-homeless persons with disabilities should be added. The Department agrees. A separate section on this group has been added.

b. Affordable Housing

Several low-income advocacy commenters wanted the Department to require jurisdictions to address the proposed availability of affordable housing for each income group, especially extremely low-income, very low-income and low-income (as these terms were used in the proposed rule), and to define affordable housing as housing for which a low-income family pays less than 30 percent of income. The Department agrees, and the rule has been revised accordingly to more closely approximate what was in the CHAS. It requires specific housing

objectives that identify the number of extremely low-, low-, and moderate-income families (using the revised terminology) to whom the jurisdiction will provide affordable housing.

c. Community Development

Several low-income advocates recommended that needs of extremely low-, very low- and low-income people be expressly addressed in the CD plan. One commenter suggested that this discussion of needs belongs in § 91.205 with the discussion of housing and homeless needs. Since there is a statutory requirement for a discussion of priority nonhousing community development needs, the Department is keeping the CD plan as a part of the strategy, and not part of the housing and homeless needs description. The Department agrees that the needs of these income groups need to be discussed in this plan, and language referring to the statutory goal of serving these income groups has been added to the paragraph on the CD plan.

In addition, language has been added indicating that jurisdictions may elect to develop a neighborhood revitalization strategy that includes the economic empowerment of area residents. HUD is willing to provide greater flexibility in program rules governing the use of CDBG funds for jurisdictions that develop such a strategy, in accordance with rule changes being made in another pending rulemaking. Approval of the consolidated plan does not imply approval of a neighborhood revitalization strategy proposal. A jurisdiction's neighborhood revitalization strategy must provide that the area selected is primarily residential and contains a percentage of low-income and moderate-income residents that is no less than 51 percent. In addition, the jurisdiction should consider the following:

(1) Developing the strategy in consultation with the area's stakeholders, including residents, owners/operators of businesses and financial institutions, non-profit organizations, and community groups that are in or serve the area(s);

(2) Including an assessment of the economic situation in the area and examination of economic development improvement opportunities and problems;

(3) Developing a realistic development strategy and implementation plan to promote the area's economic progress;

(4) Focusing on activities to create meaningful jobs for the unemployed and low-income people in the area as well as activities to promote the substantial revitalization of the area(s); and

(5) Identifying the results expected to be achieved, expressing them in terms that are readily measurable.

With respect to the proposed rule, local governments commented that the information required in the table prescribed by HUD to describe the jurisdiction's priority nonhousing community development needs eligible for assistance in dollar amounts is not very useful, only raises expectations concerning infrastructure needs that cannot be met, and is very difficult to cost out. Low-income advocates commented that there is too little information in this section compared to the housing section.

It is clear that Congress wanted data that could be aggregated nationally. The key to the table is ''priority needs'' and those covered in the table are to be those activities that are eligible for CDBG assistance. All needs do not have to be covered. Further, it is not difficult to estimate the dollar amounts when linear or square feet for facilities are known and the average cost per that unit of measure is known. The guidelines will be clarified on this point.

d. Barriers to Affordable Housing

One commenter requested that the rule state that the plan cannot be rejected for the content of its regulatory barrier assessment. One commenter admonished HUD to put stronger teeth in the plan to make cities remove barriers. The CHAS statute does not permit HUD to reject a consolidated plan on the basis of the jurisdiction's inaction to remove identified barriers. The Department will comply with that requirement but sees no need to add a provision to the rule on the subject.

Another public interest group wanted jurisdictions to explain the purpose of the policy perceived as a barrier and offer alternative options. The Department declines to make this a more burdensome requirement.

e. Anti-Poverty Strategy

Several public interest group and city commenters were critical of this paragraph, indicating that it was difficult to measure how HUD programs directly reduced the number of families with incomes below the poverty line. Of primary concern was describing their actions in terms of ''factors over which the jurisdiction has control,'' language from the statute. They recommended that the requirement be restated for programs discussed in the housing component of the consolidated plan that the city directed to poverty families. The rule has been revised accordingly.

Section 91.220 Action Plan

a. Linkage

The low-income and disability community advocates were critical of what they viewed as inadequate linkage in the action plan between the needs of the extremely low-income families and those in the worst housing conditions and the proposed activities to be undertaken by the jurisdiction under the draft language of this section.

In response to these concerns, the rule has been revised to require a clearer statement of priority needs and local objectives covered in the strategic plan, including the number and type of families to be benefitted from the activities proposed for the year, with a required a target date for completion of each activity. We also have required information on location of projects, to allow citizens to determine the degree to which they are affected.

b. Resources

With regard to describing resources, several commenters insisted that only those resources under the control of the jurisdiction should be listed. There was resistance to including private and nonfederal resources. The CHAS statute requires private and nonfederal resources that are reasonably expected to be available to be identified. The CHAS statute also requires the extent of leverage of Federal resources to be discussed. However, all discussion of resources has been moved from the strategic plan section of the rule to the action plan section, in response to commenters suggestions.

c. CDBG Float-Funded Activities

The CDBG ''miscellaneous amendments'' rule included provisions governing float-funded activities that are perceived as providing some risk to the CDBG program. A ''float-funded activity'' is an activity that uses undisbursed funds in the line of credit or program account that have been previously budgeted in an action plan (formerly, the CDBG final statement) for one or more activities that do not need the funds immediately.

Ten comments were received with respect to these requirements. Responses to these comments and the specific requirements for treatment of CDBG float-funded activities will be published in the final miscellaneous amendments rule. However, for purposes of this rule, the Department notes that there are two primary risks to the CDBG program inherent in the float funding process. First, the float-funded activity will not generate sufficient program income in a manner to allow

for timely undertaking of previously budgeted activities. Second, in undertaking a float-funded activity that exceeds a certain size or duration, grantees are apparently relying on additional CDBG funds being received in future years to enable them to continue funding previously budgeted activities until the float-funded activity generates program income.

The paragraph of the action plan dealing with CDBG program-specific requirements now deals with float-funded activities, requiring a jurisdiction to show the stream of income from repayment of float-funded activities. This provision is designed to address: (1) the problems identified by the Department's Inspector General in managing such activities and (2) the need for citizens to have sufficient information for them to know the extent to which they are likely to be affected by these activities, particularly the consequences of their default, so that they may have an opportunity to object to such a use of the funds.

The action plan section also requires that jurisdictions receiving CDBG entitlement funds may generally budget no more than 10 percent of the total available CDBG funds described for the contingency of cost overruns. The Department has had a longstanding requirement that the amount so budgeted must be reasonable in relation to the grant. This is based largely on the statutory requirement under section 104(a) of the HCD Act that, as a prerequisite to receive its annual grant, a community must submit a statement describing how it intends to use the funds. When the grantee's statement contains a set-aside of funds for contingencies in an amount that goes beyond the amount that reasonably may be expected to be needed for cost overruns of activities specifically identified in the statement, the net effect is that the grantee is simply deferring making a decision as to the use of the funds. The Department believes that this is not allowable under the statute. The Department provided guidance in the form of a notice (dated September 18, 1992) that it would not question the ''reasonableness'' of a set-aside of up to 10 percent of the amount of CDBG funds described in the final statement (now part of the action plan) for cost overruns. The regulatory language contained in this rule now reflects this threshold. This would not, however, prohibit a jurisdiction from setting an amount higher than 10 percent if the jurisdiction has data available, drawing on its prior experience, to show that actual cost overruns are likely to require a higher contingency amount.

d. Public Housing

A provision has been added to the housing market analysis section, to the institutional structure paragraph of the strategic plan section, and, most importantly, to the ''other actions'' paragraph of the action plan section, to require a jurisdiction to state any actions it is taking to assist a public housing agency that has been designated as ''troubled'' by HUD to overcome its problems.

Section 91.225 Certifications

One commenter pointed out that the paragraph on consultation ''by States'' is inapplicable to local governments, who are covered by this provision. Another commenter recommended that the certification currently found in the CDBG program that a jurisdiction's notification, inspection, testing and abatement procedures concerning lead-based paint will comply with the provisions of § 570.608 should be included here. We agree with both of these comments, and the rule has been revised accordingly.

One low-income advocate suggested that jurisdictions should be required to certify, in connection with the CDBG program, that they have satisfied their obligations under the regulation interpreting section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), which is found at 24 CFR 570.602. It requires a jurisdiction that has discriminated in the administration of the CDBG program or activity, or where there is sufficient evidence to conclude that there was discrimination, on the basis of race, color, national origin, or sex, to take remedial affirmative action to overcome the effects of the discrimination.

There are two provisions of the certifications section that have a bearing on anti-discrimination laws. The first mirrors the current requirements for the CDBG program to require specific certification of compliance with two civil rights laws: Title VI of the 1964 Act and the Fair Housing Act. Although the Department agrees that section 109 is applicable to the CDBG program, it is encompassed within the second certification, which requires certification that the jurisdiction/State will comply with all applicable laws. We note that the underlying CDBG regulation requiring compliance with section 109 remains in effect.

Section 91.235 Abbreviated Plan

One State pointed out that paragraph (a) appears to make use of the abbreviated plan permissive, but paragraph (b)(1) appears to make it required—if a jurisdiction is permitted to use it. The commenter also complained about the lack of any requirement for the jurisdiction to consult with the State.

The Department agrees that the provision needs clarification, so it is now clear that a jurisdiction eligible to submit an abbreviated plan instead of a full consolidated plan may do so, but is not required to do so. Consultation with the State has been added.

Section 91.305 Housing and Homeless Needs Analysis

Two States complained that the requirement for a State seeking HOPWA funding to collect data about the size and characteristics of the population with HIV/AIDS and their families was too burdensome and costly for States. The language for this provision and its local government counterpart have been revised to require estimation, ''to the extent practicable,'' of the number of persons in various categories of special need, including persons with HIV/AIDS and their families.

Section 91.310 Housing Market Analysis

A few low-income advocates recommended requiring States to describe substate markets, including those that have higher poverty areas. The rule requires analysis of the State's ''housing markets.'' This implies that there is more than one housing market within the State.

One State commented that paragraphs (b) (Low income tax credit use), (e) (Institutional structure), and (f) (Governmental coordination) relate not to market analysis but to strategy. It recommended moving them to § 91.315. The Department agrees and has revised the rule accordingly.

Several low-income advocates recommended that the paragraph on barriers to affordable housing should require that all jurisdictions do their ''fair share'' to provide housing opportunities to low-income persons. They also stated that States should look at cross-jurisdictional barriers. The Department is constrained by the statutory limit that prevents disapproval of a plan that does not provide for removal of barriers to affordable housing. Therefore, it cannot require such a ''fair share'' proposal. Analysis of cross-jurisdictional barriers would be beneficial, but the Department does not want to add to the burden of requirements imposed by this rule.

Section 91.315 Strategy, Priority Needs, and Objectives

Two States stated that the requirement for a statement of the reasons for the State's choice of priority needs is too detailed a requirement for States, since they respond to priorities established by localities and to their requests for funding. Low-income advocates, on the other hand, argued that States should be required to describe the basis for assigning the relative priority to a category of needs since the CHAS statute requires it. The language of this provision has been revised to refer to each category of priority needs since that is the most flexibility the Department can give to States under the statute.

The priority needs table that the rule requires States to complete was criticized as being too detailed. The table is less detailed than the table that was required for the State CHAS. However, HUD recognizes that the States have less control over fulfillment of this section than do local jurisdictions.

Several States objected to the requirement that the States include a target date for completion of specific objectives. The final rule indicates that the State must identify the proposed accomplishments that the State hopes to achieve in quantitative terms, or in other measurable terms as identified and defined by the State.

A number of States objected to the requirement that the State furnish a projection of its resource allocation geographically within the State, since often the funds are awarded on the basis of competitive selection rather than on some geographic distribution plan. The rule has been revised to reflect that a State must describe how the State's method of distribution contributes to its general priorities for allocating investment geographically within the State.

Three commenters recommended that the only non-Federal funds that be included in the resource description be those that are ''available for use in conjunction with Federal funds to address needs identified.'' We decline to make this change, since the CHAS statute does not so limit the language.

Section 91.325 Certifications

One commenter pointed out that the certification concerning excessive force was not applicable to States. That provision has been modified to clarify that the States must require the localities to make this certification.

Sections 91.400–91.435 Consortia

Several local governments complained that the proposed rule was confusing about which units of general local government are directed to participate in the development of a consolidated plan of the consortium as well as submit their own consolidated plan to cover all programs other than HOME. They suggested that § 91.400 should be revised to clarify that units of local government that participate in a consortium must participate in submission of a consolidated plan for the consortium, prepared in accordance with subpart E, as well as submitting for their own jurisdiction the following components of subpart C: § 91.215(e) (CD plan), § 91.220 (Action Plan) and § 91.225 (Certifications). The preparation and submission of a separate housing and homeless needs assessment (§ 91.205), housing market analysis (§ 91.210) and strategies, priority needs and objectives (§ 91.215) for the entitlement jurisdictions should be optional not a requirement. We agree, and the rule has been modified accordingly.

The majority of the commenters on this issue raised the problems presented by the same program year for all consortium members; suggesting this will cause consortia to break up. One suggested solution was to eliminate the requirement. Instead the consortium would develop its housing and homeless needs, housing market analysis and strategy on a planning year that coincides with the program year of the earliest entitlement jurisdiction in the consortium. Individual action plans would be submitted on individual entitlement members' program year cycle. Individual CD plans would be submitted at the same time as the strategic plan or with the individual entitlement submissions. The lead agency's action plan and program year would control the timing of the HOME program year. The rule has not been changed; however, we will develop waiver policies to handle this issue with consortia.

Local governments urged that §§ 91.105 and 91.430 be clarified to explain what citizen participation requirements apply to entitlement jurisdictions that are part of a consortium. Such clarification is now provided in § 91.401.

Section 91.500 HUD Approval Action

Low-income advocacy groups argued that the standards for review of the consolidated plan do not provide adequate guidance to participating jurisdictions, citizens, and HUD field offices about what would constitute an acceptable plan. They suggest that a consolidated plan should be approved by HUD only if it ''demonstrates integrity when read as a whole.'' They suggest that the needs assessment, priority assignments, and action plan must be sound and consistent with each other and with the purposes of the statute. For example, they state that a housing strategy that failed to seriously address ''worst case'' needs would lack the logical link between needs and action required by section 105(b)(8) of the CHAS statute.

We agree that the current regulations provide few guidelines on the standards for approval. We have modified the proposed regulations to make them more similar to the existing CHAS rule. While we agree with the desirability of internal consistency and require a certification that housing activities undertaken under CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan, we feel that the provision recommended by the advocacy groups is needlessly directive.

Section 91.505 Amendments to Consolidated Plan

Several government interest groups, citing HUD's proposed CDBG rule published on August 10, 1994, suggest that jurisdiction be allowed to notify HUD after adoption of amendments to the consolidated plan. The majority of the commenters were concerned that the specificity of the action plan will trigger a number of amendments that will need to undergo citizen participation and submission to the Department. The preference was to list major activities under which projects could fall without creating the need for amendments. One community suggested if the jurisdiction deemed a change consistent with its need section it could be done without citizen participation or HUD review. An alternate suggestion was to consider an increase or decrease in the original allocation mix over 35 percent as a substantial change.

Jurisdictions are free to determine and describe in the citizen participation plan what constitutes a ''substantial amendment,'' upon which public comment is required. The suggestions offered by these commenters may be good options for defining when a change requires a ''substantial amendment.''

Section 91.510 Consistency Determinations

One commenter suggested that HUD clarify the meaning of this section by stating that it only applies to sources of funds that are *not* applied for through

the consolidated plan; for example, the HOPE Program and Section 811. This section has been revised to cover competitive programs only. In addition, because the CHAS statute requires this statement of consistency for the formula grant programs as well, the certifications have been changed to require consistency with the strategic plan.

Section 91.520 Performance Reports

One commenter objected to reporting on the results of on-site inspections of affordable rental housing assisted with HOME funds, citing it as a new requirement. This is a statutory requirement at section 226(b) of the NAHA (42 U.S.C. 12756) and is contained at § 92.504(e)(1) of the HOME regulation. That rule requires annual on-site inspections of projects of 25 units or more, requiring every other year inspections of projects of fewer than 25 units.

Two commenters stated that the 90-day period provided after the program year for submission of the performance report is inadequate time, especially for large cities, given the lack of information about the format of the report and the computer software that HUD says it will make available for this purpose. The 30-day comment period on the performance report increases the difficulty of making the 90-day deadline.

As discussed above in the citizen participation section, the comment period on reports has been shortened to 15 days. Therefore, the final rule retains the 90 day deadline for performance reports. HUD will facilitate the provision of information needed by the jurisdictions to submit the reports.

Several local governments complained about the requirement to report on the degree to which the CDBG program was used to benefit extremely low-income persons. The reasons stated for eliminating the requirement are that it is not required by statute, the program is not targeted to that specific group, and it is burdensome. A low-income community advocate found the language of the provision inadequate in that it was not strong enough in emphasizing the requirement of the CDBG statute that the program benefit low-income and moderate-income persons.

In fact, both the CDBG and HOME programs have specific requirements with regard to income targeting. Previous reporting instructions (if not regulations) have required information about benefits to extremely low-income persons for activities where income information and family data are required to justify the activity. In these cases, the information is readily available, and therefore this reporting is not considered to be a burdensome requirement.

Sections 570.487, 570.601 and 570.904 Fair Housing Certifications

One commenter stated that there was no justification for imposing new CDBG fair housing requirements. The commenter argued that the changes to these sections provide minimal requirements for compliance with the certification that a jurisdiction will affirmatively further fair housing. The rule now states requirements rather than performance standards for affirmatively furthering fair housing. The requirements include conducting an analysis of impediments, taking actions to address the impediments, and maintaining records reflecting both. A jurisdiction need not do an analysis of impediments every year, but is expected to have conducted its first analysis of impediments no later than 12 months following February 6, 1995.

Subpart G Insular Areas

In the proposed rule, there was a heading reserved for a separate subpart to specify the consolidated plan requirements for insular areas. There were no public comments received on this topic. The Department has decided to handle the few jurisdictions that are insular areas individually, through administrative guidance. Therefore, this rule contains no subpart G.

Findings and Certifications

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St., SW., Washington, DC.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to requirements imposed by the statutes being implemented. The final rule reflects revisions to decrease the impact on States, in particular. Duplication of effort by State and local governments is being avoided by focusing the efforts of the States on the CDBG nonentitlement areas within their borders.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statutes with respect to planning documents for housing and community development programs.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on jurisdictions.

Regulatory Agenda

This rule was listed as sequence number 1723 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57641), under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.218, 14.231. 14.239, and 14.241.

List of Subjects

24 CFR Part 91

Grant programs—Indians, Homeownership, Low and moderate income housing, Public housing.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 570

Administrative practice and procedure, Grant programs—housing and community development, American Samoa, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 91, 92, 570, 574, 576, and 968 of title 24 of the Code of Federal Regulations are amended as follows:

1. Part 91 is revised to read as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

Subpart A—General

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91.515 Funding determinations by HUD.
91.520 Performance reports.
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Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

Subpart A—General

§ 91.1 Purpose.

(a) *Overall goals.* (1) The overall goal of the community planning and development programs covered by this part is to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally for low- and moderate-income persons. The primary means towards this end is to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and non-profit organizations, in the production and operation of affordable housing.

(i) Decent housing includes assisting homeless persons to obtain appropriate housing and assisting persons at risk of becoming homeless; retention of the affordable housing stock; and increasing the availability of permanent housing in standard condition and affordable cost to low-income and moderate-income families, particularly to members of disadvantaged minorities, without discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability. Decent housing also includes increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs, including persons with HIV/AIDS and their families, to live with dignity and independence; and providing housing affordable to low-income persons accessible to job opportunities.

(ii) A suitable living environment includes improving the safety and livability of neighborhoods; increasing access to quality public and private facilities and services; reducing the isolation of income groups within a community or geographical area through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods; restoring and preserving properties of special historic, architectural, or aesthetic value; and conservation of energy resources.

(iii) Expanded economic opportunities includes job creation and retention; establishment, stabilization and expansion of small businesses (including microbusinesses); the provision of public services concerned with employment; the provision of jobs involved in carrying out activities under programs covered by this plan to low-income persons living in areas affected by those programs and activities; availability of mortgage financing for low-income persons at reasonable rates using nondiscriminatory lending practices; access to capital and credit for development activities that promote the long-term economic and social viability of the community; and empowerment and self-sufficiency opportunities for low-income persons to reduce generational poverty in federally assisted and public housing.

(2) The consolidated submission described in this part 91 requires the jurisdiction to state in one document its plan to pursue these goals for all the community planning and development programs, as well as for housing programs. It is these goals against which the plan and the jurisdiction's performance under the plan will be evaluated by HUD.

(b) *Functions of plan.* The consolidated plan serves the following functions:

(1) A planning document for the jurisdiction, which builds on a participatory process at the lowest levels;

(2) An application for federal funds under HUD's formula grant programs;

(3) A strategy to be followed in carrying out HUD programs; and

(4) An action plan that provides a basis for assessing performance.

§ 91.2 Applicability.

(a) The following formula grant programs are covered by the consolidated plan:

(1) The Community Development Block Grant (CDBG) programs (see 24 CFR part 570, subparts D and I);

(2) The Emergency Shelter Grants (ESG) program (see 24 CFR part 576);

(3) The HOME Investment Partnerships (HOME) program (see 24 CFR part 92); and

(4) The Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(b) The following programs require either that the jurisdiction receiving funds directly from HUD have a consolidated plan that is approved by HUD or that the application for HUD funds contain a certification that the application is consistent with a HUD-approved consolidated plan:

(1) The HOPE I Public Housing Homeownership (HOPE I) program (see 24 CFR Subtitle A, Appendix A);

(2) The HOPE II Homeownership of Multifamily Units (HOPE II) program (see 24 CFR Subtitle A, Appendix B);

(3) The HOPE III Homeownership of Single Family Homes (HOPE III) program (see 24 CFR part 572);

(4) The Low-Income Housing Preservation (prepayment avoidance incentives) program, when administered by a State agency (see 24 CFR 248.177);

(5) The Supportive Housing for the Elderly (Section 202) program (see 24 CFR part 889);

(6) The Supportive Housing for Persons with Disabilities program (see 24 CFR part 890);

(7) The Supportive Housing program (see 24 CFR part 583);

(8) The Single Room Occupancy Housing (SRO) program (see 24 CFR part 882, subpart H);

(9) The Shelter Plus Care program (see 24 CFR part 582);

(10) The Community Development Block Grant program—Small Cities (see 24 CFR part 570, subpart E);

(11) HOME program reallocations;

(12) Revitalization of Severely Distressed Public Housing (section 24 of the United States Housing Act of 1937, (42 U.S.C. 1437 *et seq.*));

(13) Hope for Youth: Youthbuild (see 24 CFR part 585);

(14) The John Heinz Neighborhood Development program (see 24 CFR part 594);

(15) The Lead-Based Paint Hazard Reduction program (see 24 CFR part 35);

(16) Grants for Regulatory Barrier Removal Strategies and Implementation (section 1204, Housing and Community Development Act of 1992 (42 U.S.C. 12705c)); and

(17) Competitive grants under the Housing Opportunities for Persons With AIDS (HOPWA) program (see 24 CFR part 574).

(c) Other programs do not require consistency with an approved consolidated plan. However, HUD funding allocations for the Section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their consolidated plans.

§ 91.5 Definitions.

Certification. A written assertion, based on supporting evidence, that must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

Consolidated plan (or ''the plan''). The document that is submitted to HUD that serves as the planning document (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs (CDBG, ESG, HOME, or HOPWA), which is prepared in accordance with the process prescribed in this part.

Consortium. An organization of geographically contiguous units of general local government that are acting as a single unit of general local government for purposes of the HOME program (see 24 CFR part 92).

Cost burden. The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data available from the U.S. Census Bureau.

Elderly person. A person who is at least 62 years of age.

Emergency shelter. Any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

Extremely low-income family. Family whose income is between 0 and 30 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Homeless family with children. A family composed of the following types of homeless persons: at least one parent or guardian and one child under the age of 18; a pregnant woman; or a person in the process of securing legal custody of a person under the age of 18.

Homeless person. A youth (17 years or younger) not accompanied by an adult (18 years or older) or an adult without children, who is homeless (not imprisoned or otherwise detained pursuant to an Act of Congress or a State law), including the following:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeless subpopulations. Include but are not limited to the following categories of homeless persons: severely mentally ill only, alcohol/drug addicted only, severely mentally ill and alcohol/drug addicted, fleeing domestic violence, youth, and persons with HIV/AIDS.

HUD. The United States Department of Housing and Urban Development.

Jurisdiction. A State or unit of general local government.

Large family. Family of five or more persons.

Lead-based paint hazards. Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Low-income families. Low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Middle-income family. Family whose income is between 80 percent and 95

percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (This corresponds to the term ''moderate income family'' under the CHAS statute, 42 U.S.C. 12705.)

Moderate-income family. Family whose income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Overcrowding. A housing unit containing more than one person per room.

Person with a disability. A person who is determined to:

(1) Have a physical, mental or emotional impairment that:

(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 ability could be improved by more suitable housing conditions; or

(2) Have a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6007); or

(3) be the surviving member or members of any family that had been living in an assisted unit with the deceased member of the family who had a disability at the time of his or her death.

Poverty level family. Family with an income below the poverty line, as defined by the Office of Management and Budget and revised annually.

Severe cost burden. The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data available from the U.S. Census Bureau.

State. Any State of the United States and the Commonwealth of Puerto Rico.

Transitional housing. A project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living within 24 months, or a longer period approved by HUD. For purposes of the HOME program, there is no HUD-approved time period for moving to independent living.

Unit of general local government. A city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; and a consortium of such political subdivisions recognized by HUD in accordance with the HOME program (24 CFR part 92) or the CDBG program (24 CFR part 570).

Urban county. See definition in 24 CFR 570.3.

§ 91.10 Consolidated program year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, and HOPWA. Except as provided in paragraph (b) of this section, the program year shall run for a twelve month period and begin on the first calendar day of a month.

(b) Once a program year is established, the jurisdiction may either shorten or lengthen its program year to change the beginning date of the following program year, provided that it notifies HUD in writing at least two months before the date the program year would have ended if it had not been lengthened or at least two months before the end of a proposed shortened program year.

(c) See subpart E of this part for requirements concerning program year for units of general local government that are part of a consortium.

§ 91.15 Submission date.

(a) *General.* (1) In order to facilitate continuity in its program and to provide accountability to citizens, each jurisdiction should submit its consolidated plan to HUD at least 45 days before the start of its program year. (But see § 92.52(b) of this subtitle with respect to newly eligible jurisdictions under the HOME program.) With the exception of the August 16 date noted in paragraph (a)(2) of this section, HUD may grant a jurisdiction an extension of the submission deadline for good cause.

(2) In no event will HUD accept a submission earlier than November 15 or later than August 16 of the Federal fiscal year for which the grant funds are appropriated. (Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled.)

(3) A jurisdiction may have a program year that coincides with the Federal fiscal year (e.g., October 1, 1995 through September 30, 1996 for Federal fiscal year 1996 funds. However, the consolidated plan may not be submitted earlier than November 15 of the Federal fiscal year and HUD has the period specified in § 91.500 to review the consolidated plan.

(4) See § 91.20 for HUD field office authorization to grant exceptions to these provisions.

(b) *Frequency of submission.* (1) The action plan and the certifications must be submitted on an annual basis.

(2) The complete submission must be submitted less frequently, in accordance with a period to be specified by the jurisdiction; however, in no event shall the complete submission be submitted less frequently that every five years.

§ 91.20 Exceptions.

The HUD field office may grant a jurisdiction an exception from submitting all or part of the consolidated plan in FY 1995, from the submission deadline, or from a requirement in the implementation guidelines for good cause, as determined by the field office, and reported in writing to HUD Headquarters—to the extent the requirement is not required by statute or regulation.

Subpart B—Citizen Participation and Consultation

§ 91.100 Consultation; local governments.

(a) *General.* (1) When preparing the consolidated plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons) during preparation of the consolidated plan.

(2) When preparing the portion of its consolidated plan concerning lead-based paint hazards, the jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned.

(3) When preparing the description of priority nonhousing community development needs, a unit of general local government must notify adjacent units of general local government, to the extent practicable. The nonhousing community development plan must be submitted to the state, and, if the jurisdiction is a CDBG entitlement grantee other than an urban county, to the county.

(4) The jurisdiction also should consult with adjacent units of general

local government, including local government agencies with metropolitan-wide planning responsibilities where they exist, particularly for problems and solutions that go beyond a single jurisdiction.

(b) *HOPWA.* The largest city in each eligible metropolitan statistical area (EMSA) that is eligible to receive a HOPWA formula allocation must consult broadly to develop a metropolitan-wide strategy for addressing the needs of persons with HIV/AIDS and their families living throughout the EMSA. All jurisdictions within the EMSA must assist the jurisdiction that is applying for a HOPWA allocation in the preparation of the HOPWA submission.

(c) Public housing. The jurisdiction shall consult with the local public housing agency participating in an approved Comprehensive Grant program concerning consideration of public housing needs and planned Comprehensive Grant program activities. This consultation will help provide a better basis for the certification by the local Chief Executive Officer that the Comprehensive Grant Plan/annual statement is consistent with the local government's assessment of low-income housing needs (as evidenced in the consolidated plan) and that the local government will cooperate in providing resident programs and services (as required by § 968.320(d) of this title for the Comprehensive Grant program). It will also help ensure that activities with regard to local drug elimination, neighborhood improvement programs, and resident programs and services, funded under the public housing program and those funded under a program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals.

§ 91.105 Citizen participation plan; local governments.

(a) *Applicability and adoption of the citizen participation plan.* (1) The jurisdiction is required to adopt a citizen participation plan that sets forth the jurisdiction's policies and procedures for citizen participation. (Where a jurisdiction, before March 6, 1995, adopted a citizen participation plan that complies with section 104(a)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(A)(3)) but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by the first day of the jurisdiction's program year that begins on or after 180 days following March 6, 1995.)

(2) *Encouragement of citizen participation.* (i) The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report.

(ii) These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, and by residents of predominantly low- and moderate-income neighborhoods, as defined by the jurisdiction. A jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing authorities, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdiction shall make an effort to provide information to the housing agency about consolidated plan activities related to its developments and surrounding communities so that the housing agency can make this information available at the annual public hearing required under the Comprehensive Grant program.

(3) Citizen comment on the citizen participation plan and amendments. The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities, upon request.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan.

(1) The citizen participation plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive (including grant funds and program income) and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income. The citizen participation plan also must set forth the jurisdiction's plans to minimize displacement of persons and to assist any persons displaced, specifying the types and levels of assistance the jurisdiction will make available (or require others to make available) to persons displaced, even if the jurisdiction expects no displacement to occur. The citizen participation plan must state when and how the jurisdiction will make this information available.

(2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords citizens, public agencies, and other interested parties a reasonable opportunity to examine its contents and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine the contents of the proposed consolidated plan. The requirement for publishing may be met by publishing a summary of the proposed consolidated plan in one or more newspapers of general circulation, and by making copies of the proposed consolidated plan available at libraries, government offices, and public places. The summary must describe the contents and purpose of the consolidated plan, and must include a list of the locations where copies of the entire proposed consolidated plan may be examined. In addition, the jurisdiction must provide a reasonable number of free copies of the plan to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing during the development of the consolidated plan. See paragraph (e) of this section for public hearing requirements, generally.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens on the consolidated plan.

(5) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at the public hearings, in preparing the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to the final consolidated plan.

(c) *Amendments.* (1) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify

the criteria the jurisdiction will use for determining what changes in the jurisdiction's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the use of CDBG funds from one eligible activity to another.

(2) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to the substantial amendment of the consolidated plan.

(d) *Performance reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 15 days, to receive comments on the performance report that is to be submitted to HUD before its submission.

(2) The citizen participation plan shall require the jurisdiction to consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(e) *Public hearings.* (1) The citizen participation plan must provide for at least two public hearings per year to obtain citizens' views and to respond to proposals and questions, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, and review of program performance. To obtain the views of citizens on housing and community development needs, including priority nonhousing community development needs, the citizen participation plan must provide that at least one of these hearings is held before the proposed consolidated plan is published for comment.

(2) The citizen participation plan must state how and when adequate advance notice will be given to citizens of each hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(3) The citizen participation plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(4) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(f) *Meetings.* The citizen participation plan must provide citizens with reasonable and timely access to local meetings.

(g) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(h) *Access to records.* The citizen participation plan must require the jurisdiction to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's consolidated plan and the jurisdiction's use of assistance under the programs covered by this part during the preceding five years.

(i) *Technical assistance.* The citizen participation plan must provide for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction. The assistance need not include the provision of funds to the groups.

(j) *Complaints.* The citizen participation plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, and performance report. At a minimum, the citizen participation plan shall require that the jurisdiction must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).

(k) *Use of citizen participation plan.* The jurisdiction must follow its citizen participation plan.

(l) *Jurisdiction responsibility.* The requirements for citizen participation do not restrict the responsibility or authority of the jurisdiction for the development and execution of its consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.110 Consultation; States.

When preparing the consolidated plan, the State shall consult with other public and private agencies that provide assisted housing (including any State housing agency administering public housing), health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, homeless persons) during preparation of the consolidated plan. When preparing the portion of its consolidated plan concerning lead-based paint hazards, the State shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead poisoned. When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the State.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.115 Citizen participation plan; States.

(a) *Applicability and adoption of the citizen participation plan.* (1) The State is required to adopt a citizen participation plan that sets forth the State's policies and procedures for citizen participation. (Where a State, before March 6, 1995, adopted a citizen participation plan that complies with section 104(a)(3) of the Housing and

Community Development Act of 1974 (42 U.S.C. 5304(A)(3)) but will need to amend the citizen participation plan to comply with provisions of this section, the citizen participation plan shall be amended by the first day of the State's program year that begins on or after 180 days following March 6, 1995.

(2) *Encouragement of citizen participation.* The citizen participation plan must provide for and encourage citizens to participate in the development of the consolidated plan, any substantial amendments to the consolidated plan, and the performance report. These requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods, as defined by the State. A State also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.

(3) *Citizen and local government comment on the citizen participation plan and amendments.* The State must provide citizens and units of general local government a reasonable opportunity to comment on the original citizen participation plan and on substantial amendments to the citizen participation plan, and must make the citizen participation plan public. The citizen participation plan must be in a format accessible to persons with disabilities, upon request.

(b) *Development of the consolidated plan.* The citizen participation plan must include the following minimum requirements for the development of the consolidated plan.

(1) The citizen participation plan must require that, before the State adopts a consolidated plan, the State will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the State expects to receive and the range of activities that may be undertaken, including the estimated amount that will benefit persons of low- and moderate-income and the plans to minimize displacement of persons and to assist any persons displaced. The citizen participation plan must state when and how the State will make this information available.

(2) The citizen participation plan must require the State to publish the proposed consolidated plan in a manner that affords citizens, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine its contents and to submit comments. The citizen participation plan must set forth how the State will publish the proposed consolidated plan and give reasonable opportunity to examine the contents of the proposed consolidated plan. The requirement for publishing may be met by publishing a summary of the proposed consolidated plan in one or more newspapers of general circulation, and by making copies of the proposed consolidated plan available at libraries, government offices, and public places. The summary must describe the contents and purpose of the consolidated plan, and must include a list of the locations where copies of the entire proposed consolidated plan may be examined. In addition, the State must provide a reasonable number of free copies of the plan to citizens and groups that request it.

(3) The citizen participation plan must provide for at least one public hearing on housing and community development needs before the proposed consolidated plan is published for comment.

(i) The citizen participation plan must state how and when adequate advance notice will be given to citizens of the hearing, with sufficient information published about the subject of the hearing to permit informed comment. (Publishing small print notices in the newspaper a few days before the hearing does not constitute adequate notice. Although HUD is not specifying the length of notice required, it would consider two weeks adequate.)

(ii) The citizen participation plan must provide that the hearing be held at a time and location convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities. The citizen participation plan must specify how it will meet these requirements.

(iii) The citizen participation plan must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

(4) The citizen participation plan must provide a period, not less than 30 days, to receive comments from citizens and units of general local government on the consolidated plan.

(5) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general received in writing, or orally at the public hearings, in preparing the final consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the final consolidated plan.

(c) *Amendments.* (1) *Criteria for amendment to consolidated plan.* The citizen participation plan must specify the criteria the State will use for determining what changes in the State's planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) It must include among the criteria for a substantial amendment changes in the method of distribution of such funds.

(2) The citizen participation plan must provide citizens and units of general local government with reasonable notice and an opportunity to comment on substantial amendments. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 30 days, to receive comments on the substantial amendment before the amendment is implemented.

(3) The citizen participation plan shall require the State to consider any comments or views of citizens and units of general local government received in writing, or orally at public hearings, if any, in preparing the substantial amendment of the consolidated plan. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefore, shall be attached to the substantial amendment of the consolidated plan.

(d) *Performance Reports.* (1) The citizen participation plan must provide citizens with reasonable notice and an opportunity to comment on performance reports. The citizen participation plan must state how reasonable notice and an opportunity to comment will be given. The citizen participation plan must provide a period, not less than 15 days, to receive comments on the performance report that is to be submitted to HUD before its submission.

(2) The citizen participation plan shall require the state to consider any comments or views of citizens received in writing, or orally at public hearings in preparing the performance report. A summary of these comments or views shall be attached to the performance report.

(e) *Citizen participation requirements for local governments.* The citizen participation plan must describe the citizen participation requirements for units of general local government receiving CDBG funds from the State in 24 CFR 570.486. The citizen

participation plan must explain how the requirements will be met.

(f) *Availability to the public.* The citizen participation plan must provide that the consolidated plan as adopted, substantial amendments, and the performance report will be available to the public, including the availability of materials in a form accessible to persons with disabilities, upon request. The citizen participation plan must state how these documents will be available to the public.

(g) *Access to records.* The citizen participation plan must require the state to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the state's consolidated plan and the state's use of assistance under the programs covered by this part during the preceding five years.

(h) *Complaints.* The citizen participation plan shall describe the State's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, and performance report. At a minimum, the citizen participation plan shall require that the State must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the State is a CDBG grant recipient).

(i) *Use of citizen participation plan.* The State must follow its citizen participation plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

Subpart C—Local Governments; Contents of Consolidated Plan

§ 91.200 General.

(a) A complete consolidated plan consists of the information required in §§ 91.205 through 91.230, submitted in accordance with instructions prescribed by HUD (including tables and narratives), or in such other format as jointly agreed upon by HUD and the jurisdiction.

(b) The jurisdiction shall describe the lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the jurisdiction's consultations with social service agencies and other entities. It also shall include a summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.205 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must describe the jurisdiction's estimated housing needs projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.100 and the citizen participation process conducted in accordance with § 91.105. For a jurisdiction seeking funding on behalf of an eligible metropolitan statistical area under the HOPWA program, the needs described for housing and supportive services must address the needs of persons with HIV/AIDS and their families throughout the eligible metropolitan statistical area.

(b) *Categories of persons affected.* (1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the jurisdiction as a whole.

(2) For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points higher than the percentage of persons in the category as a whole.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness (including rural homelessness), addressing separately the need for facilities and services for homeless individuals and homeless families with children, both sheltered and unsheltered, and homeless subpopulations, in accordance with a table prescribed by HUD. This description must include the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. The plan also must contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Other special needs.* (1) The jurisdiction shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, public housing residents, and any other categories the jurisdiction may specify, and describe their supportive housing needs.

(2) With respect to a jurisdiction seeking funding on behalf of an eligible metropolitan statistical area under the HOPWA program, the plan must identify the size and characteristics of the population with HIV/AIDS and their families within the eligible metropolitan statistical area it will serve.

(e) *Lead-based paint hazards.* The plan must estimate the number of housing units within the jurisdiction that are occupied by low-income families or moderate-income families that contain lead-based paint hazards, as defined in this part.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.210 Housing market analysis.

(a) *General characteristics.* Based on information available to the jurisdiction, the plan must describe the significant characteristics of the jurisdiction's housing market, including the supply, demand, and condition and cost of housing and the housing stock available to serve persons with disabilities and to serve persons with HIV/AIDS and their families. The jurisdiction must identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms ''area of low-income concentration'' and ''area of minority concentration'' for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(b) *Public and assisted housing.* (1) The plan must describe the number of public housing units in the jurisdiction,

the physical condition of such units, the restoration and revitalization needs, results from the Section 504 needs assessment (i.e., assessment of needs of tenants and applicants on waiting list for accessible units, as required by 24 CFR 8.25), and the public housing agency's strategy for improving the management and operation of such public housing and for improving the living environment of low- and moderate-income families residing in public housing. The consolidated plan must identify the public housing developments in the jurisdictions that are participating in an approved HUD Comprehensive Grant program. Activities covered by the consolidated plan that are being coordinated or jointly funded with the public housing Comprehensive Grant program must be identified by project and referenced to the approved Comprehensive Grant program. Examples of supportive activities for Comprehensive Grant program activities are efforts to revitalize neighborhoods surrounding public housing projects (either current or proposed); cooperation in provision of resident programs and services; coordination of local drug elimination or anti-crime strategies; upgrading of police, fire, schools, and other services; and economic development projects in or near public housing projects to tie in with self-sufficiency efforts for residents.

(2) The jurisdiction shall include a description of the number and targeting (income level and type of family served) of units currently assisted by local, state, or federally funded programs, and an assessment of whether any such units are expected to be lost from the assisted housing inventory for any reason.

(c) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the emergency shelter, transitional housing, permanent supportive housing, and permanent housing needs of homeless persons within the jurisdiction.

(d) *Special need facilities and services.* The plan must describe, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing, and programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing.

(e) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

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§ 91.215 Strategic plan.

(a) *General.* For the categories described in paragraphs (b), (c), (d), and (e) of this section, the consolidated plan must do the following:

(1) Indicate the general priorities for allocating investment geographically within the jurisdiction (or within the EMSA for the HOPWA program) and among priority needs, as identified in the priority needs table prescribed by HUD;

(2) Describe the basis for assigning the priority (including the relative priority, where required) given to each category of priority needs;

(3) Identify any obstacles to meeting underserved needs;

(4) Summarize the priorities and specific objectives, describing how funds that are reasonably expected to be made available will be used to address identified needs; and

(5) For each specific objective, identify proposed accomplishments the jurisdictions hopes to achieve in quantitative terms over a specified time period (i.e., one, two, three or more years), or in other measurable terms as identified and defined by the jurisdiction.

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must include the priority housing needs table prescribed by HUD and must do the following:

(1) The description of the basis for assigning relative priority to each category of priority need shall state how the analysis of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.205 provided the basis for assigning the relative priority given to each priority need category in the priority housing needs table prescribed by HUD. Family and income types may be grouped together for discussion where the analysis would apply to more than one of them;

(2) The statement of specific objectives must indicate how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units; and

(3) The description of proposed accomplishments shall specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership over a specific time period.

(c) *Homelessness.* With respect to homelessness, the consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(d) *Other special needs.* With respect to supportive needs of the non-homeless, the consolidated plan must describe the priority housing and supportive service needs of persons who are not homeless but require supportive housing (i.e., elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents).

(e) *Nonhousing community development plan.* (1) If the jurisdiction seeks assistance under the Community Development Block Grant program, the consolidated plan must describe the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity, in accordance with a table prescribed by HUD. This community development component of the plan must state the jurisdiction's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(2) A jurisdiction that elects to carry out a neighborhood revitalization

strategy that includes the economic empowerment of low-income residents with respect to one or more of their areas may submit this strategy as part of its community development plan. If HUD approves such a strategy, the jurisdiction can obtain greater flexibility in the use of the CDBG funds in the revitalization area(s). The additional flexibility that the jurisdiction would be entitled to for this purpose will be described in 24 CFR part 570, subpart C, at a future date. The criteria for approval of the strategy will not be established by regulation, but jurisdictions will be notified of these criteria.

(f) *Barriers to affordable housing.* The consolidated plan must describe the jurisdiction's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing, as identified in accordance with § 91.210(d), except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph (f), as determined by HUD, the unit of general local government may submit its assessment submitted to the State to HUD and shall be considered to have complied with this requirement.

(g) *Lead-based paint hazards.* The consolidated plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(h) *Anti-poverty strategy.* The consolidated plan must describe the jurisdiction's goals, programs, and policies for reducing the number of poverty level families and how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing, set forth in the housing component of the consolidated plan, will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of poverty level families, taking into consideration factors over which the jurisdiction has control.

(i) *Institutional structure.* (1) The consolidated plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system.

(2) The jurisdiction shall describe the organizational relationship between the jurisdiction and the public housing agency, including the appointing authority for the commissioners or board of the housing agency; relationships regarding hiring, contracting and procurement; provision of services funded by the jurisdiction; and review by the jurisdiction of proposed development sites, of the comprehensive plan of the public housing agency, and of any proposed demolition or disposition of public housing developments.

(3) The plan must describe what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs. If the public housing agency is designated as ''troubled'' by HUD, or otherwise is performing poorly, the jurisdiction shall describe any actions it is taking to assist the public housing agency in addressing these problems.

(j) *Coordination.* The consolidated plan must describe the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the implementation of its consolidated plan.

(k) *Public housing resident initiatives.* The consolidated plan must describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership.

§ 91.220 Action plan.

The action plan must include the following:

(a) *Form application.* Standard Form 424;

(b) *Resources.* (1) *Federal resources.* The consolidated plan must describe the Federal resources expected to be available to address the priority needs and specific objectives identified in the strategic plan, in accordance with § 91.215. These resources include grant funds and program income.

(2) *Other resources.* The consolidated plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the jurisdiction deems it appropriate, it may indicate publicly owned land or property located within the jurisdiction that may be used to carry out the purposes stated in § 91.1;

(c) *Activities to be undertaken.* A description of the activities the jurisdiction will undertake during the next year to address priority needs in terms of local objectives that were identified in § 91.215. This description of activities shall estimate the number and type of families that will benefit from the proposed activities, the specific local objectives and priority needs (identified in accordance with § 91.215) that will be addressed by the activities using formula grant funds and program income the jurisdiction expects to receive during the program year, proposed accomplishments, and a target date for completion of the activity. This information is to be presented in the form of a table prescribed by HUD;

(d) *Geographic distribution.* A description of the geographic areas of the jurisdiction (including areas of minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically;

(e) *Homeless and other special needs activities.* Activities it plans to undertake during the next year to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with § 91.215(d);

(f) *Other actions.* (1) *General.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies and foster public housing improvements and resident initiatives (see § 91.215 (a), (b), (f), (g), (h), (i), (j), and (k)).

(2) *Public housing.* Appropriate reference to the annual revisions of the action plan prepared for the Comprehensive Grant program. If the public housing agency is designated as ''troubled'' by HUD, or otherwise is performing poorly, the jurisdiction's plan, if any, to assist the public housing

agency in addressing these problems; and

(g) *Program-specific requirements.*—(1) *CDBG.* (i) A jurisdiction must describe activities planned with respect to all CDBG funds expected to be available during the program year (including program income that will have been received before the start of the next program year), except that an amount generally not to exceed ten percent of such total available CDBG funds may be excluded from the funds for which eligible activities are described if it has been identified for the contingency of cost overruns.

(ii) CDBG funds expected to be available during the program year includes the following:

(A) Any program income that will have been received before the start of the next program year and that has not yet been programmed;

(B) Surplus from urban renewal settlements;

(C) Grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan; and

(D) *Income from float-funded activities.* The full amount of income expected to be generated by a float-funded activity must be shown, whether or not some or all of the income is expected to be received in a future program year. To assure that citizens understand the risks inherent in undertaking float-funded activities, the recipient must specify the total amount of program income expected to be received and the month(s) and year(s) that it expects the float-funded activity to generate such program income.

(iii) An ''urgent needs'' activity (one that is expected to qualify under § 570.208(c) of this title) may be included only if the jurisdiction identifies the activity in the action plan and certifies that the activity is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.

(iv) This information about activities shall be in sufficient detail, including location, to allow citizens to determine the degree to which they are affected.

(2) *HOME.* (i) For HOME funds, a participating jurisdiction shall describe other forms of investment that are not described in § 92.205(b) of this title.

(ii) If the participating jurisdiction intends to use HOME funds for homebuyers, it must state the guidelines for resale or recapture, as required in § 92.254 of this subtitle.

§ 91.225 Certifications.

(a) *General.* The following certifications, satisfactory to HUD, must be included in the annual submission to HUD. (See definition of ''certification'' in § 91.5.)

(1) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

(2) *Anti-displacement and relocation plan.* Each jurisdiction is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(3) *Drug-free workplace.* The jurisdiction must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(4) *Anti-lobbying.* The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(5) *Authority of jurisdiction.* The jurisdiction must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(6) *Consistency with plan.* The jurisdiction must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan. Where the HOPWA funds are to be received by a city that is the most populous unit of general local government in an EMSA, it must obtain and keep on file certifications of consistency from the authorized public officials for each other locality in the EMSA in which housing assistance is provided.

(7) *Acquisition and relocation.* The jurisdiction must submit a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24.

(8) *Section 3.* The jurisdiction must submit a certification that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(b) *Community Development Block Grant program.* For jurisdictions that seek funding under CDBG, the following certifications are required:

(1) *Citizen participation.* Each jurisdiction must certify that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of § 91.105.

(2) *Community development plan.* A certification that this consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in 24 CFR 570.2, and requirements of this part and 24 CFR part 570.

(3) *Following a plan.* A certification that the jurisdiction is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

(4) *Use of funds.* A certification that the jurisdiction has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years, shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.3 for definition of ''CDBG funds''); and

(iii) The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG

funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

(5) *Excessive force.* A certification that the jurisdiction has adopted and is enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(6) *Compliance with anti-discrimination laws.* The jurisdiction must submit a certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations.

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its notification, inspection, testing, and abatement procedures concerning lead-based paint will comply with the requirements of 24 CFR 570.608.

(8) *Compliance with laws.* A certification that the jurisdiction will comply with applicable laws.

(c) *Emergency Shelter Grant program.* For jurisdictions that seek funding under the Emergency Shelter Grant program, the following certifications are required:

(1) In the case of assistance involving major rehabilitation or conversion, the applicant will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, the applicant will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (including but not limited to employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, the applicant will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) It will obtain matching amounts required under § 576.71 of this title;

(7) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter;

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program; and

(9) It is following a current HUD-approved consolidated plan (or CHAS).

(d) *HOME program.* Each participating jurisdiction must provide the following certifications:

(1) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) A certification that it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(3) A certification that before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(e) *Housing Opportunities for Persons With AIDS.* For jurisdictions that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the jurisdiction that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any building or structure assisted under that program shall be operated for the purpose specified in the plan:

(i) For a period of not less than 10 years in the case of assistance involving new construction, substantial rehabilitation, or acquisition of a facility; or

(ii) For a period of not less than three years in the case of assistance involving non-substantial rehabilitation or repair of a building or structure.

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.

§ 91.235 Special case; abbreviated consolidated plan.

(a) *Who may submit an abbreviated plan?* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, and is not expected to be a participating jurisdiction in the HOME program under 24 CFR part 92, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD instead of a full consolidated plan.

(b) *When is an abbreviated plan necessary?* (1) *Jurisdiction.* When a jurisdiction that is permitted to use an abbreviated plan applies to HUD for

funds under a program that requires an approved consolidated plan (see § 91.2(b)), it must obtain approval of an abbreviated plan (or full consolidated plan) and submit a certification that the housing activities are consistent with the plan.

(2) *Other applicants.* When an eligible applicant other than a jurisdiction (e.g., a public housing agency or nonprofit organization) seeks to apply for funding under a program requiring certification of consistency with an approved consolidated plan, the jurisdiction—if it is permitted to use an abbreviated plan—may prepare an abbreviated plan appropriate to the project. See § 91.510.

(3) *Limitation.* For the HOME program, an abbreviated consolidated plan is only permitted with respect to reallocations to other than participating jurisdictions (see 24 CFR part 92, subpart J). For the CDBG program, an abbreviated plan may be submitted for the HUD-administered Small Cities program, except an abbreviated plan may not be submitted for the HUD-administered Small Cities program in the State of Hawaii.

(c) *What is an abbreviated plan?* (1) *Assessment of needs, resources, planned activities.* An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of assistance anticipated to be funded by HUD.

(2) *Nonhousing community development plan.* If the jurisdiction seeks assistance under the Community Development Block Grant program, it must describe the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity, in accordance with a table prescribed by HUD. This community development component of the plan must state the jurisdiction's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the Housing and Community Development Act of 1974, 42 U.S.C. 5301(c), of the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(3) *Separate application for funding.* In addition to submission of the abbreviated consolidated plan, an application must be submitted for funding is sought under a competitive program. The applicable program requirements are found in the regulations for the program and in the Notice of Funding Availability published for the applicable fiscal year. For the CDBG Small Cities program, the applicable regulations are found at 24 CFR part 570, subpart F.

(d) *What consultation is applicable?* The jurisdiction must make reasonable efforts to consult with appropriate public and private social service agencies regarding the needs to be served with the funding sought from HUD. The jurisdiction must attempt some consultation with the State. (Section 91.100 does not apply.)

(e) *What citizen participation process is applicable?* If the jurisdiction is seeking CDBG funds under the CDBG Small Cities program, before submitting the abbreviated consolidated plan and application to HUD for funding, the jurisdiction must comply with the citizen participation requirements of 24 CFR 570.431. If it is not seeking such funding, the jurisdiction must conduct a citizen participation process as provided in section 107 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12707). (Section 91.105 does not apply.)

§ 91.236 Special case; District of Columbia.

For consolidated planning purposes, the District of Columbia must follow the requirements applicable to local jurisdictions (§§ 91.100, 91.105, and 91.200 through 91.230). In addition, it must submit the component of the State requirements dealing with the use of Low Income Housing Tax Credits (§ 91.315(j)).

(Approved by the Office of Management and Budget under control number 2506–0117).

Subpart D—State Governments; Contents of Consolidated Plan

§ 91.300 General.

(a) A complete consolidated plan consists of the information required in §§ 91.305 through 91.330, submitted in accordance with instructions prescribed by HUD (including tables and narratives), or in such other format as jointly agreed upon by HUD and the State.

(b) The State shall describe the lead agency or entity responsible for overseeing the development of the plan and the significant aspects of the process by which the consolidated plan was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the State's consultations with social service agencies and other entities. It also shall include a summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.305 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must describe the State's estimated housing needs projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the State clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.110 and the citizen participation process conducted in accordance with § 91.115. For a State seeking funding under the HOPWA program, the needs described for housing and supportive services must address the needs of persons with HIV/AIDS and their families in areas outside of eligible metropolitan statistical areas.

(b) *Categories of persons affected.* (1) The consolidated plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for persons with HIV/AIDS and their families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, low-income, moderate-income, and middle-income renters and owners compared to the State as a whole.

(2) For any of the income categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points

higher than the percentage of persons in the category as a whole.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness (including rural homelessness) within the State, addressing separately the need for facilities and services for homeless individuals and homeless families with children, both sheltered and unsheltered, and homeless subpopulations, in accordance with a table prescribed by HUD. This description must include the characteristics and needs of low-income individuals and families with children (especially extremely low-income) who are currently housed but threatened with homelessness. The plan also must contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Other special needs.* (1) The State shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and any other categories the State may specify, and describe their supportive housing needs.

(2) With respect to a State seeking assistance under the HOPWA program, the plan must identify the size and characteristics of the population with HIV/AIDS and their families within the area it will serve.

(e) *Lead-based paint hazards.* The plan must estimate the number of housing units within the State that are occupied by low-income families or moderate-income families that contain lead-based paint hazards, as defined in this part.

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§ 91.310 Housing market analysis.

(a) *General characteristics.* Based on data available to the State, the plan must describe the significant characteristics of the State's housing markets (including such aspects as the supply, demand, and condition and cost of housing).

(b) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the needs for emergency shelter and transitional housing needs of homeless persons within the State.

(c) *Special need facilities and services.* The plan must describe, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing, and programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing.

(d) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by its policies, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

§ 91.315 Strategic plan.

(a) *General.* For the categories described in paragraphs (b), (c), (d), and (e) of this section, the consolidated plan must do the following:

(1) Indicate the general priorities for allocating investment geographically within the State and among priority needs;

(2) Describe the basis for assigning the priority (including the relative priority, where required) given to each category of priority needs;

(3) Identify any obstacles to meeting underserved needs;

(4) Summarize the priorities and specific objectives, describing how the proposed distribution of funds will address identified needs;

(5) For each specific objective, identify the proposed accomplishments the State hopes to achieve in quantitative terms over a specific time period (i.e., one, two, three or more years), or in other measurable terms as identified and defined by the State.

(b) *Affordable housing.* With respect to affordable housing, the consolidated plan must do the following:

(1) The description of the basis for assigning relative priority to each category of priority need shall state how the analysis of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.305 provided the basis for assigning the relative priority given to each priority need category in the priority housing needs table prescribed by HUD. Family and income types may be grouped together for discussion where the analysis would apply to more than one of them;

(2) The statement of specific objectives must indicate how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units; and

(3) The description of proposed accomplishments shall specify the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined in § 92.252 of this subtitle for rental housing and § 92.254 of this subtitle for homeownership over a specific time period.

(c) *Homelessness.* With respect to homelessness, the consolidated plan must include the priority homeless needs table prescribed by HUD and must describe the State's strategy for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(d) *Other special needs.* With respect to supportive needs of the non-homeless, the consolidated plan must describe the priority housing and supportive service needs of persons who are not homeless but require supportive housing (i.e., elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents).

(e) *Nonhousing community development plan.* If the State seeks assistance under the Community Development Block Grant program, the consolidated plan must describe the State's priority nonhousing community development needs that affect more than one unit of general local government and involve activities typically funded by the State under the CDBG program. These priority needs must be described by CDBG eligibility category, reflecting the needs of persons or families for each type of activity. This community development component of the plan must state the State's specific long-term and short-term community development objectives (including economic development activities that create jobs), which must be developed in accordance with the statutory goals described in § 91.1 and the primary objective of the CDBG program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for low-income and moderate-income persons.

(f) *Barriers to affordable housing.* The consolidated plan must describe the State's strategy to remove or ameliorate negative effects of its policies that serve as barriers to affordable housing, as identified in accordance with § 91.310.

(g) *Lead-based paint hazards.* The consolidated plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(h) *Anti-poverty strategy.* The consolidated plan must describe the State's goals, programs, and policies for reducing the number of poverty level families and how the State's goals, programs, and policies for producing and preserving affordable housing, set forth in the housing component of the consolidated plan, will be coordinated with other programs and services for which the State is responsible and the extent to which they will reduce (or assist in reducing) the number of poverty level families, taking into consideration factors over which the State has control.

(i) *Institutional structure.* The consolidated plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the State will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system. The plan must describe what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(j) *Coordination.* The consolidated plan must describe the State's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its consolidated plan.

(k) *Low-income housing tax credit use.* The consolidated plan must describe the strategy to coordinate the Low-income Housing Tax Credit with the development of housing that is affordable to low-income and moderate-income families.

(l) *Public housing resident initiatives.* For a State that has a State housing agency administering public housing funds, the consolidated plan must describe the State's activities to encourage public housing residents to become more involved in management and participate in homeownership.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.320 Action plan.

The action plan must include the following:

(a) *Form application.* Standard Form 424;

(b) *Resources.* (1) *Federal resources.* The consolidated plan must describe the Federal resources expected to be available to address the priority needs and specific objectives identified in the strategic plan, in accordance with § 91.315. These resources include grant funds and program income.

(2) *Other resources.* The consolidated plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the State deems it appropriate, it may indicate publicly owned land or property located within the State that may be used to carry out the purposes stated in § 91.1;

(c) *Activities.* A description of the State's method for distributing funds to local governments and nonprofit organizations to carry out activities, or the activities to be undertaken by the State, using funds that are expected to be received under formula allocations (and related program income) and other HUD assistance during the program year and how the proposed distribution of funds will address the priority needs and specific objectives described in the consolidated plan;

(d) *Geographic distribution.* A description of the geographic areas of the State (including areas of minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically;

(e) *Homeless and other special needs activities.* Activities it plans to undertake during the next year to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless identified in accordance with § 91.315(d);

(f) *Other actions.* Actions it plans to take during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing (including the coordination of Low-Income Housing Tax Credits with the development of affordable housing), remove barriers to affordable housing, evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, and enhance coordination between public and private housing and social service agencies and foster public housing resident initiatives. (See § 91.315 (a), (b), (f), (g), (h), (i), (j), (k), and (l).)

(g) *Program-specific requirements.* In addition, the plan must include the following specific information:

(1) *CDBG.* (i) An ''urgent needs'' activity (one that is expected to qualify under § 570.208(c) of this title) may be included only if the State identifies the activity in the action plan and certifies that the activity is designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available.

(ii) The method of distribution shall contain a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria—if the relative importance has been developed. The action plan must include a description of how all CDBG resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. If the State intends to aid nonentitlement units of general local government in applying for guaranteed loan funds under 24 CFR part 570, subpart M, it must describe available guarantee amounts and how applications will be selected for assistance. (The statement of the method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it and be able to prepare responsive applications.)

(2) *HOME.* (i) The State shall describe other forms of investment that are not described in § 92.205(b) of this subtitle.

(ii) If the State intends to use HOME funds for homebuyers, it must state the guidelines for resale or recapture, as required in § 92.254 of this subtitle.

(3) *ESG.* The State shall state the process for awarding grants to State recipients and a description of how the State intends to make its allocation

available to units of local government and nonprofit organizations.

(4) *HOPWA.* The State shall state the method of selecting project sponsors.

§ 91.325 Certifications.

(a) *General*—(1) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the State, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See § 570.487(b)(2)(ii) of this title.)

(2) *Anti-displacement and relocation plan.* The State is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(3) *Drug-free workplace.* The State must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(4) *Anti-lobbying.* The State must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(5) *Authority of State.* The State must submit a certification that the consolidated plan is authorized under State law and that the State possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(6) *Consistency with plan.* The State must submit a certification that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

(7) *Acquisition and relocation.* The State must submit a certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(8) *Section 3.* The State must submit a certification that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(b) *Community Development Block Grant program.* For States that seek funding under CDBG, the following certifications are required:

(1) *Citizen participation.* A certification that the State is following a detailed citizen participation plan that satisfies the requirements of § 91.115, and that each unit of general local government that is receiving assistance from the State is following a detailed citizen participation plan that satisfies the requirements of § 570.486 of this title.

(2) *Consultation with local governments.* A certification that:

(i) It has consulted with affected units of local government in the nonentitlement area of the State in determining the method of distribution of funding;

(ii) It engages or will engage in planning for community development activities;

(iii) It provides or will provide technical assistance to units of general local government in connection with community development programs;

(iv) It will not refuse to distribute funds to any unit of general local government on the basis of the particular eligible activity selected by the unit of general local government to meet its community development needs, except that a State is not prevented from establishing priorities in distributing funding on the basis of the activities selected; and

(v) Each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of the low-income and moderate-income families, and the activities to be undertaken to meet these needs.

(3) *Community development plan.* A certification that this consolidated plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in 24 CFR 570.2, and requirements of this part and 24 CFR part 570.

(4) *Use of funds.* A certification that the State has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the State, consisting of one, two, or three specific consecutive program years, shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.481 for definition of ''CDBG funds''); and

(iii) The State will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guaranteed funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than with CDBG funds. In addition, with respect to properties owned and occupied by moderate-income (but not low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the State certifies that it lacks CDBG funds to cover the assessment.

(5) *Compliance with anti-discrimination laws.* A certification that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

(6) *Excessive force.* A certification that the State will require units of general local government that receive CDBG funds to certify that they have adopted and are enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such

non-violent civil rights demonstrations within its jurisdiction.

(7) *Compliance with laws.* A certification that the State will comply with applicable laws.

(c) *Emergency Shelter Grant program.* For States that seek funding under the Emergency Shelter Grant program, a certification is required by the State that it will ensure that its State recipients comply with the following criteria:

(1) In the case of assistance involving major rehabilitation or conversion, it will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, it will maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (including but not limited to employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, it will provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) It will obtain matching amounts required under § 576.71 of this title;

(7) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter;

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program; and

(9) It is following a current HUD-approved consolidated plan.

(d) *HOME program.* Each State must provide the following certifications:

(1) If it plans to use program funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) A certification that it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(3) A certification that before committing funds to a project, the State or its recipients will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(e) *Housing Opportunities for Persons With AIDS.* For States that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the State that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any building or structure purchased, leased, rehabilitated, renovated, or converted with assistance under that program shall be operated for not less than 10 years specified in the plan, or for a period of not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.330 Monitoring.

The consolidated plan must describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements.

Subpart E—Consortia; Contents of Consolidated Plan

§ 91.400 Applicability.

This subpart applies to HOME program consortia, as defined in § 91.5 (see 24 CFR part 92). Units of local government that participate in a consortium must participate in submission of a consolidated plan for the consortium, prepared in accordance with this subpart. CDBG entitlement communities that are members of a consortium must provide additional information for the consolidated plan, as described in this subpart.

§ 91.401 Citizen participation plan.

The consortium must have a citizen participation plan that complies with the requirements of § 91.105. If the consortium contains one or more CDBG entitlement communities, the consortium's citizen participation plan must provide for citizen participation within each CDBG entitlement community, either by the consortium or by the CDBG entitlement community, in a manner sufficient for the CDBG entitlement community to certify that it is following a citizen participation plan.

§ 91.402 Consolidated program year.

(a) *Same program year for consortia members.* All units of general local government that are members of a consortium must be on the same program year for CDBG, HOME, ESG, and HOPWA. The program year shall run for a twelve month period and begin on the first calendar day of a month.

(b) *Transition period.* (1) A consortium in existence on March 6, 1995, with all members having aligned program years must comply with paragraph (a) of this section. A consortium in existence on March 6, 1995, in which all members do not have aligned program years will be allowed a transition period during the balance of its current consortium agreement to bring the program year for all members into alignment.

(2) During any such transition period, the lead agency (if it is a CDBG entitlement community) must submit, as its consolidated plan, a plan that complies with this subpart for the consortium, plus its nonhousing Community Development Plan (in accordance with § 91.215). All other CDBG entitlement communities in the consortium may submit their respective nonhousing Community Development Plans (§ 91.215(e)), an Action Plan (§ 91.220) and the certifications (§ 91.425(a) and (b)) in accordance with their individual program years.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.405 Housing and homeless needs assessment.

Housing and homeless needs must be described in the consolidated plan in accordance with the provisions of § 91.205 for the entire consortium. In addition to describing these needs for the entire consortium, the consolidated plan may also describe these needs for individual communities that are members of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.410 Housing market analysis.

Housing market analysis must be described in the consolidated plan in accordance with the provisions of § 91.210 for the entire consortium. In addition to describing market conditions for the entire consortium, the consolidated plan may also describe these conditions for individual communities that are members of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.415 Strategic plan.

Strategies and priority needs must be described in the consolidated plan in accordance with the provisions of § 91.215 for the entire consortium. The consortium is not required to submit a nonhousing Community Development Plan; however, if the consortium includes CDBG entitlement communities, the consolidated plan must include the nonhousing Community Development Plans of the CDBG entitlement community members of the consortium. The consortium must set forth its priorities for allocating housing (including CDBG and ESG, where applicable) resources geographically within the consortium, describing how the consolidated plan will address the needs identified (in accordance with § 91.405), describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.420 Action plan.

(a) *Form application.* The action plan for the consortium must include a Standard Form 424 for the consortium for the HOME program. Each entitlement jurisdiction also must submit a Standard Form 424 for its funding under the CDBG program and, if applicable, the ESG and HOPWA programs.

(b) *Description of resources and activities.* The action plan must describe the resources to be used and activities to be undertaken to pursue its strategic plan. The consolidated plan must provide this description for all resources and activities within the entire consortium as a whole, as well as a description for each individual community that is a member of the consortium.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.425 Certifications.

(a) *Consortium certifications*—(1) *General*—(i) *Affirmatively furthering fair housing.* Each consortium must certify that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the area, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

(ii) *Anti-displacement and relocation plan.* Each consortium must certify that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the HOME or CDBG program.

(iii) *Drug-free workplace.* The consortium must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(iv) *Anti-lobbying.* The consortium must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(v) *Authority of consortium.* The consortium must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the consortium possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(vi) *Consistency with plan.* The consortium must certify that the housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

(vii) *Acquisition and relocation.* The consortium must certify that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601), and implementing regulations at 49 CFR part 24.

(viii) *Section 3.* The consortium must certify that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

(2) *HOME program.* The consortium must provide the following certifications:

(i) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(ii) That it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 through 92.209 of this subtitle and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this subtitle; and

(iii) That before committing funds to a project, the consortium will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing.

(b) *CDBG entitlement community certifications.* A CDBG entitlement community that is a member of a consortium must submit the certifications required by § 91.225 (a) and (b), and, if applicable, of § 91.225 (c) and (d).

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.430 Monitoring.

The consolidated plan must describe the standards and procedures that the consortium will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.

Subpart F—Other General Requirements

§ 91.500 HUD approval action.

(a) *General.* HUD will review the plan upon receipt. The plan will be deemed approved 45 days after HUD receives the plan, unless before that date HUD has notified the jurisdiction that the plan is disapproved.

(b) *Standard of review.* HUD may disapprove a plan or a portion of a plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12703), or it is substantially incomplete. The following are examples of consolidated plans that are substantially incomplete:

(1) A plan that was developed without the required citizen participation or the required consultation;

(2) A plan that fails to satisfy all the required elements in this part; and

(3) A plan for which a certification is rejected by HUD as inaccurate, after HUD has inspected the evidence and provided due notice and opportunity to the jurisdiction for comment.

(c) *Written notice of disapproval.* Within 15 days after HUD notifies a jurisdiction that it is disapproving its plan, it must inform the jurisdiction in writing of the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval. Disapproval of a plan with respect to one program does not affect assistance distributed on the basis of a formula under other programs.

(d) *Revisions and resubmission.* The jurisdiction may revise or resubmit a plan within 45 days after the first notification of disapproval. HUD must respond to approve or disapprove the plan within 30 days of receiving the revisions or resubmission.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.505 Amendments to the consolidated plan.

(a) *Amendments to the plan.* The jurisdiction shall amend its approved plan whenever it makes one of the following decisions:

(1) To make a change in its allocation priorities or a change in the method of distribution of funds;

(2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or

(3) To change the purpose, scope, location, or beneficiaries of an activity.

(b) *Criteria for substantial amendment.* The jurisdiction shall identify in its citizen participation plan the criteria it will use for determining what constitutes a substantial amendment. It is these substantial amendments that are subject to a citizen participation process, in accordance with the jurisdiction's citizen participation plan. (See §§ 91.105 and 91.115.)

(c) *Submission to HUD.* (1) Upon completion, the jurisdiction must make the amendment public and must notify HUD that an amendment has been made. The jurisdiction may submit a copy of each amendment to HUD as it occurs, or at the end of the program year. Letters transmitting copies of amendments must be signed by the official representative of the jurisdiction authorized to take such action.

(2) See subpart B of this part for the public notice procedures applicable to substantial amendments. For any amendment affecting the HOPWA program that would involve acquisition, rehabilitation, conversion, lease, repair or construction of properties to provide housing, an environmental review of the revised proposed use of funds must be completed by HUD in accordance with 24 CFR 574.510.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.510 Consistency determinations.

(a) *Applicability.* For competitive programs, a certification of consistency of the application with the approved consolidated plan for the jurisdiction may be required, whether the applicant is the jurisdiction or another applicant.

(b) *Certifying authority.* (1) The certification must be obtained from the unit of general local government if the project will be located in a unit of general local government that: is required to have a consolidated plan, is authorized to use an abbreviated consolidated plan but elects to prepare and has submitted a full consolidated plan, or is authorized to use an abbreviated consolidated plan and is applying for the same program as the applicant pursuant to the same Notice of Funding Availability (and therefore has or will have an abbreviated consolidated plan for the fiscal year for that program).

(2) If the project will not be located in a unit of general local government, the certification may be obtained from the State or, if the project will be located in a unit of general local government authorized to use an abbreviated consolidated plan, from the unit of general local government if it is willing to prepare such a plan.

(3) Where the recipient of a HOPWA grant is a city that is the most populous unit of general local government in an EMSA, it also must obtain and keep on file certifications of consistency from such public officials for each other locality in the EMSA in which housing assistance is provided.

(c) *Meaning.* A jurisdiction's certification that an application is consistent with its consolidated plan means the jurisdiction's plan shows need, the proposed activities are consistent with the jurisdiction's strategic plan, and the location of the proposed activities is consistent with the geographic areas specified in the plan. The jurisdiction shall provide the reasons for the denial when it fails to provide a certification of consistency.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.515 Funding determinations by HUD.

(a) *Formula funding.* The action plan submitted by the jurisdiction will be considered as the application for the CDBG, HOME, ESG, and HOPWA formula grant programs. The Department will make its funding award determination after reviewing the plan submission in accordance with § 91.500.

(b) *Other funding.* For other funding, the jurisdiction must still respond to Notices of Funding Availability for the individual programs in order to receive funding.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.520 Performance reports.

(a) *General.* Each jurisdiction that has an approved consolidated plan shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its strategic plan and its action plan. The performance report must include a description of the resources made available, the investment of available resources, the geographic distribution and location of investments, the families and persons assisted (including the racial and ethnic status of persons assisted), actions taken to affirmatively further fair housing, and other actions indicated in the strategic plan and the action plan. This performance report shall be submitted to HUD within 90 days after the close of the jurisdiction's program year.

(b) *Affordable housing.* The report shall include an evaluation of the jurisdiction's progress in meeting its specific objective of providing affordable housing, including the number and types of families served. This element of the report must include the number of extremely low-income, low-income, moderate-income, and middle-income persons served.

(c) *CDBG.* For CDBG recipients, the report shall include a description of the use of CDBG funds during the program year and an assessment by the jurisdiction of the relationship of that use to the priorities and specific objectives identified in the plan, giving special attention to the highest priority activities that were identified. This element of the report must specify the nature of and reasons for any changes in its program objectives and indications of how the jurisdiction would change its programs as a result of its experiences. This element of the report also must include the number of extremely low-income, low-income, and moderate-income persons served by each activity where information on income by family size is required to determine the eligibility of the activity.

(d) *HOME.* For HOME participating jurisdictions, the report shall include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations, an assessment of the jurisdiction's affirmative marketing actions and outreach to minority-owned and women-owned businesses, and data on the amount and use of program income for projects, including the number of projects and owner and tenant characteristics.

(e) *HOPWA.* For jurisdictions receiving funding under the Housing Opportunities for Persons With AIDS program, the report must include the number of individuals assisted and the types of assistance provided.

(f) *Evaluation by HUD.* HUD shall review the performance report and determine whether it is satisfactory. If a satisfactory report is not submitted in a timely manner, HUD may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if HUD determines, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 91.525 Performance review by HUD.

(a) *General.* HUD shall review the performance of each jurisdiction covered by this part at least annually, including site visits by employees—insofar as practicable, assessing the following:

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with the consolidated plan;

(3) Accuracy of performance reports;

(4) Extent to which the jurisdiction made progress towards the statutory goals identified in § 91.1; and

(5) Efforts to ensure that housing assisted under programs administered by HUD is in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD shall report on the performance review in writing, stating the length of time the jurisdiction has to review and comment on the report, which will be at least 30 days. HUD may revise the report after considering the jurisdiction's views, and shall make the report, the jurisdiction's comments, and any revisions available to the public within 30 days after receipt of the jurisdiction's comments.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

2. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

3. In § 92.2, the definition of ''housing strategy'' is removed and a definition of ''consolidated plan'' is added in alphabetical order, to read as follows:

§ 92.2 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this subtitle, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this subtitle.

* * * * *

4. Section 92.52 is revised to read as follows:

§ 92.52 Formula allocations.

Not later than 20 days after funds become available to HUD, HUD will allocate HOME funds and then will promptly notify all jurisdictions receiving a formula allocation the amount of each jurisdiction's formula allocation.

5. In § 92.103, paragraph (a) is revised to read as follows:

§ 92.103 Notification of intent to participate.

(a) A jurisdiction must notify HUD in writing, not later than 30 days after receiving notice of its formula allocation amount under § 92.52, of its intention to become a participating jurisdiction.

* * * * *

6. Section 92.104 is revised to read as follows:

§ 92.104 Submission of consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD or has submitted an abbreviated consolidated plan (as provided for in § 91.235 of this subtitle) must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with part 91 of this subtitle.

(Approved by the Office of Management and Budget under control numbers 2501–0013).

7. Section 92.105 is revised to read as follows:

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with part 91 of this subtitle, HUD will designate the jurisdiction as a participating jurisdiction.

(Approved by the Office of Management and Budget under control numbers 2501–0013 and 2506–0117).

8. Section 92.150 is revised to read as follows:

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 92.151 [Removed]

9. Section 92.151 is removed.

§ 92.152 [Removed]

10. Section 92.152 is removed.

§ 92.200 [Amended]

11. In § 92.200, the term ''housing strategy'' is removed from each place where it appears, and the term ''consolidated plan'' is added in each place.

§ 92.201 [Amended]

12. In § 92.201, the term ''housing strategy'' is removed from paragraphs (a) and (b)(1) from each place where it appears, and the term ''consolidated plan'' is added in each place.

§ 92.204 [Amended]

13. Section 92.204 is amended by removing from paragraph (c) the phrase, ''subpart D (Program Description),''.

§ 92.207 [Amended]

14. Section 92.207 is amended by removing from paragraph (f) the term ''housing strategy'' in each place where it occurs and adding in its place the term ''consolidated plan''.

15. In § 92.211, paragraph (a)(1) is revised to read as follows:

§ 92.211 Tenant-based rental assistance.

(a) * * *

(1) The participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with §§ 91.225(d)(1), 91.325(d)(1), or 91.425(b)(1)) of this subtitle; and

* * * * *

§ 92.220 [Amended]

16. Section 92.220 is amended by removing the last sentence from paragraph (a)(6)(ii).

§ 92.222 [Amended]

17. Section 92.222 is amended by removing from paragraphs (a)(3) and (a)(4) the word ''published'' in each place where it appears, and adding in its place the word ''made''.

§ 92.300 [Amended]

18. Section 92.300 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.302 [Amended]

19. Section 92.302 is amended by removing from paragraph (b)(2) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.350 [Amended]

20. Section 92.350 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.450 [Amended]

21. Section 92.450 is amended by removing from paragraph (b) the term ''housing strategy'' where it occurs and adding it its place the term ''consolidated plan''.

§ 92.451 [Amended]

22. Section 92.451 is amended by removing from paragraph (a)(1)(iii), the phrase ''housing strategy in accordance with § 92.104'' and by adding in its place, the phrase ''consolidated plan, in accordance with part 91 of this subtitle''; and by removing from paragraph (a)(2) the phrase ''§ 91.70 of this title'' and by adding in its place, the phrase ''part 91 of this subtitle''.

§ 92.453 [Amended]

23. Section 92.453 is amended by removing from paragraph (b)(2)(ii) the phrase ''housing strategy'' each place where it occurs, and by adding the phrase ''consolidated plan''.

§ 92.508 [Amended]

24. Section 92.508 is amended by removing from paragraph (c)(1) the word ''three'' and adding in its place the word ''four''.

25. In § 92.509, paragraph (b) is revised to read as follows:

§ 92.509 Performance reports.

(a) * * *

(b) *Annual performance report.* For annual performance report requirements, see part 91 of this subtitle.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

26. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

27. In § 570.3, the definition of ''Comprehensive Housing Affordability Strategy (CHAS or housing strategy)'' is removed, and the definition of ''consolidated plan'' is added in alphabetical order, to read as follows:

§ 570.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with 24 CFR part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the CDBG program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with 24 CFR part 91.

* * * * *

§ 570.205 [Amended]

28. In § 570.205, paragraph (a)(3)(i) is amended by removing the term ''Comprehensive Housing Affordability Strategy'', and adding in its place the term ''consolidated plan''.

§ 570.301 [Removed]

29. Section 570.301 is removed.

30. Section 570.302 is revised to read as follows:

§ 570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a grantee must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the consolidated plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(Approved by the Office of Management and Budget under control number 2506–0117).

31. Section 570.303 is revised to read as follows:

§ 570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

(Approved by the Office of Management and Budget under control number 2506–0117).

32. In § 570.304, paragraphs (a) and (c)(1) are revised to read as follows:

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submissions have been made and approved in accordance with 24 CFR part 91.

* * * * *

(c) * * *

(1) The consolidated plan is not received by the first working day in September or is not approved under 24 CFR part 91, subpart F, in which case the grantee will forfeit the entire entitlement amount; or

* * * * *

§ 570.305 [Removed]

33. Section 570.305 is removed.

§ 570.306 [Removed]

34. Section 570.306 is removed.

§ 570.308 [Amended]

35. In § 570.308, paragraph (d) is amended by removing the phrase, ''this subpart'', and adding in its place the phrase, ''24 CFR part 91''.

§ 570.420 [Amended]

36. In § 570.420, paragraph (d) is amended by removing the word ''*CHAS*'' and adding in its place the phrase ''*consolidated plan*''; and by removing the phrase ''Comprehensive Housing Affordability Strategy'' and adding in its place the phrase ''consolidated plan''.

37. In § 570.423, paragraphs (a), (b), and (c)(1) are revised to read as follows:

§ 570.423 Application for the HUD-administered New York Small Cities Grants.

(a) *Proposed application.* The applicant shall prepare and publish a proposed application and comply with citizen participation requirements as described in § 570.431, and in 24 CFR part 91—if the application contains housing activities and the applicant is required to prepare and submit an abbreviated consolidated plan.

(b) *Final application.* The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted, in a form prescribed by HUD, to the appropriate HUD office. The application also must contain a priority nonhousing community development plan, in accordance with 24 CFR 91.235.

(c) *Certifications.* (1) Certifications shall be submitted in a form prescribed by HUD. If the application contains any housing activities, the applicant shall certify that the proposed housing activities are consistent with its abbreviated consolidated plan, as described at 24 CFR part 91.

* * * * *

38. Section 570.429 is amended as follows:

a. By removing from paragraph (b) the word ''through'' and by adding, in its place, the word ''and''; and

b. By revising paragraphs (f) and (g) to read as follows:

§ 570.429 Hawaii general and grant requirements.

* * * * *

(f) *Required submissions.* In order to receive its formula grant under this subpart, the applicant must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

(g) *Application approval.* HUD will follow the requirements of 24 CFR 91.500.

* * * * *

§ 570.430 [Amended]

39. Section 570.430 is amended by removing paragraph (f).

§ 570.431 [Amended]

40. Section 570.431 is amended by removing paragraph (f).

41. In § 570.485, paragraphs (b), (c), and (e) are removed; paragraph (d) is redesignated as paragraph (b); and paragraph (a) is revised to read as follows:

§ 570.485 State submissions and state citizen participation requirements.

(a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

* * * * *

42. Section 570.487 is amended by revising paragraph (b) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(b) *Affirmatively furthering fair housing.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing. The certification that the State will affirmatively further fair housing shall specifically require the State to assume the responsibility of fair housing planning by:

(1) Conducting an analysis to identify impediments to fair housing choice within the State;

(2) Taking appropriate actions to overcome the effects of any impediments identified through that analysis;

(3) Maintaining records reflecting the analysis and actions in this regard; and

(4) Assuring that units of local government funded by the State comply with their certifications to affirmatively further fair housing.

* * * * *

43. Section 570.491 is revised to read as follows:

§ 570.491 Performance and evaluation report.

The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(Approved by the Office of Management and Budget under control number 2506–0117).

44. In § 570.502, paragraph (a)(16) is revised to read as follows:

§ 570.502 Applicability of uniform administrative requirements.

(a) * * *

(16) Section 85.42, ''Retention and access requirements for records,'' except that the period shall be four years;

* * * * *

45. In § 570.506, paragraphs (e) and (g)(1) are revised to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(e) Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients.

* * * * *

(g) * * *

(1) Documentation of the analysis of impediments and the actions the recipient has carried out with its housing and community development and other resources to remedy or ameliorate any impediments to fair housing choice in the recipient's community.

* * * * *

46. In § 570.507, paragraph (a) is revised to read as follows:

§ 570.507 Reports.

(a) *Performance and evaluation report*—(1) *Entitlement grant recipients and HUD-administered small cities recipients in Hawaii.* The annual performance and evaluation report shall be submitted in accordance with 24 CFR part 91.

(2) *HUD-administered small cities recipients in New York.* (i) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by HUD, including a summary of the citizen comments received on the report.

(ii) *Timing.* The performance and evaluation report on each grant shall be submitted:

(A) No later than October 31 for all grants executed before April 1 of the same calendar year. The first report should cover the period from the execution of the grant until September 30. Reports on grants made after March 31 of a calendar year will be due October 31 of the following calendar year, and the reports will cover the period of time from the execution of the grant until September 30 of the calendar year following grant execution. After the initial submission, the performance and evaluation report will be submitted annually on October 31 until completion of the activities funded under the grant;

(B) Hawaii grantees will submit their small cities performance and evaluation report for each pre-FY 1995 grant no later than 90 days after the completion of their most recent program year. After the initial submission, the performance and evaluation report will be submitted annually until completion of the activities funded under the grant; and

(C) No later than 90 days after the criteria for grant closeout, as described in § 570.509(a), have been met.

(iii) *Citizen comments on the report.* Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and times the report will be made available to citizens consistent with the preceding sentence.

* * * * *

§ 570.509 [Amended]

47. Section 570.509 is amended by removing from paragraph (b)(1) the word, ''§ 570.507'' and adding in its place the words, ''24 CFR part 91''; and by removing from paragraph (d) the phrases, ''*comprehensive housing affordability strategy*'', ''Comprehensive Housing Affordability Strategy (CHAS)'', and ''fiscal year'', and adding, in their place, the phrases, ''*consolidated plan*'', ''Consolidated Plan'', and ''program year'', respectively.

§ 570.601 [Amended]

48. In § 570.601, paragraph (b) is amended by adding the following sentence to the end of the paragraph, to read as follows:

§ 570.601 Public Law 88–352 and Public Law 90–284; affirmatively furthering fair housing; Executive Order 11063.

* * * * *

(b) * * * For each community receiving a grant under subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard.

* * * * *

§ 570.605 [Amended]

49. Section 570.605 is amended by removing the phrase, ''final statement pursuant to § 570.302'', and by adding, in its place, the phrase, ''consolidated plan, in accordance with 24 CFR part 91''.

§ 570.606 [Amended]

50. In § 570.606, paragraph (c)(3)(iv) is amended by removing the term ''Comprehensive Housing Affordability Strategy'', and adding in its place the term ''consolidated plan''.

§ 570.704 [Amended]

51. Section 570.704 is amended as follows:

a. In paragraph (a)(1)(v), the phrase, ''statements of community development objectives and projected use of funds prepared for its annual grant pursuant to § 570.301'' is removed, and the phrase, ''consolidated plan'' is added in its place; and the phrase, ''include in these statements'', is removed and the phrase, ''include in the consolidated plan'', is added in its place.

b. In paragraph (b) introductory text, the phrase ''final statement'' is removed and the phrase ''consolidated plan'' is added in its place.

c. In paragraph (a)(2), the third and fourth sentences are revised to read as follows:

§ 570.704 Application requirements.

(a) * * *

(2) *Citizen participation plan.* * * * The plan may be the citizen plan required for the consolidated plan, modified to include guaranteed loan funds. The public entity is not required to hold a separate public hearing for its consolidated plan and for the guaranteed loan funds to obtain citizens' views on community development and housing needs. * * *

* * * * *

§ 570.901 [Amended]

52. Section 570.901 is amended by removing from paragraph (d) the phrase, ''presubmission requirements at § 570.301, the amendment requirements at § 570.305'', and adding in its place the phrase, ''submission requirements of 24 CFR part 91''.

53. In § 570.904, paragraph (c) is revised to read as follows:

§ 570.904 Equal Opportunity and Fair Housing Review Criteria.

* * * * *

(c) *Fair housing review criteria.* Section 570.601(b) sets forth the general requirements for the Fair Housing Act (42 U.S.C. 3601–3620) and the grantee's certification that it will affirmatively further fair housing.

* * * * *

§ 570.910 [Amended]

54. Section 570.910 is amended by removing from paragraph (b)(2)(iii) the phrase, ''subpart D'', and adding in its place the phrase, ''24 CFR part 91''.

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

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

56. Section 574.2 is revised to read as follows:

§ 574.2 Overview.

(a) *Available funds.* The Department awards funds appropriated for any fiscal year for the program through a formula allocation and a competitive grant process. Ninety percent of funds appropriated for this program are distributed by formula entitlement. The remaining ten percent is awarded through the competitive process.

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

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

57. In § 574.3, the definitions for ''Eligible State'' and ''Qualifying city'' are revised to read as follows:

§ 574.3 Definitions.

* * * * *

Eligible State means a State that has:

(1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and

(2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. (A State may carry out activities anywhere in the State, including within an EMSA.)

* * * * *

Qualifying city means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

* * * * *

58. In § 574.100, the existing text is designated as paragraph (a), and a new paragraph (b) is added, to read as follows:

§ 574.100 Eligible applicants.

* * * * *

(b) HUD will notify eligible States and qualifying cities of their formula eligibility and allocation amounts and EMSA service areas annually.

59. Section 574.120 is revised to read as follows:

§ 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a

consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

§ 574.160 [Removed]

60. Section 574.160 is removed.

§ 574.170 [Removed]

61. Section 574.170 is removed.

§ 574.180 [Removed]

62. Section 574.180 is removed.

63. In § 574.190, the first sentence is revised to read as follows:

§ 574.190 Reallocation of grant amounts.

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year.

* * *

§ 574.240 [Amended]

64. In § 574.240, paragraph (c)(11) is amended by removing the phrase, ''CHAS approved by HUD (see § 574.160(a))'' and by adding in its place the phrase, ''consolidated plan approved by HUD in accordance with 24 CFR part 91''.

65. Section 574.520 is revised to read as follows:

§ 574.520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

§ 574.530 [Amended]

66. In § 574.530, the word ''three-year'' is removed and the word ''four-year'' is added in its place.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

67. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

68. In § 576.3, the definition of ''Comprehensive Housing Affordability Strategy'' is removed and a definition of ''Consolidated plan'' is added in alphabetical order, to read as follows:

§ 576.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this title, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this title.

* * * * *

Subpart C—[Removed and Reserved]

69. Subpart C is removed and reserved.

70. Section 576.51 is revised to read as follows:

§ 576.51 Application requirements.

In order to receive a grant under this part, a State or formula city or county must submit and obtain HUD approval of a consolidated plan in accordance with 24 CFR part 91 that includes activities to be funded under this part. 24 CFR part 91 includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process. This plan serves as the jurisdiction's application for funding under this program.

(Approved by the Office of Management and Budget under control number 2506–0117).

§ 576.53 [Amended]

71. In § 576.53, paragraphs (a), (b), and (e) are removed; and paragraphs (c) and (d) are redesignated as paragraphs (a) and (b), respectively.

72. In § 576.61, the section heading and paragraph (a) are revised to read as follows:

§ 576.61 Reallocation of grant amounts; formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to submit or obtain HUD approval of its consolidated plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year.

* * * * *

73. In § 576.63, the section heading, paragraph (a), paragraph (d) introductory text, and paragraph (d)(1) are revised, to read as follows:

§ 576.63 Reallocation of grant amounts; States and Territories.

(a) *Applicability.* This section applies where a State or Territory fails to submit or obtain HUD approval of its consolidated plan by the deadline specified in § 576.61(a), or grant amounts cannot be reallocated to a State under § 576.61.

* * * * *

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, or State or Territory, must:

(1) Submit an amendment, in accordance with 24 CFR part 91, to its consolidated plan for that program year to cover activities for the reallocation amount it wishes to receive; and

* * * * *

74. In § 576.67, paragraphs (c)(5) and (f)(1) are revised to read as follows:

§ 576.67 Reallocation of grant amounts; returned or unused amounts.

* * * * *

(c) * * *

(5) The responsible HUD field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications, and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted.

* * * * *

(f) * * *

(1) For purposes of this section, emergency shelter grant amounts are considered ''returned'' when they become available for reallocation because a jurisdiction does not execute a grant agreement with HUD for them.

* * * * *

§ 576.85 [Removed]

75. Section 576.85 is removed.

§ 576.87 [Amended]

76. In § 576.87, the word ''three-year'' is removed and the word ''four-year'' is added in its place.

PART 968—PUBLIC HOUSING MODERNIZATION

77. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, 3535(d).

78. Section 968.320 is amended by:

a. Revising the first sentence of paragraph (c) introductory text;

b. Redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively;

c. Adding a new paragraph (d);

d. Amending the newly redesignated paragraph (e) by adding two new sentences preceding the last sentence of the introductory text;

e. Revising the last sentence of paragraph (e)(4)(i); and

f. Removing from paragraph (e)(6)(ii) the phrase ''Comprehensive Housing Affordability Strategy'' and adding in its place the phrase ''consolidated plan''; to read as follows:

§ 968.320 Comprehensive Plan (including Five-Year Action Plan).

* * * * *

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of a comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their residents. * * *

* * * * *

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) * * * Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. * * *

* * * * *

(4) * * * (i) * * * Where necessary, HUD will review the PHA's documentation in support of its cost reasonableness and taking into account broader efforts to revitalize the neighborhoods in which the development are located;

* * * * *

Dated: December 22, 1994.

Henry G. Cisneros,

Secretary.

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