

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 91

[Docket No. FR-4923-P-01; HUD 2004-0028]

RIN 2501-AD07

Revisions and Updates To Consolidated Plan

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the consolidated plan regulations of state and local governments to make clarifying and streamlining changes that are expected to make the consolidated plan of state and local jurisdictions more results-oriented and useful to communities in assessing their own progress toward addressing the problems of low-income areas. The consolidated plan is the document that is submitted to HUD by jurisdictions that receive funding under any of HUD's Community Planning and Development formula grant programs and serves as the jurisdiction's planning document for the use of the funds received under these programs. The proposed rule would eliminate some obsolete and redundant provisions and make other changes that would conform the consolidated plan regulations with HUD's public housing regulations that govern the Public Housing Agency (PHA) Plan.

DATES: *Comment due date:* January 31, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The federal electronic rulemaking Portal at www.regulations.gov; or
- The HUD electronic Web site at www.epa.gov/feddocket. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at www.epa.gov/feddocket.

FOR FURTHER INFORMATION CONTACT:

Salvatore Sclafani, CPD Office of Policy Development and Coordination, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-7000, telephone, (202) 708-1817 extension 4364 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD published a final rule on January 5, 1995 (60 FR 1896) for the "Consolidated Submission for Community Planning and Development Programs" that consolidated and streamlined the planning, application, and reporting requirements for HUD's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons with AIDS (HOPWA) formula programs into a consolidated planning document (consolidated plan) and a consolidated annual performance report. The final rule for the PHA Plan, published in the **Federal Register** on October 21, 1999 (64 FR 56844), established the procedures and requirements for the submission of PHA Plans that provide a mechanism for defining long-term and short-term needs and strategies. Both the consolidated plan and the PHA Plan resulted from an extensive consultation process that involved numerous stakeholders representing the interests of state and local governments and low-income persons.

In Fiscal Year (FY) 2002, the President's Management Agenda directed HUD to work with local stakeholders to streamline the consolidated plan, making it more results-oriented and useful to communities in assessing their own progress toward addressing the problems of low-income areas. To launch this activity, several HUD Office of Community Planning and Development (CPD) Field Offices held focus group sessions with grantees and other stakeholders in February 2002, to discuss ways to streamline the consolidated plan and improve performance measurement. On March 14, 2002, CPD convened a national planning meeting to introduce the concept of the Consolidated Plan Improvement Initiative to a national audience that included public interest groups, grantees, other stakeholders, along with staff from HUD headquarters

and field offices, and the Office of Management and Budget (OMB).

At a meeting of these stakeholders, participants agreed that addressing the issues of streamlining and performance measurement would be best served by small working groups that represent the full range of people involved in and affected by the consolidated plan, including grantee practitioners, public interest groups, HUD staff, and other stakeholders. Six working groups were identified to assess alternative planning requirements, examine and suggest performance measures, and identify communities that would be willing to test pilots of alternative planning procedures. Alternative planning procedures were tested by representatives of state and local governments that participated in eight pilots. A steering committee coordinated the work of the six working groups and reviewed ideas under consideration to make the consolidated plan more useful and results oriented.

One pilot looked at streamlining the plan by referencing existing documents to avoid requiring redundant information. Another pilot evaluated alternative means of satisfying non-housing community development plan requirements. A third pilot addressed alternative formats for submission of consolidated plans, action plans, and performance reporting. The fourth pilot explored ways to enhance the citizen participation process. The fifth pilot involved development and use of templates. The sixth pilot involved coordination of consolidated plan and public housing agency plan. The seventh pilot explored the development and review of tools to submit consolidated plans, track results, and report performance. The eighth pilot documented useful practices for streamlining and performance measurement. An analysis of these pilots helped HUD determine how the consolidated planning process and regulatory requirements might be made more streamlined, results-oriented, and ultimately more useful to communities in addressing the needs of their low-income residents and areas.

II. This Proposed Rule

This proposed rule resulted from an extensive consultation process that involved stakeholders representing the interests of state and local governments and low-income persons. The Department carefully considered ideas generated by several working groups that were established to explore alternative planning requirements and suggestions for improving the consolidated plan. Representatives from

the following national groups participated in the process: Council of State Community Development Agencies, National Community Development Association, National Association for County, Community and Economic Development, National Association of Housing and Redevelopment Officials, and National Low Income Housing Coalition.

The proposed rule builds on the existing framework that established the consolidated plan as a collaborative process whereby a community establishes a unified plan of community development actions. That framework gave states and local governments the flexibility to use existing plans and strategies to help citizens understand the jurisdiction's priority needs, and assess the jurisdiction's progress toward meeting identified goals and objectives through measurable indicators.

This rule also conforms the consolidated plan regulations to sections 568 and 583 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998, codified at 42 U.S.C. 12705) that required state or local consolidated plans to describe the manner that the jurisdiction will help address the needs of public housing, and that a consolidated plan from a state or unit of general local government in which any troubled PHA is located must include a description of the manner in which the state or unit of local government will provide financial or other assistance to remove the PHA's troubled designation. This rule also makes certain other conforming amendments and clarification changes.

A. Concise, Action-Oriented Management Tool

The general view of the groups participating in the Consolidated Plan Improvement Initiative was that the consolidated plan should be a concise, action-oriented management tool that would be more understandable to the public and more useful to decision makers in the community. This view is consistent with ideas expressed in the conference report accompanying the Cranston-Gonzalez National Affordable Housing Act that stated that the (housing) strategies “will serve not only as effective monitoring tools for the Department, but also as concise, useful, action-oriented management tools for States and local governments.” (H.R. Conf. Rep. 101–943, October 25, 1990). In accordance with this view, § 91.200 (b); § 91.205(a), (b), (c); § 91.215 (d), (e), (h), (i), (j); § 91.220(b)(1); § 91.300(b); § 91.305(a), (b), (c); § 91.315(d), (e), (h), (i), (j); and § 91.320(b)(1) are modified to

emphasize the format of the descriptions should be a concise summary, not a detailed narrative. In addition, § 91.1(b)(4) is amended to read the consolidated plan serves as “a management tool for assessing performance and tracking results.”

B. Citizen Participation

HUD regulations that concern citizen participation would be amended at § 91.1 to include citizens, organizations, businesses, and other stakeholders among those that should be involved in the citizen participation process and at §§ 91.105 and 91.115 to encourage the participation of local and regional institutions and other organizations (including businesses, developers, community and faith-based organizations) in the process of developing and implementing the consolidated plan. Jurisdictions would be encouraged to explore alternative public involvement techniques (such as focus groups and the use of the Internet) and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance.

HUD also invites comment on whether an executive summary would be a useful tool for citizens as well as jurisdictions. For example, the format of the executive summary could include two items: (1) A list of the significant short and long-term performance goals (for grantee activities and the communities/neighborhoods assisted); and (2) the major activities and projects grantees plan to fund to achieve those goals. HUD is particularly interested in comments on what specific information should be included in an executive summary and whether the benefit of an executive summary would outweigh the burden.

C. Clarification of Chronic Homelessness

HUD's regulations that concern the homeless are amended to include and emphasize the needs of unaccompanied homeless individuals with a disabling condition who have been continuously homeless for a year or more or have had at least four episodes of homelessness in the past three years. The rule would amend § 91.5 to include a definition of a chronically homeless person. This definition is consistent with the January 23, 2003 Notice of Funding Availability (NOFA) for the Collaborative Initiative to Help End Chronic Homelessness (68 FR 4018). In addition, clarifications are made at §§ 91.100(a)(2) and 91.110 that indicate the jurisdiction shall consult with other public and private agencies

that provide assisted housing, health services, and social services to determine what resources are available to address the needs of any persons that are chronically homeless. Clarifying changes are made at § 91.210 and § 91.310 to include persons that are chronically homeless in the 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. A clarifying amendment is made to the regulations that govern the strategic plan at § 91.215(c) and § 91.315(c) to include the chronically homeless in a jurisdiction's efforts to address homelessness. The regulations that govern the action plan are also amended at § 91.220(g) and § 91.320(g) to include specific action steps to end chronic homelessness. These changes are designed to bring the consolidated plan more in line with the Administration's goal of ending chronic homelessness by 2012.

D. Removal of Barriers to Affordable Housing

HUD regulations that concern barriers to affordable housing would contain clarifying amendments at §§ 91.220 and 91.320, adding a new paragraph (h) that requires each jurisdiction to describe specific actions it plans to take during the next year to address the public policies, procedures, and processes of the jurisdiction that impact the cost of developing, maintaining, or improving affordable housing. Addressing regulatory barriers to affordable housing is a component of a housing strategy. Barrier removal will not only make it easier to find and get approval for affordable housing sites but it will also allow available subsidies to go further in meeting local housing needs. The removal of regulatory barriers to affordable housing has also become a top Administration priority. HUD Form HUD–27300, used for competitive grants, can serve as a useful guidance document in assisting jurisdictions identify the specific policies, procedures or process that impact the cost of developing, maintaining or improving affordable housing.

E. Clarifications of Strategic Plan Provisions

A change is made to §§ 91.215(a)(4) and (a)(5) and 91.315(a)(4) to make the sections clearer that the summary of specific objectives must identify proposed accomplishments the jurisdiction hopes to achieve in quantitative terms over a specified time period (e.g., one, two, three or more

years), or in other measurable terms as identified by the jurisdiction. The strategic plan must also describe how funds expected to be available will be used to address identified needs. HUD is adding a new § 91.215(a)(6) and § 91.315(a)(6) to encourage grantees to include outcomes in the strategic plan. Similar clarifying change are made to §§ 91.215(b)(2), (b)(3) and 91.315(b)(2) and (b)(3) to clarify that specific housing objectives must identify 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. The affordable housing section must describe how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units. In addition, §§ 91.215(b)(2), 91.215(d), 91.315(b)(2), and 91.315(d) would be amended to indicate if a jurisdiction plans to use HOME funds for tenant-based assistance, it must specify local market conditions that lead to the choice of this option.

Priorities and Priority Needs

HUD invites comment on whether assigning "priority" needs, especially the assigning "relative" allocation priorities of "High" "Medium" and "Low" pursuant to §§ 91.215(a)(1) and (2) is useful. For housing, a "High" priority means activities to address the unmet need "will be funded" with federal funds. A "Medium" priority means activities to address the unmet need "may be funded" with federal funds, if available. A "Low" priority means the jurisdiction "will not fund" activities to address the unmet need, but will consider certifications of consistency for other entities' applications for federal assistance. HUD would welcome suggestion on alternatives for indicating general priorities for allocating investment. Section 105(b)(7) of the Cranston-Gonzalez National Affordable Housing Act requires the jurisdiction to indicate the general priorities for allocating investment among different activities and housing needs. Section 105(b)(8) requires the jurisdiction describe the reasons for allocation priorities. §§ 91.215(a)(1) and (2) are amended to more closely conform with the language in the statute.

The proposed rule also contains a change to § 91.215(e)(1) that eliminates the provision dealing with "dollars to address" in the priority community

development needs table that some jurisdictions do not find useful and adds a requirement that the plan include an estimate of the number of abandoned buildings, using the locality's definition.

Clarifying changes are made to §§ 91.215(e)(2) and 91.315(e)(2) requiring that neighborhood revitalization strategies identify long-term and short-term objectives (*e.g.*, physical improvements, social initiatives and economic empowerment), in terms of measures of outputs and outcomes expected to be achieved in the area through the use of HUD programs. These changes will make the consolidated plan more results or outcome oriented.

A clarification would be made to § 91.215(h) indicating jurisdictions may include policies for providing training and employment opportunities to residents under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and 24 CFR part 135.

F. Action Plan

A clarification is made at § 91.220(b) indicating federal resources include Section 8 funds made available to the jurisdiction and competitive McKinney-Vento Homeless Assistance Act funds. A clarification is also made at § 91.220(g) that CDBG funds includes proceeds from Section 108 loan guarantees.

This proposed rule would add the following requirements to the action plan. The first change would add a new provision at § 91.220(b)(3) and § 91.320(b)(3) that would require a jurisdiction to include a summary of the annual objectives the jurisdiction expects to achieve during the forthcoming program year.

The second change would add a new provision at § 91.220(d) and § 91.320(d) to require a jurisdiction to measure outcomes for some of the proposed activities that are included in its action plan. These may include specific outcome measures to be issued in future HUD guidance so that the outcomes can be aggregated on a national basis, as well as locally identified outcomes to meet local needs. Outcomes are defined as benefits that result from a program that typically relate to a change in conditions, status, attitudes, skills, knowledge, or behavior. Common outcomes could include measures of improved quality of life for program beneficiaries, improved quality of program assisted local housing stock, or revitalization of a neighborhood. HUD plans to develop outcome measures in consultation with grantees and public interest groups, as well as specific

comments that are made in response to this proposed rule. The Department is participating in an effort with the Council of State Community Development Agencies, the National Association for County, Community, and Economic Development, and the National Community Development Association to develop workable outcome measures that will be acceptable to the Department and its grantees.

The third change would add a provision at § 91.220(e) that would require the jurisdiction to estimate the percentage of funds the jurisdiction plans to dedicate to target areas. Target areas might include areas such as neighborhood revitalization strategy areas, neighborhood improvement areas, or other low- and moderate-income service areas in which block grant assistance activities are being carried out in a concentrated manner.

The fourth change would add specific provisions at a new § 91.220(f) and § 91.320(f) to require the jurisdiction to specify one-year goals for the number of homeless, non-homeless, and special needs families to be provided affordable housing through activities that provide rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units using funds made available to the jurisdiction. This change will make the annual action plan submission more results oriented and focus more attention on how formula grant funds are used to provide affordable housing.

The fifth change would add a new § 91.220(j)(1)(iv) to require CDBG grantees to identify the estimated amount of CDBG funds that will benefit persons of low- and moderate-income. The sixth change would add a new § 91.220(j)(3) to require HOPWA grantees to specify one-year goals for the number of households to be provided with housing through the use of HOPWA funds for activities that provide short-term rent, mortgage and utility assistance payments to prevent homelessness of the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased or operated with HOPWA funds.

Finally, changes at §§ 91.220(k) and 91.320(k) would require a concise summary of the citizen participation and consultation process (including efforts to broaden public participation), a summary of comments or views received, and a summary of comments or views not accepted and a rationale for not accepting the comments.

G. Submission Requirements

Changes are made to § 91.15(b)(1) to clarify that a summary of the citizen participation and consultation process must be submitted on an annual basis together with the action plan and certifications.

Clarifying changes are made to § 91.15(b)(2) indicating the housing and homeless needs assessment, housing market analysis, and strategic plan sections must be submitted at least once every five years, or at such time as jointly agreed upon by HUD and the jurisdiction. This will allow jurisdictions the flexibility to submit and update plans in a manner that facilitates orderly program management. A new provision at § 91.15(b)(3) would allow jurisdictions to make amendments that extend the time period covered by their plan if agreed upon by HUD. This provision would be used to coordinate consolidated plans with the time periods used for cooperation agreements, other local plans, or the availability of data.

H. Exceptions

A clarifying change is made to the exceptions at § 91.20 to remove an obsolete requirement that applied only for FY 1995 and to indicate that exceptions may be granted from submission deadlines for consolidated plans and performance reports required under §§ 91.15 and 91.520. Only the last exception (*i.e.* from the implementation guidelines) is modified to the extent the requirement is not required by statute or regulation.

I. Public and Assisted Housing

This proposed rule would make a number of additional conforming and clarifying changes to part 91. The conforming changes would add the provisions at § 91.2 that would require the PHA Plan (24 CFR part 903) to include a certification of consistency with the applicable consolidated plan by the appropriate state or local official and a description of the manner in which the applicable contents of the PHA Plan are consistent with the consolidated plan. Conforming changes are made to §§ 91.100(c), 91.105, and 91.210 to remove reference to the Comprehensive Grant Program and substitute references to the PHA Plan. The housing needs section at § 91.205 is revised to include the needs of public housing residents and families on the public housing and section 8 tenant-based waiting list among those considered in estimating the housing needs of the jurisdiction. The housing market analysis section at § 91.210 is

also revised to include the expiration of Section 8 contracts as an example of affordable housing expected to be lost from the assisted housing inventory.

Redundant and obsolete provisions dealing with organizational relationships between the jurisdiction and PHA, 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 are removed at § 91.215 (i)(2) since this information is available in the PHA Plan.

This rule amends §§ 91.215(k) and 91.315(l), to include the requirements of sections 568 and 583 of the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. § 12705). The strategic plan of a jurisdiction must describe the manner in which the jurisdiction will address the needs of public housing and the financial or other assistance the jurisdiction will provide to improve the operations of a public housing agency designated as “troubled” in order to remove such designation. However, this rule does not require a State to describe the manner in which financial or other assistance is provided to a troubled public housing agency if that agency is located entirely within the boundaries of a unit of local government that must submit a housing strategy to HUD. Corresponding changes are made at § 91.220(f) and § 91.320(f). This rule would also include among the needs of public housing, the need to increase the number of accessible units required by section 504 voluntary compliance agreements.

In addition, this rule also adds a conforming change at § 91.500(b)(4) that would provide that the failure to include a description of the manner in which a jurisdiction will provide financial or other assistance to remove a PHA’s troubled designation may cause HUD to disapprove a plan or determine that it is substantially incomplete.

J. State Method of Distribution

This proposed rule would amend § 91.320(g) to resolve some apparent confusion that states and state grantees have regarding the Method of Distribution requirements. In meetings with states and state organizations, as well as from monitoring visits, it has become clear that many states are not aware that the entire rating and ranking process needed to be transparent. This

proposed rule clarifies that the state must document how it selected state CDBG applications for funding so that it can be easily reviewed by citizens, HUD staff, and the Inspector General. The revised rule indicates the Method of Distribution, the application manual, or other generally available state publication that is referenced in the Method of Distribution, must contain a description of all of the rating and ranking criteria that is used to select applications from local governments for funding. If the description of the rating and ranking criteria is published in a document other than the Method of Distribution, the Method of Distribution must include a listing of all of the state’s selection criteria. This includes any criteria that might be used by a state’s senior management that affect final funding selection decisions. HUD’s purpose is to ensure full disclosure to units of general local government and citizens of all criteria affecting how funding decisions are to be made and not to dictate how a state selects its grantees. The process should be transparent so that potential applicants will have a clear indication of what they have to do to prepare a successful application.

The proposed rule also makes clear that HUD’s approval of the consolidated plan does not necessarily confer approval of a state’s actual implementation of its Method of Distribution, or compliance with the requirements of Section 91.320(g)(1)(i) as HUD may determine in a subsequent monitoring or audit of the state’s Method of Distribution.

HUD specifically welcomes comments on this rule from states, units of general local government participating in the State Community Development Block Grant Program, and citizens affected by the State CDBG program.

III. Findings and Certifications

Justification for 30-Day Comment Period

In general, HUD publishes a proposed rule for a 60-day public comment period on all proposed rules, however, HUD is reducing its usual 60-day public comment period to 30 days for this proposed rule. The Department developed these clarifying changes in response to suggestions by affected parties and after extensive consultation with interested stakeholders representing the interests of state and local governments and low-income persons. In addition, many jurisdictions are in the process of preparing their consolidated plans for FY2005 and publication of an updated rule that would guide the development of their

plans. Therefore, HUD is publishing this proposed rule with a 30-day public comment period because the rule makes clarifying and conforming changes to a regulation to make it more internally consistent and to conform to recent statutory changes. HUD welcomes comments on the rule, and these comments will be taken into consideration in developing the final rule.

Paperwork Reduction Act

The proposed new information collection requirements contained in §§ 91.15, 91.215, 91.220, 91.315, 91.320, and 91.520 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection

of information unless the collection displays a valid control number. The current information collection requirements for the consolidated plan at 24 CFR part 91 have been approved by the Office of Management and Budget under OMB Approval No. 2506–0117.

Information on the estimated public reporting burden is provided in the following table:

Information collection, 24 CFR part 91	Number of respondents	Frequency of response	Burden hours	Total hours
Consolidated Plan				
<i>Localities</i>				
• Strategic Plan Development § 91.215)	1,000	1	220	220,000
• Action Plan Development (§ 91.220)	1,000	1	112	112,000
<i>States</i>				
• Strategic Plan Development (§ 91.315)	50	1	604	30,200
• Action Plan Development (§ 91.320)	50	1	374	18,700
Performance Report (§§ 91.15, 91.520)				
• Localities	1,000	1	162	162,000
• States	50	1	252	12,600
*Abbreviated Strategy	100	8,200
Total Burden	563,700

*Respondents that submit abbreviated plans are those local governments that are required by statute to submit an abbreviated plan because they receive direct funds from HUD and are not formula grantees. For example, local governments that are recipients of lead based paint grants.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the

agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4923–P–01) and must be sent to:

Mark D. Menchik, HUD Desk Officer,
Office of Management and Budget, New
Executive Office Building, Washington,
DC 20503, *Mark_D.*
Menchik@omb.eop.gov;

and

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection weekdays between the hours of 8 a.m. and 5 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires

an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism," prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on

state and local governments or preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This proposed rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, entitled “Regulatory Planning and Review.” OMB determined that this rule is a “significant regulatory action” as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department’s Rules Docket Clerk, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The applicable Catalog of Federal Domestic Assistance (CFDA) program number is 14.218.

List of Subjects in 24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 91 as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. In § 91.1, revise paragraph (b) to read as follows:

§ 91.1 Purpose.

* * * * *

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

- (1) A planning document for the jurisdiction, which builds on a participatory process among citizens, organizations, businesses, and other stakeholders;
 - (2) An application for federal funds under HUD’s formula grant programs for jurisdictions;
 - (3) A strategy to be followed in carrying out HUD programs; and
 - (4) A management tool for assessing performance and tracking results.
3. Add § 91.2(d) to read as follows:

§ 91.2 Applicability.

* * * * *

(d) The Public Housing Agency Plan submission (PHA Plan) (see 24 CFR part 903) includes a certification by the appropriate state or local official that the PHA Plan is consistent with the applicable consolidated plan for the jurisdiction in which the public housing agency is located and must describe the manner in which the applicable contents of the PHA Plan are consistent with the consolidated plan.

4. Amend § 91.5 by adding alphabetically definitions for “chronically homeless person” and “disabling condition” to read as follows:

§ 91.5 Definitions.

* * * * *

Chronically homeless person. An unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more or has had at least four episodes of homelessness in the past three years. To be considered chronically homeless, a person must have been sleeping in a place not meant for human habitation (e.g. living on the streets) and/or in an emergency shelter during that time.

* * * * *

Disabling condition. For the purposes of chronic homelessness, a disabling condition is a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. A disabling condition limits an individual’s ability to work or perform one or more activities of daily living.

* * * * *

5. Revise § 91.15 to read as follows:

§ 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 § 92.104 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, 2003 through September 30, 2004 for Federal fiscal year 2004 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 summary of the citizen participation and consultation process, the action plan, and the certifications must be submitted on an annual basis.

(2) The housing, and homeless needs assessment, market analysis, and strategic plan must be submitted at least once every five years, or at such time agreed upon by HUD and the jurisdiction in order to facilitate orderly program management, coordinate consolidated plans with time periods used for cooperation agreements, other plans, or the availability of data.

(3) A jurisdiction may make amendments that extend the time period covered by their plan if agreed upon by HUD.

6. Revise § 91.20 to read as follows:

§ 91.20 Exceptions.

The HUD Field Office may grant a jurisdiction an exception from the submission deadline for plans and reports and from a requirement in the implementation guidelines for good cause, as determined by the field office and reported in writing to HUD Headquarters unless the requirement is required by statute or regulation.

7. In § 91.100, revise paragraphs (a) and (c) to read as follows:

§ 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 the consolidated plan describing the jurisdiction's homeless strategy, the jurisdiction shall consult with public and private agencies that provide assisted housing, health services, and social services to determine what resources are available to address the needs of any persons that are chronically homeless.

(3) 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.

(4) 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.

(5) The jurisdiction also should consult with adjacent units of general local government, including local government agencies with metropolitan-wide planning responsibilities, particularly for problems and solutions that go beyond a single jurisdiction.

* * * * *

(c) *Public housing.* The jurisdiction shall consult with the local public housing agency (PHA) concerning consideration of public housing needs and planned programs and activities. This consultation will help provide a better basis for the certification by the authorized official that the PHA Plan is consistent with the consolidated plan and the local government's description of the manner in which it will address the needs of public housing and, where necessary, the manner in which it will provide financial or other assistance to a troubled PHA to improve its operations and remove such designation. It will also help ensure that activities with regard to local drug elimination, neighborhood improvement programs, and resident programs and services, funded under a public housing agency's program and

those funded under a program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals.

8. In § 91.105, paragraph (a)(2)(ii) is revised and paragraph (a)(2)(iii) is revised to read as follows:

§ 91.105 Citizen participation plan; local governments.

(a) * * *

(2) * * *

(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. The jurisdiction shall encourage the participation of local and regional institutions and other organizations (including businesses, developers, community and faith-based organizations) in the process of developing and implementing the consolidated plan. The jurisdiction should also explore alternative public involvement techniques and quantitative ways to measure efforts that encourage citizen participation in a shared vision for change in communities and neighborhoods, and the review of program performance, for example, use of focus groups, use of Internet, etc.

(iii) The jurisdiction shall encourage, in conjunction with consultation with public housing agencies, 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 public housing agency about consolidated plan activities related to its developments and surrounding communities so that the public housing agency can make this information available at the annual public hearing required for the PHA Plan.

* * * * *

9. Revise § 91.110 to read as follows:

§ 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 the consolidated plan describing the state's homeless strategy, the state shall consult with public and private agencies that provide assisted housing, health services, and social services to determine what resources are available to address the needs of any persons that are chronically homeless. 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.

10. Revise § 91.115(a)(2) to read as follows:

§ 91.115 Citizen participation plan; states.

(a) * * *

(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. 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. The State shall encourage the participation of statewide and regional institutions and other organizations (including businesses, developers, community and faith-based organizations) in the process of developing and implementing the consolidated plan. The state should also explore alternative public involvement techniques that encourage a shared vision of change for the community and

the review of program performance, for example, use of focus groups, use of Internet.

* * * * *

11. Revise § 91.200 to read as follows:

§ 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 concise summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

12. Revise § 91.205(a), (b) and (c) to read as follows:

§ 91.205 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must provide a concise summary of 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, public housing residents, families on the public housing and section 8 tenant-

based waiting list, persons with HIV/AIDS and their families, and for persons with disabilities. The description of housing needs shall include a concise summary 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. (The jurisdiction must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

(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 in a category of need is at least 10 percentage points higher than the percentage of persons in the category as a whole.

(c) *Homeless needs.* The plan must provide a concise summary of 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 brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

* * * * *

13. In § 91.210, paragraphs (b)(1), (b)(2), and (c) are revised to read as follows:

§ 91.210 Housing market analysis.

* * * * *

(b) *Public and assisted housing.* (1) The plan must describe and identify the public housing developments and 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 PHA Plan.

(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, for example, expiration of Section 8 contracts.

(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, including any persons that are chronically homeless.

* * * * *

14. In § 91.215, revise paragraphs (a)(1) through (a)(6), (b)(2), (b)(3), (c), (d), (e), (h), (i), (j) and (k) to read as follows:

§ 91.215 Strategic plan.

(a) * * *

(1) Indicate the general priorities for allocating investment geographically within the jurisdiction (or within the EMSA for the HOPWA program) and among different activities and needs, as identified in tables prescribed by HUD.

(2) Describe the reasons 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 the jurisdiction intends to initiate and/or complete during the time period covered by the strategic plan. For each specific objective, identify proposed accomplishments the jurisdiction hopes to achieve in quantitative terms over a specified time period (*e.g.*, one, two, three or more years), or in other measurable terms as identified and defined by the jurisdiction;

(5) Describe how funds that are reasonably expected to be available will be used to address identified needs for the period covered by the plan;

(6) Where known, grantees should include proposed outcomes measures for some of the proposed accomplishments listed in paragraph

(a)(4) of this section in accordance with guidance to be issued by HUD.

(b) * * *

(2) The affordable housing section shall 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 existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). If the jurisdiction intends to use HOME funds for tenant-based assistance, it must specify local market conditions that lead to the choice of this option.

(3) The affordable housing section shall include specific objectives that describe proposed accomplishments the jurisdiction hopes to achieve and must 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 (especially any persons that are chronically homeless) 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 provide a concise summary of 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). If the jurisdiction intends to use HOME funds for tenant-based assistance to assist one or more of these subpopulations, it must specify local market conditions that lead to the choice of this option.

(e) *Nonhousing community development plan.* (1) If the jurisdiction seeks assistance under the Community Development Block Grant program, the

consolidated plan must provide a concise summary of the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, 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 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. The plan shall also include an estimate of the number of abandoned buildings, using the jurisdiction's definition.

(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 its areas may submit this strategy as part of its community development plan. The strategy must identify long-term and short-term objectives (*e.g.*, physical improvements, social initiatives and economic empowerment), expressing them in terms of measures of outputs and outcomes expected to be achieved in the neighborhood through the use of HUD programs. If HUD approves such a strategy, the jurisdiction can obtain greater flexibility in the use of the CDBG funds in the revitalization area(s) as described in 24 CFR part 570, subpart C.

* * * * *

(h) *Anti-poverty strategy.* The consolidated plan must provide a concise summary of 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. These policies may include the jurisdiction's policies for providing employment and training opportunities to section 3 residents pursuant to 24 CFR part 135.

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

(2) The plan must provide a concise summary of what the jurisdiction 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 provide a concise summary of 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 preparation of its homeless strategy, the jurisdiction must describe efforts in addressing the needs of persons that are chronically homeless. 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.* The consolidated plan must describe the manner in which the plan of the jurisdiction will address the needs of public housing, including the need to increase the number of accessible units where required by a section 504 voluntary compliance agreement. The consolidated plan must also describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership. If the public housing agency is designated as "troubled" by HUD under 24 CFR part 902, the jurisdiction must describe the manner in which it will provide financial or other assistance to improve its operations and remove the "troubled" designation.

15. Revise § 91.220 to read as follows:

§ 91.220 Action plan.

The action plan must include the following:

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

(b) *Resources and objectives.* (1) Federal resources. The consolidated plan must provide a concise summary of the federal resources (including grant funds and program income) expected to be made available. Federal resources include Section 8 funds made available to jurisdictions and competitive McKinney-Vento Homeless Assistance Act funds.

(2) *Other resources.* The consolidated plan must indicate resources from private and state and local 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 address the needs identified in the plan;

(3) *Annual objectives.* The consolidated plan must contain a summary of the annual objectives the jurisdiction expects to achieve during the forthcoming program year.

(c) *Activities to be undertaken.* A description of the activities the jurisdiction will undertake during the next year to address priority needs and objectives. 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) *Outcome measures.* Each jurisdiction must provide outcome measures for activities included in its action plan in accordance with guidance to be issued by HUD.

(e) *Geographic distribution.* A description of the geographic areas of the jurisdiction (including areas of low-income and minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically. When appropriate, jurisdictions should estimate the percentage of funds they plan to dedicate to target areas.

(f) *Affordable housing.* The jurisdiction must specify one-year goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing through activities that provide rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units using funds made available to the jurisdiction. The term affordable housing shall be as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership.

(g) *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, specific action steps to end chronic homelessness, and to address the special needs of persons who are not homeless identified in accordance with § 91.215(d);

(h) *Barriers to Affordable Housing.* Actions it plans to take during the next year to address public policies, procedures and processes of the jurisdiction that impact the cost of developing, maintaining or improving affordable housing. Such policies, procedures and processes include but are not limited to: land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations and policies affecting the return on residential investment.

(i) *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, 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 (see § 91.215 (a), (b), (g), (h), (i), and (j)).

(2) *Public housing.* Actions it plans to take during the next year to address the needs of public housing and actions to encourage public housing residents to become more involved in management and participate in homeownership. If the public housing agency is designated as “troubled” by HUD under part 902 of this title, the jurisdiction must describe the manner in which it will provide financial or other assistance to improve its operations and remove the “troubled” designation.

(j) *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) Proceeds from Section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in its strategic plan;

(C) Surplus from urban renewal settlements;

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

(E) 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) The plan shall identify the estimated amount of CDBG funds that will be used for activities that benefit persons of low- and moderate-income. The 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.

(iii) If the participating jurisdiction intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its

refinancing guidelines required under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(d)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

(iv) If the participating jurisdiction will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership.

(3) *HOPWA*. For HOPWA funds, the jurisdiction must specify one-year goals for the number of households to be provided housing through the use of HOPWA activities for: short-term rent, mortgage and utility assistance payments to prevent homelessness of

the individual or family; tenant-based rental assistance; and units provided in housing facilities that are being developed, leased or operated with HOPWA funds.

(k) A concise summary of the citizen participation and consultation process (including efforts to broaden public participation) (24 CFR 91.200(b)), a summary of comments or views, and a summary of comments or views not accepted and the reasons therefore. (24 CFR 91.105(b)(5))

16. Revise § 91.300(b) to read as follows:

§ 91.300 General.

* * * * *

(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 concise summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

17. In § 91.305, revise paragraphs (a), (b), and (c) to read as follows:

§ 91.305 Housing and homeless needs assessment.

(a) *General*. The consolidated plan must provide a concise summary of 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 jurisdiction 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 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 concise summary 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. (The state must define in its consolidated plan the terms "standard condition" and "substandard condition but suitable for rehabilitation.")

(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 in a category of need is at least 10 percentage points higher than the percentage of persons in the category as a whole.

(c) *Homeless needs*. The plan must provide a concise summary of 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 brief narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

* * * * *

18. Revise § 91.310(b) to read as follows:

§ 91.310 Housing market analysis.

* * * * *

(b) *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, including any persons that are chronically homeless.

* * * * *

19. Revise § 91.315(a)(4), (a)(6), (b)(2), (b)(3), (c), (d), (e), (h), (i), (j), and (l) as follows:

§ 91.315 Strategic plan.

(a) * * *

(4) Summarize the priorities and specific objectives the State intends to initiate and/or complete during the time period covered by the strategic plan, describing how the proposed distribution of funds will address identified needs. For each specific objective, identify proposed accomplishments the state hopes to achieve in quantitative terms over a specified time period (*e.g.*, one, two, three or more years), or in other measurable terms as identified and defined by the jurisdiction;

* * * * *

(6) Where known, grantees should include proposed outcomes measures for some of the proposed accomplishments listed in paragraph (a)(4) of this section in accordance with guidance to be issued by HUD.

(b) * * *

(2) The affordable housing section shall 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 existing units, or acquisition of existing units (including preserving affordable housing units that may be lost from the assisted housing inventory for any reason). If the State intends to use HOME funds for tenant-based assistance, it must specify local market conditions that lead to the choice of this option.

(3) The affordable housing section shall include specific objectives that describe proposed accomplishments the state hopes to achieve and must 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 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 (especially any persons that are chronically homeless) 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 provide a concise summary of 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). If the State intends to use HOME funds for tenant-based assistance to assist one or more of these subpopulations, it must specify local market conditions that lead to the choice of this option.

(e) *Nonhousing community development plan.* (1) If the State seeks assistance under the CDBG Program, the consolidated plan must concisely describe the State's priority nonhousing community development needs that affect more than one unit of general local government. 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 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 State may elect to allow units of general local government to carry out a community revitalization strategy that includes the economic empowerment of low income residents, in order to obtain the additional flexibility available as provided in 24 CFR part 570, subpart I. A State must approve a local government's revitalization strategy before it may be implemented. If a State elects to allow revitalization strategies in its program, the method of distribution contained in a State's action plan pursuant to § 91.320(j)(1) must reflect the State's process and criteria for approving local governments' revitalization strategies. The strategy must identify the long-term and short-term objectives (*e.g.* physical improvements, social initiatives and economic empowerment), expressing them in terms of measures of outputs and outcomes expected to be achieved through the use of HUD programs. The

State's process and criteria are subject to HUD approval.

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(h) *Anti-poverty strategy.* The consolidated plan must provide a concise summary of 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 such as Temporary Aid for Needy Families as well as employment and training 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 jurisdiction has control.

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

(2) The plan must provide a concise summary of 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 provide a concise summary of 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 preparation of its homeless strategy, the state must describe efforts in addressing the needs of persons that are chronically homeless. 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.

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(l) *Public housing.* With respect to public housing, the consolidated plan must do the following:

(1) *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;

(2) *Public housing needs.* The consolidated plan must describe the

manner in which the plan of the State will address the needs of public housing; and

(3) *Troubled public housing agencies.*

If a public housing agency located within a State is designated as "troubled" by HUD under part 902 of this title, the strategy for the State or unit of local government in which any troubled public housing agency is located must describe the manner in which the State or unit of general local government will provide financial or other assistance to improve the public housing agency's operations and remove the "troubled" designation. A State is not required to describe the manner in which financial or other assistance is provided if the troubled public housing agency is located entirely within the boundaries of a unit of general local government that must submit a consolidated plan to HUD.

20. Revise § 91.320 to read as follows:

§ 91.320 Action plan.

The action plan must include the following:

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

(b) *Resources and objectives.* (1) Federal resources. The consolidated plan must provide a concise summary of the Federal resources expected to be made available. 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 identified in the plan;

(3) *Annual objectives.* The consolidated plan must contain a summary of the annual objectives the State expects to achieve during the forthcoming program year.

(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) *Outcome measures.* Each State must provide outcome measures for activities included in its action plan in accordance with guidance to be issued by HUD. For the Community Development Block Grant Program this would include activities that are likely to be funded as a result of the implementation of the State's Method of Distribution.

(e) *Geographic distribution.* A description of the geographic areas of the State (including areas of low-income and minority concentration) in which it will direct assistance during the ensuing program year, giving the rationale for the priorities for allocating investment geographically. When appropriate, the State should estimate the percentage of funds they plan to dedicate to target area(s).

(f) *Affordable housing goals.* The state must specify one-year goals for the number of homeless, non-homeless, and special needs households to be provided affordable housing through activities that provide rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units using funds made available to the state. The term affordable housing shall be as defined in 24 CFR 92.252 for rental housing and 24 CFR 92.254 for homeownership.

(g) *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, specific action steps to end chronic homelessness, and to address the special needs of persons who are not homeless identified in accordance with § 91.315(d);

(h) *Barriers to Affordable Housing.* Actions it plans to take during the next year to address public policies, procedures, and processes of the State that impact the cost of developing, maintaining, or improving affordable housing. Such policies, procedures, and processes include but are not limited to: land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment.

(i) *Other actions.* Actions it plans to take during the next year to implement its strategic plan and 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), evaluate and reduce lead-based paint hazards, reduce the number of poverty level families, develop institutional structure, enhance coordination between public and private housing and social service agencies, address the needs of public housing (including providing financial or other assistance to troubled public housing agencies), and encourage public housing residents to become more involved in management and participate in homeownership.

(j) *Program-specific requirements.* In addition, the plan must include the following specific information: (1) 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. If a State elects to allow units of general local government to carry out community revitalization strategies, the method of distribution shall reflect the State's process and criteria for approving local governments' revitalization strategies. (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.)

(i) The method of distribution shall contain a description of all criteria used to select applications from local governments for funding. Notwithstanding, the method of distribution may provide a summary of the selection criteria, (providing that all criteria are listed) as long as the details are contained in application manuals or other official state publications that are widely distributed to potential applicants. 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. If a State elects to allow units of general local government to carry out community revitalization strategies, the method of distribution shall reflect the State's process and criteria for approving local government's revitalization strategies. 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, understand on what criteria and information their application will be judged, and be able to prepare responsive applications. This means that all selection criteria must be included in at least summary form, with the details included in other application materials that are widely distributed to potential applicants. If final funding decisions will be made by senior management, the Method of Distribution must include the criteria that senior management will use to make the decisions.

(ii) The State shall keep records to document its funding decision reached under the Method of Distribution described in paragraph (i) above so that they can be reviewed by HUD, the Inspector General, the Government Accountability Office and citizens pursuant to the requirements of § 570.493(a).

(iii) Approval of the Consolidated Plan under § 91.500 shall not be deemed to indicate that the Method of Distribution is in compliance with the requirements of paragraph (i) above, and HUD may monitor the Method of Distribution as part of its review and audit as provided in § 570.493(a)(1).

(2) *HOME*. (i) The State shall describe other forms of investment that are not described in Sec. 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.

(iii) If the State intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required

under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the State will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

(iv) If the state will receive funding under the American Dream Downpayment Initiative (ADDI) (*see* 24 CFR part 92, subpart M), it must include:

(A) A description of the planned use of the ADDI funds;

(B) A plan for conducting targeted outreach to residents and tenants of public and manufactured housing and to other families assisted by public housing agencies, for the purposes of ensuring that the ADDI funds are used to provide downpayment assistance for such residents, tenants, and families; and

(C) A description of the actions to be taken to ensure the suitability of families receiving ADDI funds to undertake and maintain homeownership, such as provision of housing counseling to homebuyers.

(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 (including community and faith-based organizations).

(4) *HOPWA*. The State shall state the method of selecting project sponsors (including community and faith-based organizations).

(k) A concise summary of the citizen participation and consultation process (including efforts to broaden public participation) (24 CFR 91.200 (b)), a summary of comments or views, and a summary of comments or views not accepted and the reasons therefore. (24 CFR 91.105 (b)(5)).

21. In § 91.500, revise paragraph (b)(3) and add paragraph (b)(4) to read as follows:

§ 91.500 HUD approval action.

* * * * *

(b) * * *

(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; and

(4) A plan that does not include a description of the manner in which the unit of general local government will provide financial or other assistance to a public housing agency if the public housing agency is designated as "troubled" by HUD.

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22. Revise § 91.520 by adding paragraph (g) to read as follows:

§ 91.520 Performance reports.

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(g) The report will include a comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan. The report must explain variances between the proposed and actual outcomes.

Dated: November 30, 2004.

Nelson R. Bregón,

General Deputy Assistant Secretary for Community Planning and Development.

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