



# Federal Register

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**Thursday,  
February 9, 2006**

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**Part III**

## **Department of Housing and Urban Development**

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**24 CFR Parts 91 and 570  
Consolidated Plan Revisions and Updates;  
Final Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 91 and 570

[Docket No. FR-4923-F-02]

RIN 2501-AD07

### Consolidated Plan Revisions and Updates

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

**ACTION:** Final rule.

**SUMMARY:** This rule makes streamlining and clarifying changes to the consolidated plan regulations of state and local governments so that the plans are more results-oriented and useful to communities in assessing their own progress toward addressing the problems of low-income areas. The rule also eliminates obsolete and redundant provisions and makes other changes that conform these regulations to HUD's public housing regulations that govern the Public Housing Agency (PHA) Plan. A consolidated plan is a document that jurisdictions submit to HUD if they receive funding under any of HUD's Community Planning and Development formula grant programs. The consolidated plan also serves as the jurisdiction's planning document for the use of the funds received under these programs.

**DATES:** *Effective Date:* March 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Salvatore Sciafani, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7240, Washington, DC 20410-7000. Telephone: (202) 708-1817. (This is not a toll-free number.) Individuals with hearing and speech impairments may contact this telephone number through the toll-free Federal Information Relay Service at 1-800-877-8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On December 30, 2004, HUD published the proposed rule to update and streamline the consolidated plan (69 FR 78830). The rule built on the existing framework that established the consolidated plan as a collaborative process whereby a community establishes a unified plan of housing and 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.

The proposed rule resulted from an extensive consultation process that involved 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 by 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. In attendance were public interest groups, grantees, other stakeholders, along with staff from HUD Headquarters and field offices, and from 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 created to assess alternative planning requirements, examine and suggest performance measures, and identify communities that would be willing to test pilots of alternative planning procedures. The Department carefully considered ideas generated by the working groups concerning alternative planning requirements and suggestions for improving the consolidated plan. Representatives from the following national groups participated in the working groups: 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.

Alternative planning procedures were tested by representatives of state and local governments that participated in eight pilots. One pilot looked at streamlining the consolidated 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. A fourth pilot explored ways to enhance the citizen participation process. A fifth pilot involved development and use of templates. The sixth pilot involved coordination of consolidated plan and PHA plan. A seventh pilot explored the development and review of tools to submit consolidated plans, track results, and report performance. An 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 streamlined, made more results-oriented, and ultimately made more useful to communities in addressing the needs of their low-income residents and areas.

This rule also conformed 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). Those sections required state and local consolidated plans to describe the manner in which the jurisdiction will help address the needs of public housing, and also mandated 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 local government will provide financial or other assistance to remove the PHA's troubled designation. Those sections of the rule also made certain other conforming amendments and clarification changes.

#### II. This Final Rule

This final rule takes into consideration the public comments received on the December 30, 2004, proposed rule. After reviewing the public comments, the significant changes described below have been incorporated into the final rule.

##### A. Executive Summary

The Department believes an executive summary is useful and has included references to this requirement at §§ 91.200, 91.220, 91.300, and 91.320. The final rule does not specify the precise content or format. However, the executive summary must include a summary of objectives and outcomes

identified in the consolidated plan, and an evaluation of past performance.

#### *B. Chronic Homelessness*

The references to including any persons that are chronically homeless in the inventory of facilities and services at § 91.210 and § 91.310 have been modified to make it clear that a separate inventory identifying chronic homeless facilities and services is not required. Rather, the inventory should include an estimate of the percentage or number of beds and supportive services programs that are serving people that are chronically homeless, to the extent that information is available to the jurisdiction.

#### *C. Relative Allocation Priorities*

The Department has decided to eliminate the requirement regarding relative allocation priorities and to allow jurisdictions to designate one. The regulation has also been revised to make it clear that the jurisdiction must describe the relationship between the allocation priorities and the extent of need given to each category of priority needs, particularly among extremely low-income, low-income, and moderate-income households. The plan should be explicit about what the jurisdiction plans to do with formula grant funds in the context of their larger strategy.

#### *D. Objectives and Outcomes*

The consolidated plan's strategy requirements are modified to take into account the proposed performance measurement framework that was developed by a working group that included representatives from national groups, including the Council of State Community Development Agencies; the National Association for County, Community and Economic Development; and the National Community Development Association. Changes have been made to § 91.215 and § 91.315 indicating that these requirements will be provided in accordance with guidance issued by HUD.

#### *E. Abandoned Buildings*

Data regarding the number of vacant or abandoned buildings should be included in the Housing Market Analysis section of the consolidated plan rather than in the section dealing with the non-housing community development plan. The estimate of the number of vacant or abandoned buildings and whether units are available that are suitable for rehabilitation should be provided to the extent information is available.

#### *F. Resources*

The Department agreed that local jurisdictions should include Low-Income Housing Tax Credits (LIHTCs) among the federal resources discussed in the consolidated plan, even though HUD does not administer them. The importance of the LIHTC program to jurisdictions cannot be overstated as a means of accomplishing the goals of a jurisdiction to provide housing for extremely low-income and low-income households.

### **III. Summary of Public Comments**

The comment period for the proposed rule closed on January 31, 2005. HUD received 53 comments, including 20 from local governments or groups representing their interests, 22 from states or groups representing their interests, five from groups representing the interests of homeless or low-income persons, one from an organization representing a coalition of organizations advocating for the interests of persons with disabilities, two from trade associations representing home builders and manufactured housing, and three from individuals. Low-income advocates, cities, and states often expressed opposing views on the rule.

For example, one of the groups representing low-income persons welcomed improvements in the rule that increased the emphasis on accountability and results, but indicated that many consolidated plans fail to demonstrate how funds allocated by the plan address the needs of extremely low-income persons. That group indicated that federal funds should be used to solve the most pressing problems and that failure to link spending decisions to priority needs should be a factor that HUD can use to disapprove a plan. On the other hand, one of the groups representing local governments thought some of the proposed changes to the rule went beyond the current statute and were too prescriptive, particularly in the area of assigning quantifiers to priority needs and requiring grantees to estimate the amount of funding in target areas. That group expressed concern that HUD might use these reports to penalize communities for not reaching their goals. Another group representing local governments said that requiring jurisdictions to address the chronically homeless in the strategic plan and to include specific action steps to end chronic homelessness in the action plan diminished the consolidated plan's ability to be a "concise" and "streamlined" document. This new requirement would ask CPD formula

programs to be accountable for yet another objective, making it less targeted and less streamlined. One state suggested that HUD, by focusing on trying to influence grantees to use their resources on assisting the homeless, especially the chronic homeless, was violating both the intent of the consolidated plan as well as Congress's directions to HUD that prevents HUD from conveying federal housing priorities to local governments.

### **IV. Summary of Public Comments From Local Governments and Interest Groups**

#### *A. Concise Action-Oriented Management Tool*

Groups representing local governments expressed support for making the consolidated plan a concise, action-oriented management tool. One group representing local governments was pleased that some concerns were addressed in the proposed rule but was disappointed that the "revisions and updates" appeared to have usurped the "streamlining effort" in favor of additional requirements, particularly in the area of assigning quantifiers to priority needs and requiring grantees to estimate the amount of funding they will use in target areas. Another group representing local governments expressed support for the Consolidated Plan Management Process (CPMP) Tool as part of the streamlining effort, but felt the Tool did not produce a consumer-friendly document that allowed community residents to understand the goals and achievements of their jurisdictions' federal grant programs. The group urged HUD to amend the CPMP Tool so that it generates a document that more simply communicates program goals. One county cited the addition or expansion of required narratives on homelessness and public housing as prime examples that made the process more burdensome and questioned why it was necessary to repeat information contained in other HUD documents in consolidated plans. It suggested that it would be far simpler to cross-reference the pages of the relevant document where the information could be found. One large city suggested that HUD permit localities with PHAs the option of cross-referencing materials contained in their approved PHA Plan or other similar documents. Two other cities also indicated that it was redundant to require jurisdictions to include needs identified in the PHA Plan.

*HUD response:* The final rule provides more flexibility while also asking for more accountability in terms of the ability to track results. With

respect to the CPMP Tool, the Department plans to revise the tool so that it generates a document that more simply communicates program goals. The Department will also allow jurisdictions the option to cross-reference pages of relevant documents like the PHA Plan and Continuum of Care Plan in order to streamline the consolidated plan and make the process less burdensome. The Department will issue supplemental guidance on how local jurisdictions can implement some of these requirements.

#### B. Citizen Participation

Representatives of county officials and local governments supported the language at § 91.1 and § 91.105 to include a broader list of stakeholders in the consolidated planning process and encouraging jurisdictions to explore alternative public involvement techniques such as focus groups and use of the Internet. A national group representing homebuilders also expressed support for widening the participation of stakeholders, which it suggested would help foster more public-private partnerships and leverage more community resources. Several cities and counties indicated to HUD that they had already undertaken efforts to broaden stakeholder involvement. One city, however, commented that broadening the scope of the required section would be a time-consuming administrative burden and should be deleted.

*HUD response:* The Department has determined that including a broader list of stakeholders in the process and encouraging alternative public involvement techniques would not significantly increase the administrative burden.

*Executive Summary.* The preamble of the proposed rule invited comment on whether an executive summary would be a useful tool for both citizens and jurisdictions. The preamble also indicated that HUD was 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. Eleven local governments and one of the groups representing their interests expressed support for an executive summary, thought it might be useful, and indicated that many communities currently use one. Another group representing local governments, however, did not support an executive summary as a way of simplifying the information for the general public. Instead, it suggested that HUD reduce the scope and administrative burden of

the consolidated plan itself, to what would essentially be an executive summary and argued an executive summary would add more work. Some commenters that support an executive summary indicated that the summary would be a powerful and meaningful document only if jurisdictions were allowed to present it in a format that was most consistent with local citizen participation and program management processes. Most local governments felt that because each jurisdiction knew the most effective way to provide that information to citizens and governing bodies, HUD should not be mandating the format. A group representing low-income housing advocates also thought a well-written executive summary would be a useful device for citizen participation and expressed support for maintaining citizen participation requirements and continuing to seek input on how to make citizen participation as effective and meaningful as possible. One local government indicated that it made extended use of an executive summary not only in its five-year plan and annual action plan but also in its Consolidated Annual Performance and Evaluation Report. The city suggested that the executive summary include not only short-term and long-term performance goals and the major activities and projects a city plans to fund, but also provide a strong evaluation of the previous year's results, information on targeting of consolidated plan funds, and information on how these funds directly affected neighborhoods. Three cities expressed reservations about an executive summary. One maintained that the strategic plan should be well organized so that it functions as an executive summary. Another indicated that an executive summary would become a burden to both citizens and jurisdictions unless other changes were made that condense or consolidate the changes. A third said it should be left to the option of grantees because, in trying an executive summary format in the past, the city found it raised more questions from readers than if one had not been written.

*HUD response:* The Department believes an executive summary is useful and has included references to this requirement at §§ 91.200, 91.220, 91.300, and 91.320. The final rule does not specify the precise content or format. However, the executive summary must include a summary of objectives and outcomes identified in the consolidated plan, and an evaluation of past performance.

#### C. Clarification of Chronic Homelessness

While representatives of county officials and local governments supported the goal of ending chronic homelessness, they cited the difficulty of identifying and tracking transient individuals and families. In addition, they cited the difficulty of asking CPD formula programs to be accountable for yet another objective, thereby making the plans less targeted and streamlined. One group expressed a concern that the definition of chronic homelessness was too broad and difficult to determine in most cases, and impossible in many. Several communities suggested expanding the definition to include families, while others indicated that funds were too limited. Others cited the expansion in the number of narratives dealing with chronic homelessness as burdensome and the need for a more explicit linkage with the Continuum of Care process. One city stated that a separate inventory identifying chronic homeless facilities was not needed, and that instead, it was the programs and priorities that should be identified.

*HUD response:* The Department recognizes that jurisdictions may find it difficult to maintain documentation for a chronically homeless person and has developed technical assistance guides that describe methods for identifying and counting the homeless. These are available at: <http://www.hud.gov/offices/cpd/homeless/hmis/assistance/index.cfm#materials>. The Department believes there should be a more explicit linkage with the Continuum of Care process, and the definition of chronic homelessness is identical with the definition that is used in that process. The 2006 consolidated plan update for the city of Seattle, which is available at: <http://www.cityofseattle.net/humanservices/director/consolidatedplan/default.htm>, provides an example of the linkage between the Continuum of Care process, the King County/Seattle Ten Year Plan to End Homelessness, and the Consolidated Plan. In addition, the reference to including any persons that are chronically homeless in the inventory of facilities and services at § 91.210 has been modified to make it clear that a separate inventory identifying chronic homeless facilities and services is not required. Rather, the inventory should include an estimate of the percentage or number of beds and supportive services programs that are serving people that are chronically homeless, to the extent that information on those subjects is available to the jurisdiction. With regard to the term "disabling condition," the

term applies specifically to the sections of the consolidated plan that relate exclusively to chronically homeless people.

#### *D. Removal of Barriers to Affordable Housing*

One representative of the local governments agreed with the constructiveness of working to remove barriers to affordable housing development. However, the representative did not think the HUD-27300 Form would be useful in collecting information on regulatory barriers, since it did not ask specific-enough questions about regulatory barriers so that the results could be aggregated nationally. Two cities commented that the additional language contained in § 91.220(j), which specified annual actions to address affordable housing barriers, was too restrictive and should be eliminated. While recognizing the importance of the topic, two other local jurisdictions opposed adding additional requirements and cited the complexity of the issue.

*HUD response:* The Department believes that the removal of barriers to affordable housing is an important issue and has decided to include the additional clarifying language with the understanding that it is not imposing a new requirement.

#### *E. Clarification of Strategic Plan Provisions*

*Priorities and Priority Needs.* Representatives of county officials, local governments, and most commenters did not find the current method of assigning "relative" allocation priorities of "high," "medium," and "low" particularly useful. Some large cities suggested making it optional or assigning a federal, federal/local, local, or no-priority designation to more clearly communicate how a community intends to fund a need and with what resources (which could tie into the proposed measurement framework). One city argued that the designation should be linked not to the funding, but to whether the need is high, medium, or low. Another city indicated that only those needs that will be funded should be included in the consolidated plan, and that an amendment could be made with the new priorities if priorities changed later.

*HUD response:* The Department has decided to eliminate the requirement regarding relative allocation priorities but to allow jurisdictions to designate one. The regulation has also been revised to make it clear that the jurisdiction must describe the relationship between the allocation

priorities and the extent of need given to each category of priority needs, particularly among extremely low-income, low-income, and moderate-income households. The consolidated plan should be explicit about what the jurisdiction intends to do with formula grant funds in the context of their larger strategy. For example, jurisdictions may wish to indicate that they intend to allocate formula grant funds for gap financing, while using tenant-based rental assistance or vouchers for low-income households that require a deeper subsidy. The rationale for establishing the allocation priorities should flow logically from the analysis. As part of the analysis, the jurisdiction must also identify any obstacles to addressing underserved needs.

*Summary of objectives.* A number of commenters indicated that the consolidated plan's strategy requirements should be influenced by a proposed performance measurement framework that has been developed by a working group that included representatives from the Council of State Community Development Agencies; the National Association for County, Community and Economic Development; and the National Community Development Association. HUD has been working with the working group to develop workable outcome measures that will be acceptable to the Department and its grantees.

*HUD response:* Changes are being made to § 91.215(a)(4) indicating that these requirements would be provided in accordance with guidance issued by HUD.

*Non-homeless special needs.* One national group representing persons with disabilities was concerned that the reference to persons with disabilities in the priority housing needs table is only to those persons who may require housing with supportive services. The group recommended the reference to persons with disabilities in the priority housing needs table not be limited to persons that may require housing with supportive services but to all people with disabilities, since many people with disabilities do not need supportive housing but do need decent, safe, and affordable housing. The group was also concerned that the proposed rule did not refer to the President's New Freedom Initiative, a nationwide effort that encourages both the removal of barriers to community living for people with disabilities, and the integration of persons with disabilities into local communities. Another group expressed a concern that the proposed rule did not promote integration between the

consolidated plan and the Analysis of Impediments (AI) to Affirmatively Furthering Fair Housing (AFFH).

*HUD response:* The Department agrees that the reference to persons with disabilities in the priority needs table should not be limited to persons that require supportive services, and will make the appropriate changes to the consolidated plan guidelines and instructions. With regard to the President's New Freedom Initiative, the consolidated plan rule requires communities to conduct an analysis to identify impediments to fair housing choice and take appropriate actions to overcome the effects of any impediments. In addition, the Department issued a notice (CPD Notice 05-03) addressing the President's New Freedom Initiative. This notice, which is available on HUD's Web site <http://www.hud.gov/offices/cpd/lawsregs/notices/2005/index.cfm>, encourages communities to develop "comprehensive, effective working plans" aimed at providing services to individuals with disabilities in the most integrated settings possible.

With regard to the second comment, this final rule focuses on streamlining the consolidated plan and making it more results-oriented in accordance with the President's Management Agenda. The final rule does not address the topic of affirmatively furthering fair housing that the Department believes merits separate consideration and consultation with stakeholders. The Department is considering a proposed rule that would invite comments on better ways to integrate the Consolidated Plan and the Analysis of Impediments to AFFH. The Department is also considering issuing guidance dealing with AFFH and other fair housing issues.

*Dollars to address.* Almost all commenters agreed with the proposal to eliminate the requirement to quantify "dollars to address" in the non-housing community development plan. One large city, however, argued for retention of the requirement to quantify "dollars to address" non-housing community development needs. It argued that the estimated "dollars to address" has a practical utility for understanding the scope of unmet needs.

*HUD response:* The Department has decided to eliminate the requirement to quantify "dollars to address" in the non-housing community development plan, but to allow jurisdictions to provide an estimate of "dollars to address" unmet needs or to identify estimated dollars that will be targeted to address the need.

*Abandoned Buildings.* Most commenters said they did not

understand the intention behind mandating jurisdictions to estimate the number of abandoned buildings and that there appeared to be many logistical problems with this requirement, including definitional and data collection issues. One commenter indicated that the requirement to estimate the number of abandoned buildings in the non-housing community development plan would be redundant because the Housing Market Analysis of the plan includes data on the number of abandoned buildings as part of its calculation of the housing vacancy rate, and because the description of the condition of housing includes the number of abandoned (residential) buildings. Others indicated that collecting this information would be burdensome, unless there were specific plans for a site.

*HUD response:* The Department agrees with the comment that this provision would be redundant because the Housing Market Analysis section of the consolidated plan should include both an estimate of the number of vacant or abandoned buildings as part of its calculation of the housing vacancy rate and the description of the condition of housing. Therefore, the Department has determined that data regarding the number of vacant or abandoned buildings should be included in the Housing Market Analysis section of the consolidated plan instead of the section dealing with the non-housing community development plan. The estimate of the number of vacant or abandoned buildings and whether units in the building are suitable for rehabilitation should be provided to the extent information is available.

For jurisdictions that wish to use it, HUD will make data available from the U.S. Postal Service on the number of vacant addresses at the census tract level, and plans to provide updated data on the number of vacant addresses annually. The U.S. Postal Service collects data on addresses that are vacant 90 days or longer. The Department finds vacant and abandoned buildings depress property values, reduce tax revenues, attract crime, and serve as a good measure of neighborhood blight. Vacant properties also degrade the quality of life for remaining residents. A large number of vacant buildings in a neighborhood increases the likelihood that property values will continue to decline and that further abandonment will persist.

*Lead-based Paint Hazards.* A national organization advocating solutions to childhood lead poisoning commented that jurisdictions should describe how their plan for the reduction of lead-

based hazards will increase access to housing without such health hazards. In addition, one commenter on HUD regulations that address barriers to the production and rehabilitation of affordable housing stated that HUD should clarify that the consolidated plan should describe the relationship between plans for reducing lead hazards and the extent of lead poisoning and lead hazards.

*HUD response:* The Department agrees and has modified § 91.215(i) accordingly. In addition, the description of the consultation process described in § 91.200 is being modified to include a reference to consultations with state or local health and child welfare agencies regarding lead-based paint hazards conducted in accordance with § 91.100(a)(3).

#### F. Action Plan

*Federal resources.* With regard to describing resources, one city expressed concern that the clarified term "federal resources" included Section 8 resources made available to the jurisdictions and competitive McKinney-Vento Homeless Assistance Act funds. The city maintained that by including these funds as resources in the action plan, it might be inferred that these funds are available for allocation through the consolidated plan process, which is not the case. Another city argued that an estimate of Section 8 funding should be contained in the PHA's annual plan and that the best a jurisdiction could do for a tabulation of competitive McKinney-Vento resources would be an estimate. Another city indicated that only those jurisdictions that administer Section 8 vouchers and public housing programs should be required to report on the vast breadth of the public housing requirements listed in the consolidated plan. Therefore, jurisdictions should be mandated to report on public housing requirements on a more limited, scaled-down basis in the consolidated plan. This would help jurisdictions that might choose to fund an occasional public housing project without duplicating the reporting requirements that already exist in the Public Housing Agency Plan.

*HUD response:* The Department recognizes that Section 8 funds and McKinney-Vento Homeless Assistance funds may be administered by other entities. The regulation only requires the jurisdiction to identify these programs as sources of funding.

A national group representing homebuilders and one representing low-income housing advocates said it would also be useful to include expected allocations of LIHTC in its discussion of

expected federal resources, even though HUD does not administer the LIHTC program. They pointed out that the importance of the LIHTC program to jurisdictions cannot be overstated and that jurisdictions should consider linking Section 8 rental assistance to LIHTC projects as a means of accomplishing their goals to provide housing for extremely low-income and low-income households.

*HUD response:* The Department agrees that LIHTCs should be listed among the federal resources.

*Summary of annual objectives.* One representative of the local governments expressed support for the provision requiring jurisdictions to submit a summary of annual objectives and also indicated that most of its members already meet this requirement. One city also asked for clarification as to whether the annual objectives identified in the action plan were a subset of the specific objectives identified in the strategic plan. Another city thought it was unclear whether this provision would actually enhance the quality, utility, and clarity of the action plan since objectives tend to be broad. Still another city thought the provision was unnecessary since it was addressed by other parts of the plan.

*HUD response:* The Department believes a summary of annual specific objectives is a useful feature of the action plan since it identifies the subset of specific objectives that jurisdictions expect to achieve during the forthcoming program year.

*Activities to be undertaken.* One group representing low-income housing advocates recommended that the consolidated plan include a stronger linkage between the priority needs identified in the plan and the action plan. It said jurisdictions should spend federal funds to solve the most pressing problems and that the failure of plans to link spending decisions to priority needs should be one of the factors that HUD considers when it approves a consolidated plan.

*HUD response:* The Department agrees the consolidated plan must describe the linkage between priority needs identified in the plan and activities that are funded. Section 105(b)(8) of the Cranston-Gonzalez National Affordable Housing Act requires that the plan of the jurisdiction describe how the plan will address housing and homeless needs, describe the reasons for allocation priorities, and identify any obstacles to addressing underserved needs. Since the allocation of resources is described in the action plan, the Department has revised the section of the regulation dealing with

the description of activities to be undertaken by requesting grantees to describe the reasons for their allocation priorities and to identify any obstacles to addressing their underserved needs.

**Outcomes.** Groups representing local governments expressed support for measuring outcomes and accomplishments in the consolidated plan so that the positive impact of CPD formula programs may be compellingly communicated at the national level. However, one group pointed out that it does not support reporting on outcomes if doing so becomes a means by which HUD uses these reports to penalize communities for not reaching their goals. Planning is not an exact science, and funding levels, lack of viable projects, along with many other factors can determine if goals will be met.

Nine local governments commented on this provision. One large city recommended that HUD modify the provision by permitting localities to demonstrate that they currently provide appropriate housing and community development performance measures through other documents and by enabling these jurisdictions to meet the federal requirement by cross-referencing (e.g., providing the Internet site address for) materials published by the locality. The large city pointed out that requiring detailed outcome measures to somehow be reconfigured to fit the specific parameters of the consolidated plan would lead to additional burdensome accounting without necessarily improving the public's sense of the situation.

Another city agreed that outcome measures should be included. However, the commenter argued that the use of outcome measures to measure the result of each activity was misguided and would result in redundant and duplicative entries. The commenter indicated that outcome measures measure long-term results, such as assessed valuation, crime rates, poverty rates, etc. It was that city's experience that it takes more than one activity to result in a significant change in an outcome measure. The city added that outcome measures should be associated with the achievement of a larger goal such as neighborhood revitalization, homeownership, and employment rates. For example, in its plan, the city could claim that up to ten different activities could be linked to a single outcome such as homeownership rate. The jurisdiction suggested that outcome measures be required to measure stated larger goals, rather than small activities, and then associate activities with each goal. This would eliminate a great deal of confusion and needless paperwork.

Others supported outcome measures, but only if they were implemented in a meaningful way and did not place an undue burden on jurisdictions. Some jurisdictions felt that maximum flexibility must be provided to grantees in determining outcomes based on local program experience and knowledge of current housing and community development needs, and supported development of such outcome indicators from a broad spectrum, with input from residents, city departments, related city agencies, counties, states, other grantees, and non-profit and for-profit organizations. They did not think it necessary that either the Department, or the Office of Management and Budget needed to define national outcome measures. One large city thought that until outcome measures were further developed by the Department and published, it was premature to add this requirement to the rule. Another said it was not able to take a position since HUD had not released its guidance regarding specific outcome measures: It requested that HUD publish a proposed rule on the specific outcome measures rather than issuing guidance in order to allow an opportunity to review and submit comments on an area that would greatly impact the way jurisdictions do business. However, it strongly opposed the insertion of, as burdensome and of no practical or analytical use, a provision at § 91.520 requiring that the performance report "must explain variances between proposed and actual outcomes."

**HUD response:** The Department has decided to require outcomes in the consolidated plan rule in accordance with guidance to be issued by HUD. Accordingly, it has modified the provision at § 91.520 by requiring that the performance report explain why progress was not made toward meeting goals and objectives. HUD published a notice outlining the framework for a draft performance measurement system for comment in the **Federal Register** on June 10, 2005 (70 FR 34004).

**Percentage of funds to target areas.** Groups representing local governments expressed concern about this provision and did not understand the relevance of requiring a jurisdiction to estimate the percentage of funds the jurisdiction plans to dedicate to target areas, since at least 70 percent of the distribution of CDBG funds is mandated to be spent on projects that benefit low- and moderate-income persons. While expressing support for funding activities in target areas, one group opposing this requirement indicated that it suggests that HUD is pushing jurisdictions to spend funds in target areas, which also

creates the impression that if grantees do not spend funds in target areas, they may be sanctioned or penalized in some manner. The group indicated that using a target area approach in funding activities is a locally determined decision and one that should remain as such.

Eight local governments also commented on this provision. One city suggested that it would be better to require a listing, in the action plan, of any target areas as well as funds and projects dedicated to those target areas. Another indicated that there already is a requirement to provide a description of the geographic distribution of funds and that additional details required in federal regulations usually translate into extra research, documentation, recordkeeping, and reports. Some jurisdictions said they do not have target areas and jurisdictions and should have the flexibility to serve low- and moderate-income clients throughout the jurisdiction. Others urged HUD to make the designation of target areas (and specific objectives for those areas) optional, rather than having the federal government mandate the kind of system to be employed.

**HUD response:** The Department believes that identification of the percentage of funds a jurisdiction plans to dedicate to target areas will be useful in determining the degree to which activities are being carried out in a concentrated manner.

**One-year housing goals.** A representative of local governments argued that it is too narrow a requirement if jurisdictions must specify a goal for the number of homeless, non-homeless and special needs families to be assisted by three different categories of housing assistance. When a double breakdown of data like this is required, the numbers become artificial estimates and are confusing to the public. However, the group indicated that setting separate goals for the number of homeless, non-homeless and special needs families to be assisted is useful and would inform the public of the community's priorities. Similarly setting separate goals for the number of households to be served by rent assistance, new construction units, rehab, or acquisition is also good and would inform the public of the community's priorities. Several other cities thought this requirement might be redundant or duplicative of the goals required in the strategic plan.

**HUD response:** The Department agrees with the point made by the group representing local governments and is clarifying the regulation to require two sets of annual housing goals. One set of



annual goals is for the number of households to be served by rent assistance, new construction units, rehabilitation, or acquisition during the year with funds made available by HUD to the jurisdiction. A second set of annual goals is for the number of homeless, non-homeless, and special needs families to be assisted during the program year with funds made available by HUD to the jurisdiction. The program funds providing the benefits (i.e., CDBG, HOME, HOPWA, ESG) may be from any funding year or combined funding years.

*Estimate amount of CDBG funds to benefit low/mod persons.* One of the groups representing local governments expressed support for including an estimate of the amount of CDBG funds that would be used for activities benefiting low- and moderate-income persons. Two cities, however, commented that requiring an estimate of the amount of CDBG funds used for activities benefiting low- and moderate-income persons was redundant because the program already requires that at least 70 percent of a jurisdiction's CDBG funding benefit this income group. A group representing low-income advocates, however, indicated that the consolidated plan requires an assessment of the number of extremely low-income, low-income, and moderate-income people who need affordable housing and to whom the jurisdiction will provide affordable housing. It thought it would be incongruous if jurisdictions were not expected to demonstrate how low-income people are actually aided by CDBG funds.

*HUD response:* The Department believes this provision should be required by the regulation, since Section 104(a)(2) of the Housing and Community Development Act of 1974 requires the jurisdiction's statement of community development and housing activities include the estimated amount of funds proposed to be used for activities that will benefit persons of low- and moderate-income.

#### G. Submission Requirements

*Needs, Market Analysis, and Strategic Plan.* One of the groups representing local governments and one local government strongly supported giving jurisdictions the flexibility to submit and update plans in a manner that facilitates orderly program management. A local government indicated that allowing for this flexibility will greatly improve the ability of urban counties to synchronize the consolidated planning process with the 3-year cooperation agreement cycle and other local planning and data collection cycles.

*Consolidated Plan Submission.* Clarifying changes are made to § 91.15 and § 91.200 identifying both the submissions that make up the component parts of the consolidated plan submission and the sections of the rule that contain the comprehensive housing affordability strategy for local jurisdictions.

#### H. Public and Assisted Housing

*Financial and other assistance for troubled housing.* One group representing local governments commented that requirements related to public housing would seem to encumber the consolidated planning process rather than streamline it. Requiring a jurisdiction to "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 if that agency is designated as "troubled" is beyond the scope of CPD's formula grant programs and becomes a logistical nightmare for urban counties that have many PHAs within their jurisdictions. Three local jurisdictions also commented on these provisions. One jurisdiction said providing financial or other assistance for troubled PHAs constituted an unfunded mandate, especially to an agency that may not even be an agency of the grant recipient. Two jurisdictions thought it was appropriate to address the needs of public housing. Two jurisdictions also objected to giving HUD the ability to disapprove a plan or risk future funding if a jurisdiction either did not offer assistance or provide information on how it would help a PHA to remove a troubled designation.

*HUD response:* As indicated in the preamble of the proposed rule, these amendments were made pursuant to the requirements of sections 568 and 583 of the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 12705). The statute requires that the consolidated plan of a jurisdiction describe the manner in which the jurisdiction will address the needs of public housing and the financial or other assistance it will provide to improve the operations of a PHA designated as "troubled," in order to remove such designation. The statute also considers 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 as cause for HUD to disapprove a consolidated plan or determine that one is substantially incomplete. Also, HUD is clarifying that the provision at § 91.500 applies to

states as well as units of general local government. Such assistance need not be financial assistance but can include other assistance such as technical assistance provided by the jurisdiction.

### V. Summary of Public Comments From State Governments and Interest Groups

#### A. Concise Action-Oriented Management Tool

A group representing state community development agencies expressed support for HUD's efforts to streamline the consolidated plans and action plans and reduce the administrative burdens on states. However, they argued that several provisions would not streamline the preparation of plans or were inconsistent with the state role as a grantor agency. Among the issues raised were provisions that would require reporting on activities and outcomes that cannot be funded or achieved primarily with the formula grant programs covered by the consolidated plan. For example, state grantees would be required to describe their strategy for "helping homeless persons (especially any persons that are chronically homeless) make the transition to permanent housing and independent living." Several states contended that requiring additional information regarding chronic homelessness, public housing, and outcome measurement would entail considerable additional work for which HUD has committed no additional administrative or planning funds. Several states also indicated that the proposed rule failed to take into account the unique nature of the small cities CDBG program as administered by the states. One state said it would make more sense to include some of the requirements in applications submitted by applicants instead of in the plan submitted to HUD. Some states indicated some of the requirements involving public housing would be redundant since some of this information was already included in local PHA plans. Many states expressed that putting outcome measures in the final rule was premature since more work was needed before this change was implemented.

*HUD response:* HUD recognizes that the states as grantor agencies have less control over fulfillment of sections of the regulations dealing with annual goals and performance than do local jurisdictions. However, states are expected to provide the information to the extent that they are able to do so. HUD recognizes that states generally do not originate specific projects or activities, but offer programs through which local communities apply to



accomplish specific objectives. These local applications are submitted after the consolidated plan is submitted to HUD and approved. With regard to the provisions dealing with chronic homelessness, this section has been revised to require estimation "to the extent practicable." The information about public housing has been included because it is a comprehensive housing affordability strategy (CHAS) statutory requirement. However, the Department will also allow states the option to cross-reference pages of relevant documents like the PHA plan and Continuum of Care Plan in order to streamline the consolidated plan and make the process less burdensome. Also, the Department may issue supplemental guidance on how states can implement some of these requirements.

#### *B. Citizen Participation*

Representatives of state governments recommended that HUD continue to pursue ways that state grantees can use electronic and other forms of input, particularly to help states reach rural populations. In addition, representatives of state governments recommended that HUD allow input from local governments to meet citizen participation requirements, since they are representatives of citizens and are more likely to provide input to states than individual citizens. Several states were in agreement with provisions to include citizens, organizations, businesses, and other stakeholders among those that should be involved in the citizen participation process and exploring alternative public involvement techniques. However, one state objected to adding quantitative ways to measure efforts that encourage citizen participation. One state suggested the section be modified to state that "the citizen participation process should encourage participation of citizens of the jurisdiction, and agencies, organizations, and private for-profit businesses and private non-profit entities that are involved with, or affected by, the programs or activities covered by the consolidated plan." Another state indicated that an analysis and evaluation of performance should be referenced and made available to citizens during the citizen participation process for the annual plan so that citizens and others could view the progress the grantee is making on addressing the identified needs in the strategy.

*Executive Summary.* The preamble of the proposed rule invited comment on whether an executive summary would be a useful tool for citizens as well as

jurisdictions. It also indicated that HUD was 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. While some states considered the concept of an executive summary as having some benefit, they said it would be more useful to entitlement communities. Some thought that HUD's intent was to make local citizens aware of programs and activities, but argued that requiring that proposed projects and activities be stated would amount to restating the content of the consolidated plan and thus would hardly be a "summary." Several states suggested that condensing state plans would not be worth the effort and a table of contents would be much more effective and could accomplish the same goal.

*HUD response:* The Department has determined that including a broader list of stakeholders in the process and encouraging alternative public involvement techniques would not significantly increase the administrative burden. Accordingly, it has modified the section to make it clear that it refers to entities that are involved with or affected by programs covered by the consolidated plan. The Department also believes an executive summary is useful and has included references to this requirement at §§ 91.300 and 91.320. To meet the concerns raised by the commenters, HUD will allow states to determine the format but that the executive summary must include a summary of objectives and outcomes identified in the consolidated plan and an evaluation of past performance.

#### *C. Clarification of Chronic Homelessness*

A group representing state community development organizations indicated there were several problems associated with implementing the proposed changes involving chronic homelessness. Its first concern was that the definition of a "chronically homeless person" was far too restrictive and ignored the existence of chronically homeless families, including couples without children and disabled parents with children. Moreover, it expressed concern about the ability of grantees to document either such disabling conditions or the length of time that each individual has been homeless. Such documentation would require, at a minimum, a year's worth of high quality data in the grantee's Homeless Management Information System (HMIS). Also, the proposed addition to include an inventory of all facilities meeting the needs of the chronically

homeless is unnecessary from the perspective of factors that may influence the state's method of distribution for the Emergency Shelter Grant program and is impractical at the state level, particularly since the provision does not limit the inventory of facilities to those that have received CDBG funding. One state claimed there was no basis in the statute for the definition of chronic homelessness and that while such priorities are reasonable for making competitive funding decisions, such requirements should not be imposed on the consolidated plan. Another state indicated that the resources for chronically homeless are not expected to be much different than they are for other homeless persons. Several states indicated that the proposed changes regarding the chronic homelessness provide tracking challenges. One state that was in the early stages of building its HMIS indicated that it eventually would be able to extract chronic homeless data from HMIS, but could not do so at present. Further, the chronic homeless definition includes persons who have been homeless at least three times in a year, and most states are not going to have data in their systems to determine whether a household meets that part of the homeless definition. Homeless shelters in small communities have small, usually volunteer staff and don't have time to spend an hour with each homeless person to determine if that person has a disabling condition, nor can they document how often the person has been homeless. The state pointed out that the federal, ten-year Census could not adequately document this and small organizations will have a difficult time providing this information, and the requirement could affect the amount they are funded. On the other hand, another state expressed a concern that the regulations did not include a discussion on "coordinated discharge policy" and asked for more guidance on this issue.

*HUD response:* In response to these comments, the Department recognizes that states and local governments may find it difficult to maintain documentation for chronically homeless persons. The Department wishes to point out that the CHAS statute requires states and local jurisdictions to describe their strategy on addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs). The statute does not limit the description to the projected use of Emergency Shelter Grant funds. However, the Department is modifying the reference to including

any persons that are chronically homeless in the inventory of facilities and services at § 91.310, to make it clear that a separate inventory identifying chronic homeless facilities and services is not required. Rather, the inventory should include an estimate of the percentage or number of beds and supportive services programs that are serving people that are chronically homeless, to the extent that information is available to the state. States are encouraged to use information from their Continuum of Care applications to satisfy this requirement. The existing regulations at 24 CFR 91.310(c) currently require states to describe programs for ensuring that persons returning from mental and physical health institutions receive appropriate supportive housing. The regulations at §§ 91.225 and 91.325 now require states and local jurisdictions to include a certification that they have developed a coordinated discharge policy. Such a policy should include policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care, or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. HUD will issue supplemental guidance on what elements should be included in such a policy.

#### *D. Removal of Barriers to Affordable Housing*

A group representing state community development agencies stated that it was difficult for states to meet goals for affordable housing barrier removal because states have very minimal control over the major barriers identified by HUD (zoning, local fees, etc). Zoning and land use decision-making are an inherently local process, subject to a range of influences including market forces and citizen input. One state indicated that it had already addressed those areas over which the state has regulatory control and that the existing regulatory relief barrier requirement on HUD's Notice of Funding Availability process is sufficient to reward those HUD applicants that have made efforts to reduce constraints on affordable housing. Another suggested that these issues could be addressed in the applicant's application, but they could not require a local jurisdiction to change its policies. Still another indicated it was not clear exactly what kinds of barriers HUD believes still exist and what specific information it has on such barriers in local communities. It

suggested that HUD share this information with grantees so that they could better respond to these issues.

*HUD response:* The Department recognizes that states have less control over barrier removal than do entitlement jurisdictions. The Department believes the removal of barriers to affordable housing is important and has decided to include the additional clarifying language with the understanding that it is not imposing a new requirement. The Department has also established a regulatory barrier clearinghouse at <http://www.huduser.org/rbc/> that provides examples of how communities can identify and remove barriers to affordable housing.

#### *E. Clarification of Strategic Plan Provisions*

*Priorities and Priority Needs—Relative priorities.* A group representing state community development agencies recommended that HUD remove this classification system for high, medium, or low priorities in favor of the overarching goals and outcomes established by each grantee, which will be required if other sections of this rule are implemented. The group argued that these goals and outcomes should become, in effect, the priorities established by the grantee to meet the intent of the statutory provision pertaining to priorities.

Most of the states that commented welcomed the elimination of the requirement to designate relative priorities. One said the new performance and outcome measures should serve this purpose more effectively. Another indicated that a priority could be important to a state, but that it may not spend federally allocated money on that priority. Indicating where federal funds will be spent could easily be accomplished with a checkbox, or something similar and less able to be misconstrued. HUD and citizens should be able to discern the relative importance a jurisdiction has placed on funding a certain area by looking at the goals relative to unmet needs. The same state felt that general priorities and the reasons for allocation priorities are better described in narratives where program obstacles can be identified. Also, many programs are not designed to serve extremely low-income households, for instance, without supplementary operating subsidy. One state suggested local communities be able to assign their own priorities depending on local needs and suggested making "high" priority mean the needs are widespread or urgent, "medium" mean moderate in terms of extent and urgency, and "low" mean the

activity may be funded at a very low level if funds are available. Another state suggested including only high priorities because it would be confusing and misleading if medium and low priorities were included that could not be addressed through the available funding allocation.

*HUD response:* The Department has decided to eliminate the requirement regarding setting a relative allocation priority but to allow states to set one. The regulation has also been revised to make it clear that the state must describe the relationship between the allocation priorities and the extent of need given to each category of priority need, particularly among extremely low-income, low-income, and moderate-income households. The consolidated plan should be explicit about what the state intends to do with formula grant funds in the context of their larger strategy. For example, states may wish to indicate that they intend to allocate formula grant funds for projects that involve gap financing, while allocating low-income tax credits to projects for low-income households that require a deeper subsidy. The rationale for establishing the allocation priorities should flow logically from the analysis. Also as part of the analysis, the state must also identify any obstacles to addressing underserved needs.

Several states objected to the provision at § 91.315(b)(1) requiring states to identify how local market conditions led to the use of HOME funds for tenant-based assistance.

*HUD response:* This provision is required by section 212(a)(3) of the Cranston-Gonzalez National Affordable Housing Act that requires states to specify the local market conditions that led to the choice of tenant-based rental assistance.

*Summary of Specific Objectives.* A number of commenters indicated that the consolidated plan's strategy requirements should be influenced by a proposed performance measurement framework that has been developed by the working group that included representatives from the Council of State Community Development Agencies; the National Association for County, Community and Economic Development; and the National Community Development Association. HUD has been working with that group to develop workable outcome measures that will be acceptable to the Department and its grantees. One state pointed out that the purpose of a strategic plan is to identify categories and types and areas of need, and to develop strategies for addressing those needs. Annually, the performance report

should examine the needs of these population groups against the actual activities to determine how well their needs are being met. The state argued that if the strategy is created correctly, the types and magnitude of needs, goals, objectives, and priorities will become apparent and there would be no need to try to force communities to develop specific statements such as "the grantee will install 983 linear feet of sidewalks on Elm Street." The fact that the need for sidewalks has been identified as a need is sufficient. Therefore, the annual action plan would merely need to be evaluated and demonstrate that it makes progress toward addressing that need through specific activities.

*HUD response:* The Department agrees that the consolidated plan's strategy requirements should be influenced by the proposed performance measurement framework that has been developed. Accordingly, changes have been made to § 91.315 to indicate that these requirements would be provided in accordance with guidance issued by HUD.

*Antipoverty strategy.* A group representing state community development agencies and several states suggested that the regulation involving the antipoverty strategy be revised to indicate that states can meet this requirement by referring to their statewide plans related to poverty.

*HUD response:* The Department agrees that states can satisfy this requirement by referring to statewide plans related to poverty by allowing states the option to cross-reference pages of relevant documents like the Temporary Assistance for Needy Families (TANF) Plan in order to streamline the plan and make the process less burdensome. The Department will issue supplemental guidance on how states can implement some of these requirements.

#### F. Action Plan

*Summary of annual objectives.* One state and group representing state community development agencies asked for clarification as to whether the summary of annual objectives was the same as the outcome measures a grantee would submit. Meanwhile, several states expressed support for the provision requiring jurisdictions to submit a summary of annual objectives. One state agreed that long-term objectives should be stated in the strategy and that short-term objectives should be covered in the action plan.

*HUD response:* The Department believes that a summary of annual specific objectives is a useful feature of the plan since it identifies the subset of

specific objectives (identified in the strategic plan) that will be addressed in the action plan.

*Outcomes.* Although some states supported outcome measurement and indicated it was a good idea, many states felt that putting outcome measures in the final rule was premature since more work was needed before this change could be implemented. One state indicated that HUD's guidance for these measures should be flexible enough to recognize that many entitlement jurisdictions and states are charged with developing allocation and rating systems to be responsive to the needs of many different local communities. Any direction from HUD should preserve the flexibility of state and local jurisdictions to develop outcome measures that are consistent with the jurisdiction's approved allocation method and application rating system, but which do not narrow or preclude varying choices among eligible activities among grantees throughout the state. One state felt that measurements for outcomes/performance measurements would be more appropriately addressed within the content requirements of the Performance Evaluation Report and the Integrated Disbursement and Information System. Based on the nature of their programs as grantor agencies, several other states said they could only make estimates based on historical funding and past experience.

*HUD response:* The Department has decided to require outcomes in the consolidated plan in accordance with guidance to be issued by HUD and has modified the provision at § 91.520 to explain why progress was not made toward meeting goals and objectives. HUD recognizes that some of these estimates may be based on historical funding and past experience of states.

*Percentage of funds to target areas.* While several states were unclear how this provision could be applied to their state, one, in expressing support for estimating the amount of funds spent in target areas, indicated that it would help show impact.

*HUD response:* The Department believes that identification of the percentage of funds a state plans to dedicate to target areas, where appropriate, would be useful in determining the degree to which activities are being carried out in a concentrated manner.

*One-year housing goals.* The preamble to the proposed rule added a new section requiring jurisdictions to specify one-year goals for the number of homeless, non-homeless, and special-needs households to be provided with

affordable housing through activities that provide rental assistance, production of new units, rehabilitation of existing units, or acquisition of existing units with funds made available to the jurisdiction. One state asked HUD to clarify how these numbers should be counted.

*HUD response:* The Department is clarifying the regulation to require two sets of annual housing goals. One set of annual goals is for the number of households to be served by rent assistance, new construction units, rehabilitation, or acquisition during the program year with funds made available to the jurisdiction. A second set of annual goals is for the number of homeless, non-homeless, and special-needs households to be assisted during the program year. The program funds providing the benefits (i.e., CDBG, HOME, HOPWA, ESG) may be from any funding year or combined funding years.

One state opposed the requirement for the number of homeless, non-homeless, and special-needs households because the requirement implies that the federal government desires that federal funds be used for these categories of households. States may have non-federal funds that they use for addressing these categories of households. Consequently, states should not be judged negatively for not having goals for using federal funds for households that are as aggressive as HUD may wish, or for not allocating funds from programs that are not specifically required to be used for these populations. Another state indicated that it would be impossible to carry out this requirement to specify one-year goals for the number of homeless, non-homeless, and special-needs families to be provided affordable housing with any level of accuracy. The states indicated that they can set priorities and forecast results after projects are chosen, and can later report on accomplishments. It would also be impossible to know who the tenants of an affordable housing project might be or the detailed characteristics of households that might receive down payment assistance before those events occur.

*HUD response:* The Department recognizes that the states as grantor agencies have less control over fulfillment of sections of the regulations dealing with annual goals and performance that do local jurisdictions. However, states are expected to provide the information to the extent that they are able to do so.

#### G. Submission Requirements

*Needs, Market, and Strategic Plan.* One state commented that it agreed with

the proposed rule that allows the submission of the housing and homeless needs assessment, housing market analysis, and strategic plan sections every five years, or at such time agreed upon by HUD and the state in order to facilitate orderly, program management, and to coordinate consolidated plans with time periods used for cooperation agreements, other plans, or the availability of data. The state encouraged adoption of this rule as a reasonable approach to using the most currently available data.

*Consolidated Plan Submission.* A clarifying amendment has been made to § 91.300 identifying the sections of the rule concerning a state's comprehensive housing affordability strategy.

#### *H. Public and Assisted Housing*

*Financial and other assistance for troubled housing.* A group representing state community development agencies acknowledged that this requirement comes from the Quality Housing and Work Responsibility Act, but indicated the funds covered by the consolidated plan would likely not be used to assist troubled PHAs. It recommended use of a more appropriate document, other than the consolidated plan, for states to report this type of information. Several states also acknowledged the statutory requirement but some argued that states should not be held responsible for assisting a PHA with removing the "troubled" designation. Several states indicated that they have provisions in various programs that allow PHAs to participate and that they will continue to work with those PHAs to ensure that their programs are available to them. However, they maintain that PHAs are essentially an arm of local governments and that the state should not be held responsible for assisting a PHA with removing the "troubled" designation. Rather, assisting "troubled" PHAs should be a local government issue and a HUD issue. Two states and a group representing state community development agencies asked that HUD provide each state with a list of troubled PHAs in their state.

*HUD response:* As indicated in the preamble of the proposed rule, these amendments were made pursuant to the requirements of sections 568 and 583 of the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 12705). The statute requires that the plan of a state 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 PHA designated as "troubled" in order to remove such

designation. The regulation excludes PHAs that are entirely within the boundaries of a unit of general local government that must submit a consolidated plan to HUD. The statute also considers 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 as cause for HUD to disapprove a plan or determine that it is substantially incomplete. Also, the final rule clarifies that the provision at § 91.500 applies to states as well as units of general local government. Such assistance need not be financial assistance but can include other assistance such as technical assistance provided by the jurisdiction. The Department will also provide each state with a list of troubled PHAs in their state in order to facilitate state grantee compliance with this requirement.

#### *I. State Method of Distribution*

Most commenters agreed that the method of distribution should include all of the state's selection criteria used to select applications for funding. One state thought it added nothing and argued that it attempts to remove all program flexibility. The state also found the language insulting and inappropriate to reference perceived notions that senior management overturns staff decisions in the program and argued that it promotes a guilty-until-proven innocent mentality. Another state indicated that the section went well beyond reasonableness in requiring that any decisions made by senior management be included in the criteria description of the method of distribution. In addition, a group representing state community development agencies and six states objected to the provision that approval of the plan shall not be deemed to indicate that the method of distribution was in compliance with CDBG program requirements. The group argued that each state needs to have a point at the beginning of its program year when its method of distribution is officially approved by HUD. Most of the states that commented on this point argued that such a decision should be made in tandem with the approval of the consolidated plan. One state asked how states become aware in advance if their method of distribution will meet HUD's acceptability criteria when scrutinized by HUD during a future monitoring visit, what the penalty would be, and would all funds awarded become disallowed costs.

*HUD response:* HUD acknowledges the desire among states to know that their method of distribution has been

determined to be in compliance with program requirements before the state implements its method of distribution. However, HUD has long recognized that it is not practical to expect a state's annual action plan to contain every detail about a state's distribution process—otherwise a state would have to incorporate the contents of its application manuals into the action plan. To further streamline the consolidated plan, the proposed rule provided that a state's method of distribution could contain a summary of the state's selection criteria, so long as the details are contained in other readily available state documents. HUD has retained that provision in the final rule and has modified the final language to indicate that HUD may monitor the method of distribution as part of its audit and review responsibilities in order to determine compliance with program requirements.

This final rule also makes several technical changes to the proposed rule. Duplicative language regarding the content of the method of distribution and provisions regarding records a state must keep to document its funding decisions, proposed at § 91.320(j)(1), has been moved to § 570.490(a), which is the section of the state CDBG regulations governing recordkeeping requirements.

## **VI. Findings and Certifications**

### *Information Collections*

The information collection requirements contained in this final rule are currently approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0117. 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 currently valid OMB control number.

### *Regulatory Planning and Review*

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866, (captioned "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 to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

*Regulatory Flexibility Act*

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule makes only clarifying and conforming changes to a regulation to make it more internally consistent and consistent with recent statutory changes.

*Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction, or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*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 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 the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of the UMRA.

*Catalog of Federal Domestic Assistance*

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

**List of Subjects***24 CFR Part 91*

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

*24 CFR Part 570*

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 91 and 570 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) A submission 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" and revising the definition of "consolidated plan" to read as follows:

**§ 91.5 Definitions.**

\* \* \* \* \*

*Chronically homeless person.* An unaccompanied homeless individual with a disabling condition who has 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.

*Consolidated plan* or ("the plan"). The document that is submitted to HUD that serves as the comprehensive housing affordability strategy, community development plan, and submissions for funding under any of the Community Planning and Development formula grant programs (e.g., CDBG, ESG, HOME, and HOPWA), that is prepared in accordance with the process described in this part.

\* \* \* \* \*

*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 receive 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, 2005 through September 30, 2006, for federal fiscal year 2006 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 as 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 and fair housing 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 PHA's program and those funded under a program covered by the consolidated plan, are fully coordinated to achieve comprehensive community development goals. If a PHA is required to implement remedies under a Section 504 Voluntary Compliance Agreement to provide accessible units for persons with disabilities, the local jurisdiction should consult with the PHA and identify actions it may take, if any, to assist the PHA in implementing the required remedies. A local jurisdiction may use CDBG funds for eligible

activities or other funds to implement remedies required under a Section 504 Voluntary Compliance Agreement.

■ 8. In § 91.105, paragraphs (a)(2)(ii) and (iii) are 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, and 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, e.g., use of focus groups, and use of the Internet.

(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 and fair housing services (including those focusing on services to children, elderly persons, persons with disabilities, persons with HIV/AIDS and their families, and 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, and community and faith-based organizations) that are involved with or affected by the programs or activities covered by the consolidated plan 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, e.g., use of focus groups, and 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 § 91.200 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. A comprehensive housing affordability strategy consists of the information required in § 91.200 through § 91.215(e), § 91.215(h) through § 91.215(l), § 91.220(c), § 91.220(g), § 91.225 and § 91.230.

(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, health, and child service agencies and other entities.

(c) In order to facilitate citizen review and comment each year, the plan shall contain a concise executive summary that includes the objectives and outcomes identified in the plan as well as an evaluation of past performance. The plan shall also 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 unmet needs of low-income persons with HIV/AIDS and their families throughout the eligible metropolitan statistical area.

(b) *Categories of persons affected.* (1) The plan shall estimate the number and type of families in need of housing assistance for extremely low-income, low-income, moderate-income, and middle-income families, for renters and owners, for elderly persons, for single persons, for large families, for public housing residents, for families on the public housing and section 8 tenant-based waiting list, 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 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 and chronically homeless persons), 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, revise paragraphs (a), (b)(1), (b)(2), and (c) to read as follows:

**§ 91.210 Housing market analysis.**

(a) *General characteristics.* Based on information available to the jurisdiction, the plan must describe the significant characteristics of the jurisdiction's housing market, including the supply, demand, and condition and cost of housing and the housing stock available to serve persons with disabilities, and to serve other low-income persons with special needs, including persons with HIV/AIDS and their families. Data on the housing market should include, to the extent information is available, an estimate of the number of vacant or abandoned buildings and whether units in these buildings are suitable for rehabilitation. The jurisdiction must also identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms "area of low-income concentration" and "area of minority concentration" for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(b) *Public and assisted housing.* (1) The plan must describe 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, such as 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. The inventory should also include (to the extent the information is available to the jurisdiction) an estimate of the percentage or number of beds and supportive services programs that are serving people that are chronically homeless.

\* \* \* \* \*

■ 14. Revise § 91.215 to read as follows:

**§ 91.215 Strategic plan.**

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

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

(2) Describe the rationale for establishing the allocation priorities given to each category of priority needs, particularly among extremely low-income, low-income, and moderate-income households;

(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 and how funds that are reasonably expected to be available will be used to address identified needs. For each specific objective statement, identify proposed accomplishments and outcomes 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. This information is to be provided in accordance with guidance to be issued by HUD.

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

(1) The affordable housing section shall describe how the characteristics of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.205 provided the rationale for establishing allocation priorities and 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). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the jurisdiction intends to use HOME funds for tenant-based assistance, it must specify local market conditions that led to the choice of that option.

(2) 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) *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 Voluntarily 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.

(d) *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.

(e) *Other special needs.* With respect to special 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 who may or may not 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 led to the choice of this option.

(f) *Nonhousing community development plan.* If the jurisdiction seeks assistance under the Community Development Block Grant (CDBG) 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.

(g) *Neighborhood Revitalization.* Jurisdictions are encouraged to identify locally designated areas where geographically targeted revitalization efforts are carried out through multiple activities in a concentrated and coordinated manner. In addition, a jurisdiction may elect to carry out a HUD-approved neighborhood revitalization strategy that includes the economic empowerment of low-income residents with respect to one or more of its areas. 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. This 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 the jurisdiction expects to achieve in the neighborhood through the use of HUD programs.

(h) *Barriers to affordable housing.* The consolidated plan must describe the jurisdiction's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing, as identified in accordance with § 91.210(e), except that,

if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph (h), as determined by HUD, the unit of general local government may submit its assessment submitted to the State to HUD and shall be considered to have complied with this requirement.

(i) *Lead-based paint hazards.* The consolidated plan must outline actions proposed or being taken to evaluate and reduce lead-based paint hazards and increase access to housing without such health hazards, how the plan for the reduction of lead-based hazards is related to the extent of lead poisoning and hazards, and how the plan for the reduction of lead-based hazards will be integrated into housing policies and programs.

(j) *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.

(k) *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, and which assesses 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.

(l) *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. With respect to economic development, the jurisdiction should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

■ 15. Revise § 91.220 to read as follows:

**§ 91.220 Action plan.**

The action plan must include the following:

(a) Standard Form 424;

(b) A concise executive summary that includes the objectives and outcomes identified in the plan as well as an evaluation of past performance, a 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)).

(c) *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 should include Section 8 funds made available to jurisdictions, Low-Income Housing Tax Credits, and competitive McKinney-Vento Homeless Assistance Act funds, expected to be available to address priority needs and specific objectives identified in the strategic plan.

(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, the jurisdiction 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.

(d) *Activities to be undertaken.* The action plan must provide 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. The plan must also describe the reasons for the allocation priorities and identify any obstacles to addressing underserved needs;

(e) *Outcome measures.* Each jurisdiction must provide outcome measures for activities included in its action plan in accordance with guidance to be issued by HUD.

(f) *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.

(g) *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 using funds made available to the jurisdiction and one-year goals for the number of 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.

(h) *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.

(i) *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(e);

(j) *Barriers to Affordable Housing.* Actions it plans to take during the next year to remove or ameliorate the negative effects of public policies that serve as barriers to 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.

(k) *Other actions.* 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), (i), (j), (k), and (l)).

(l) *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 because 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).

(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.

(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(g) 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 and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community organizations).

■ 16. Amend § 91.225 by adding paragraph (c)(10) to read as follows:

**§ 91.225 Certifications.**

\* \* \* \* \*

(c) \* \* \*

(10) A certification that the jurisdiction has established a policy for the discharge of persons from publicly

funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

\* \* \* \* \*

■ 17. Revise § 91.300 to read as follows:

**§ 91.300 General.**

(a) A complete consolidated plan consists of the information required in § 91.300 through § 91.330, submitted in accordance with instructions prescribed by HUD (including tables and narratives), or in such other format as jointly agreed upon by HUD and the state. A comprehensive housing affordability strategy consists of the information required in § 91.300 through § 91.315(e), § 91.315(h) through § 91.315(m), § 91.320(c), § 91.320 (g), § 91.225 and § 91.330.

(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, health, and child service agencies and other entities.

(c) The plan shall contain a concise executive summary that includes the objectives and outcomes identified in the plan as well as an evaluation of past performance. The plan shall also contain a concise summary of the citizen participation process, public comments, and efforts made to broaden public participation in the development of the consolidated plan.

■ 18. 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 state clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.110 and the citizen participation process conducted in accordance with § 91.115. For a state seeking funding under the HOPWA program, the needs described for housing and supportive services

must address the unmet needs of low-income 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 and chronically homeless persons) 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.

\* \* \* \* \*

■ 19. 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 state. The inventory should also include (to the extent the information is available to the state) an estimate of the percentage or number of beds and supportive services programs that are serving people that are chronically homeless.

\* \* \* \* \*

■ 20. Revise § 91.315 to read as follows:

**§ 91.315 Strategic plan.**

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

(1) Indicate the general priorities for allocating investment geographically within the state and among different activities and needs.

(2) Describe the rationale for establishing the allocation priorities given to each category of priority needs, particularly among extremely low-income, low-income, and moderate-income households.

(3) Identify any obstacles to meeting underserved needs.

(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 statement, identify proposed accomplishments and outcomes 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 state. This information shall be provided in accordance with guidance to be issued by HUD.

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

(1) The affordable housing section shall describe how the characteristics of the housing market and the severity of housing problems and needs of extremely low-income, low-income, and moderate-income renters and owners identified in accordance with § 91.305 provided the rationale for establishing allocation priorities and 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). Household and income types may be grouped together for discussion where the analysis would apply to more than one of them. If the state intends to use HOME funds for tenant-based assistance, it must specify local market conditions that led to the choice of that option.

(2) 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 state 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) *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.

(d) *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.

(e) *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 led to the choice of this option.

(f) *Nonhousing community development plan.* 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 identify 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.

(g) *Community Revitalization.* States are encouraged to identify areas where geographically targeted revitalization efforts are carried out through multiple activities in a concentrated and coordinated manner. In addition, 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(k)(1) must reflect the state's process and criteria for approving local government's 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 that are expected through the use of HUD programs. The state's process and criteria are subject to HUD approval.

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

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

(j) *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 Assistance 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 state has control.

(k) *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.

(l) *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 implementation of its consolidated plan. With respect to economic development, the state should describe efforts to enhance coordination with private industry, businesses, developers, and social service agencies.

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

■ 21. Revise § 91.320 to read as follows:

**§ 91.320 Action plan.**

The action plan must include the following:

(a) Standard Form 424;

(b) A concise executive summary that includes the objectives and outcomes identified in the plan as well as an evaluation of past performance, a summary of the citizen participation and consultation process (including efforts to broaden public participation) (24 CFR 91.300 (b)), a summary of comments or views, and a summary of comments or views not accepted and the reasons therefore (24 CFR 91.115 (b)(5)).

(c) *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.

(d) *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, the reasons for the allocation priorities, how the proposed distribution of funds will address the priority needs and specific objectives described in the consolidated plan, and any obstacles to addressing underserved needs.

(e) *Outcome measures.* Each state must provide outcome measures for activities included in its action plan in accordance with guidance issued by HUD. For the CDBG program, this would include activities that are likely to be funded as a result of the implementation of the state's method of distribution.

(f) *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).

(g) *Affordable housing goals.* The state must specify one-year goals for the number of 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, and one-year goals for the number of homeless, non-homeless, and special-needs households to be provided affordable housing 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.

(h) *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(e);

(i) *Barriers to Affordable Housing.* Actions it plans to take during the next year to remove or ameliorate the negative effects of public policies that

serve as barriers to 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.

(j) *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.

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

(1) *CDBG.* The action plan must set forth the state's method of distribution.

(i) 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, where applicable. The action plan must include a description of how all CDBG resources will be allocated among funding categories and the threshold factors and grant size limits that are to be applied. 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 what criteria and information their application will be judged, and be able to prepare responsive applications. The method of distribution may provide a summary of the selection criteria, provided that all criteria are summarized and the details are set forth in application manuals or other official state publications that are widely distributed to eligible applicants. HUD may monitor the method of distribution as part of its audit and review responsibilities, as provided in § 570.493(a)(1), in order to determine compliance with program requirements.

(ii) If the state intends to help nonentitlement units of general local government apply 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.

(2) *HOME.* (i) The state shall describe other forms of investment that are not described in 24 CFR 92.205(b).

(ii) If the state intends to use HOME funds for homebuyers, it must state the guidelines for resale or recapture, as required in 24 CFR 92.254.

(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 state-wide or limited to a specific geographic area, such as a community identified in a neighborhood revitalization strategy under 24 CFR 91.315(g), 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 the CDBG program.

(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 identify 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.* For HOPWA funds, the state 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, and shall identify the method of selecting project sponsors (including providing full access to grassroots faith-based and other community-based organizations).

■ 22. In § 91.325, amend paragraph (c) by adding (c)(10) to read as follows:

**§ 91.325 Certifications.**

\* \* \* \* \*

(c) \* \* \*

(10) A certification that the state has established a policy for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care, or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons.

\* \* \* \* \*

■ 23. 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 or state will provide financial or other assistance to a public housing agency if



the public housing agency is designated as "troubled" by HUD.

\* \* \* \* \*

■ 24. Amend § 91.520 by adding paragraph (g) to read as follows:

**§ 91.520 Performance reports.**

\* \* \* \* \*

(g) The report will include a comparison of the proposed versus actual outcomes for each outcome measure submitted with the consolidated plan and explain, if applicable, why progress was not made toward meeting goals and objectives.

**PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

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

**Authority:** 42 U.S.C. 3535(d) and 5301–5320.

■ 26. Revise § 570.490(a) to read as follows:

**§ 570.490 Recordkeeping requirements.**

(a) *State records.* (1) The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds under § 570.493. The content of records maintained by the state shall be as jointly agreed upon by HUD and the states and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the states in accordance with 24 CFR part 85.

(2) The state shall keep records to document its funding decisions reached under the method of distribution described in 24 CFR 91.320(j)(1), including all the criteria used to select applications from local governments for funding and the relative importance of the criteria (if applicable), regardless of the organizational level at which final funding decisions are made, so that they can be reviewed by HUD, the Inspector General, the Government Accountability Office, and citizens pursuant to the requirements of § 570.490(c).

\* \* \* \* \*

Dated: January 31, 2006.

**Pamela H. Patenaude,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 06–1182 Filed 2–8–06; 8:45 am]

**BILLING CODE 4210–67–P**