

good cause for missing the deadline to submit the evidence in § 416.1435, the Appeals Council will send you a notice that explains why it did not accept the additional evidence and advises you of your right to file a new application. The notice will also advise you that if you file a new application within 60 days after the date of the Appeals Council's notice, your request for review will constitute a written statement indicating an intent to claim benefits under § 416.340. If you file a new application within 60 days of the Appeals Council's notice, we will use the date you requested Appeals Council review as the filing date for your new application.

■ 28. Revise § 416.1476 to read as follows:

**§ 416.1476 Procedures before the Appeals Council on review.**

(a) *Limitation of issues.* The Appeals Council may limit the issues it considers if it notifies you and the other parties of the issues it will review.

(b) *Oral argument.* You may request to appear before the Appeals Council to present oral argument. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance, or the appearance of any other person relevant to the proceeding, will be in person, by video teleconferencing, or by telephone.

**§ 416.1479 [Amended]**

■ 29. Revise the first sentence of § 416.1479 to read as follows:

After it has reviewed all the evidence in the administrative law judge hearing record and any additional evidence received, subject to the limitations on Appeals Council consideration of additional evidence in § 416.1470, the Appeals Council will make a decision or remand the case to an administrative law judge. \* \* \*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 91**

[Docket No. FR 5891-F-02]

RIN 2506-AC41

**Modernizing HUD's Consolidated Planning Process To Narrow the Digital Divide and Increase Resilience to Natural Hazards**

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

**ACTION:** Final rule.

**SUMMARY:** HUD's Consolidated Plan is a planning mechanism designed to help States and local governments to assess their affordable housing and community development needs and to make data-driven, place-based investment decisions. The Consolidated Planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from HUD's formula block grant programs. This rule amends HUD's Consolidated Plan regulations to require that jurisdictions consider two additional concepts in their planning efforts.

The first concept is how to address the need for broadband access for low- and moderate-income residents in the communities they serve. Broadband is the common term used to refer to a high-speed, always-on connection to the Internet. Such connection is also referred to as high-speed broadband or high-speed Internet. Specifically, the rule requires that States and localities that submit a Consolidated Plan describe the broadband access in housing occupied by low- and moderate-income households. If low-income residents in the communities do not have such access, States and jurisdictions must consider providing broadband access to these residents in their decisions on how to invest HUD funds. The second concept added to the Consolidated Plan process requires jurisdictions to consider incorporating resilience to natural hazard risks, taking care to anticipate how risks will increase due to climate change, into development of the plan in order to begin addressing impacts of climate change on low- and moderate-income residents.

**DATES:** *Effective Date:* January 17, 2017.

**FOR FURTHER INFORMATION CONTACT:** Lora Routt, Senior Advisor, Office of Community Planning and Development, Department of Housing and Urban

Development, Office of Community Planning and Development, 451 7th Street SW., Suite 7204, Washington, DC 20410 at 202-402-4492 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

*A. Purpose of This Rule*

The purpose of this rule is to require States and local governments to evaluate the availability of broadband access and the vulnerability of housing occupied by low- and moderate income households to natural hazard risks, many of which may be increasing due to climate change, in their Consolidated Planning efforts. These evaluations are to be conducted using readily available data sources developed by Federal government agencies, other available data and analyses (including State, Tribal, and local hazard mitigation plans that have been approved by the Federal Emergency Management Agency (FEMA)), and data that State and local government grantees may have available to them. Where access to broadband Internet service is not currently available or is minimally available (such as in certain rural areas), States and local governments must consider ways to bring broadband Internet access to low- and moderate-income residents, including how HUD funds could be used to narrow the digital divide for these residents. Further, where low- and moderate-income communities are at risk of natural hazards, including those that are expected to increase due to climate change, States and local governments must consider ways to incorporate appropriate hazard mitigation and resilience into their community planning and development goals, codes, and standards, including the use of HUD funds to accomplish these objectives. These two planning considerations reflect emerging needs of communities in this changing world. Broadband provides access to a wide range of resources, services, and products, which assist not only individuals and, but also communities, in their efforts to improve their economic outlooks. Analysis of natural hazards, including the anticipated effects of climate change on those hazards, is important to help ensure that jurisdictions are aware of existing and developing vulnerabilities in the geographic areas that they serve that can threaten the health and safety of the populations they serve.

### *B. Summary of Major Provisions of This Rule*

HUD's currently codified Consolidated Plan regulations require that local governments and States consult public and private agencies that provide assisted housing, health services, and social and fair housing services during preparation of the Consolidated Plan. Under these regulations, local governments and States are also required in their citizen participation plan to encourage the participation of local and regional institutions and businesses in the process of developing and implementing their Consolidated Plans. This rule requires States and local governments, in preparing their Consolidated Plan, to add to the list of public and private agencies and entities that they now must consult with for preparation of their plans, to consult with public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide (*e.g.*, schools, digital literacy organizations), and agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies (see §§ 91.100 and 91.110). Jurisdictions must also encourage the participation of these entities in implementing relevant components of the plan (see §§ 91.105 and 91.115).

The rule also requires each jurisdiction to describe broadband needs in housing occupied by low- and moderate-income households based on an analysis of data for its low- and moderate-income neighborhoods for which the source is cited in the jurisdiction's Consolidated Plan. These needs include the need for broadband wiring and for connection to the broadband service in the household units, and the need for increased competition by having more than one broadband Internet service provider serve the jurisdiction (see §§ 91.210 and 91.310). Possible sources of such data include the National Broadband Map created by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce. Grantees may also find broadband availability data in Federal Communications Commission (FCC) Form 477. As discussed later in this preamble, the regulatory text does not include recommended sources of data to avoid any confusion that these are not required sources, only recommended sources.

The rule also requires that jurisdictions provide, as part of their required housing market analysis, an assessment of natural hazard risks to low- and moderate-income residents, including risks expected to increase due to climate change, based on an analysis of data, findings, and methods identified by the jurisdiction, for which a reputable source is cited in the jurisdiction's Consolidated Plan. Possible sources of such data include: (1) The most recent National Climate Assessment, (2) the Climate Resilience Toolkit, (3) the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST), and, (4) other climate risk-related data published by the Federal government or other State or local government climate risk related data, including FEMA-approved hazard mitigation plans which incorporate climate change data or analysis. For the same reasons discussed above, the regulatory text related to natural hazard risk analysis does not include the recommended sources of data. Prior to implementation of the new requirements established by this rule, HUD will provide additional resources to support grantees in the form of guides and trainings. Grantees may also request Technical Assistance through their HUD Field Office or directly at [www.HUDExchange.info/get-assistance](http://www.HUDExchange.info/get-assistance).

### *C. Costs and Benefits of This Rule*

HUD's Consolidated Plan process, established by regulation in 1995, provides a comprehensive planning process for HUD programs administered by HUD's Office of Community Planning and Development, specifically the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program, the Emergency Solutions Grants (ESG) program and the Housing with Opportunities for Persons With AIDS (HOPWA) program. Comprehensive community planning provides officials with an informative profile of their communities in terms of population, housing, economic base, community facilities, and transportation systems, and such information aids officials in their investment decisions. HUD's Consolidated Planning process assists State and local officials that are recipients of HUD funds under the above-listed programs in determining the housing and community development needs of their respective communities. Requiring Consolidated Plan jurisdictions to consider the broadband and natural hazard resilience needs of their communities helps to

ensure a more complete profile of the needs of their communities. As discussed in this preamble, the importance of providing broadband access to all cannot be overstated. Broadband access is not only important for increasing opportunities for individuals' success, but also for the success of a community. Consideration of the impact of natural hazard risks, many of which are anticipated to increase due to climate change, in one's community, and how communities can help mitigate any such adverse impacts, is equally important as it will help to guide the best use of land and orderly and sustainable growth. In brief, the benefits of this rule are to promote a balanced planning process that more fully considers the housing, environmental, and economic needs of communities.

The costs of the revised consultation and reporting requirements are not significant since the regulatory changes proposed by this rule merely build upon similar existing requirements for other elements covered by the Consolidated Planning process rather than mandating completely new procedures. Further, the required assessments are based on data readily available on the Internet, or which the Consolidated Plan jurisdiction may already have available to it, such as its own local data. Therefore, jurisdictions will not have to incur the expense and administrative burdens associated with collecting data. HUD anticipates providing grantees with data early in Federal Fiscal Year 2018. HUD will not require grantees to incorporate these new requirements into their Consolidated Plan process until HUD is able to make the data available to all grantees. To provide such time, the regulatory text provides that the new requirements apply to Consolidated Plans submitted on or after January 1, 2018.

Moreover, this rule does not mandate that actions be taken to address broadband needs or climate change adaptation needs. HUD's Consolidated Plan process has long provided that jurisdictions are in the best position to decide how to expend their HUD funds. The additional analyses required by this rule may highlight areas where expenditure of funds would assist in opening up economic opportunities through increased broadband access or mitigate the impact of possible natural hazards, including those that may be exacerbated due to climate change. But HUD leaves it to jurisdictions to consider any appropriate methods to promote broadband access or protect against the adverse impacts of climate change, taking into account the other

needs of their communities, and available funding, as identified through the Consolidated Planning process.

## II. Background

### A. Broadband Access

On March 23, 2015, President Obama issued a Presidential Memorandum on “Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training.” In this memorandum, the President noted that access to high-speed broadband is no longer a luxury, but a necessity for American families, businesses, and consumers. The President further noted that the Federal government has an important role to play in developing coordinated policies to promote broadband deployment and adoption, including promoting best practices, breaking down regulatory barriers, and encouraging further investment.

On July 15, 2015, HUD launched its Digital Opportunity Demonstration, known as “ConnectHome,” in which HUD provided a platform for collaboration among local governments, public housing agencies, Internet service providers, philanthropic foundations, nonprofit organizations and other relevant stakeholders to work together to produce local solutions for narrowing the digital divide in communities across the nation served by HUD. The demonstration, or pilot as it is also called, commenced with the participation of 28 communities. Through contributions made by the Internet service providers and other organizations participating in the pilot, these 28 communities will benefit from the ConnectHome collaboration by receiving, for the residents living in HUD public and assisted housing in these communities, broadband infrastructure, technical assistance, literacy training, and electronic devices that provide for accessing high-speed Internet.

The importance of all Americans having access to the Internet cannot be overstated. As HUD stated in its announcement of the Digital Opportunity Demonstration, published in the **Federal Register** on April 3, 2015, at 80 FR 18248, “[k]nowledge is a pillar to achieving the American Dream—a catalyst for upward mobility as well as an investment that ensures each generation is as successful as the last.”<sup>1</sup> Many low-income Americans do not have broadband Internet at home, contributing to the estimated 66 million Americans who are without the most

basic digital literacy skills. Without broadband access and connectivity and the skills to use Internet technology at home, children will miss out on the high-value educational, economic, and social impact that high-speed Internet provides. It is for these reasons that HUD is exploring ways, beyond ConnectHome, to narrow the digital divide for the low-income individuals and families served by HUD multifamily rental housing programs. This rule presents one such additional effort.

### B. Natural Hazards Resilience

On November 1, 2013, President Obama signed Executive Order 13653, on “Preparing the United States for the Impacts of Climate Change.” Executive Order 13653 was subsequently published in the **Federal Register** on November 6, 2013 (78 FR 66819). The Executive Order recognizes that the potential impacts of climate change—including an increase in prolonged periods of excessively high temperatures, more heavy precipitation, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise—are often most significant for communities that already face economic or health-related challenges. Research has bolstered the understanding of the concept of social vulnerability, which describes characteristics (age, gender, socioeconomic status, special needs, race, and ethnicity) of populations that influence their capacity to prepare for, respond to, and recover from hazards and disasters, including the sensitivity of a population to climate change impacts and how different people or groups are more or less vulnerable to those impacts. Social vulnerability and equity in the context of climate change are important because some populations may have less capacity to prepare for, respond to, and recover from climate-related hazards and effects. Executive Order 13653 asserts that managing these risks requires deliberate preparation, close cooperation, and coordinated planning by the Federal government, State, Tribal, and local governments, and stakeholders. Further, the Executive Order calls upon Federal agencies to identify opportunities to support and encourage smarter, more climate-resilient investments by States, local communities, and tribes, through grants and other programs, in the context of infrastructure development.

Section 7 of Executive Order 13653 established the President’s State, Local, and Tribal Leaders Task Force on Climate Change Resilience and Preparedness (Task Force). Co-chaired by the Chair of the White House Council

on Environmental Quality and the Director of the White House Office of Intergovernmental Affairs, the Task Force consisted of 26 governors, mayors, county officials, and Tribal leaders from across the United States. Members brought first-hand experiences in building climate preparedness and resilience in their communities and conducted broad outreach to thousands of government agencies, trade associations, planning agencies, academic institutions, and other stakeholders, to inform their recommendations to the Administration.

The President charged the Task Force with providing recommendations on how the Federal government can respond to the needs of communities nationwide that are dealing with the impacts of climate change by removing barriers to resilient investments, modernizing Federal grant and loan programs to better support local efforts, and developing the information and tools they need to prepare, among other measures. In November 2014, Task Force members presented their recommendations for the President at a White House meeting with Vice President Biden and other senior Administration officials. Among other actions, the Task Force called on HUD to consider strategies within existing grant programs to facilitate and encourage integrated hazard mitigation approaches that address climate-change related risks, land use, development codes and standards, and capital improvement planning. This final rule represents one step that HUD is taking to implement these recommendations.

### HUD’s May 2016 Proposed Rule

On May 18, 2016, at 81 FR 31192, HUD published a proposed rule that would require Consolidated Plan jurisdictions to consider broadband Internet access and the natural hazard resilience needs of their communities and to consider whether they should and can take actions to address these needs.

HUD’s Consolidated Planning process serves as the framework for a community-wide dialogue to identify housing and community development priorities that align and focus funding from the HUD formula block grant programs: The CDBG program, the HOME program, the ESG program, and the HOPWA program. HUD’s regulations for the Consolidated Plan are codified at 24 CFR part 91 (entitled “Consolidated Submissions for Community Planning and Development Programs”). A Consolidated Plan, which may have a planning duration of

<sup>1</sup> See 80 FR 18248, at 18249.

between 3 and 5 years, is designed to help States and local governments to assess their affordable housing and community development needs, in the context of market conditions at the time of their planning, and to make data-driven, place-based decisions on how to expend HUD funds in their jurisdictions.

In developing their Consolidated Plans, States and local governments are required to engage their communities, both in the process of developing and reviewing the proposed plan, and as partners and stakeholders in the implementation of the plan. By consulting and collaborating with other public and private entities, States and local governments can better align and coordinate community development programs with a range of other plans, programs, and resources to achieve greater impact. A jurisdiction's Consolidated Plan is carried out through annual Action Plans, which provide a concise summary of the actions, activities, and the specific Federal and non-Federal resources that will be used each year to address the priority needs and specific goals identified by the Consolidated Plan. States and local governments report on accomplishments and progress toward Consolidated Plan goals in the Consolidated Annual Performance and Evaluation Report (CAPER).

The regulatory amendments proposed by HUD's May 2016 rule would require States and local governments to consider broadband access and natural hazard resilience as part of their Consolidated Planning efforts. Where the required analysis demonstrates that broadband Internet support is not currently available or is minimally available, or the jurisdiction's community is at risk of natural hazards, the jurisdiction should consider ways of addressing those needs.

The public comment period for HUD's May 18, 2016, proposed rule closed on July 18, 2016. HUD received 37 public comments on the proposed rule. The commenters included State and local governments, climate adaptation and environment organizations, public housing agencies (PHAs) and nonprofit organizations. The following Section III discusses the significant comments raised by the commenters and HUD's responses to the comments.

### III. Discussion of Public Comments Received on the May 16, 2016, Proposed Rule

This section of the preamble presents a summary of the significant issues and questions raised by the commenters and HUD's responses to these comments.

The majority of the commenters supported the inclusion of both assessments in the Consolidated Planning process, but as shown below in the discussion of public comments were concerned about administrative burden. In responding to the comments, HUD has strived to highlight that the burden is minimal. The only change that HUD makes in responses to public comments, as is more fully discussed below, is to remove from the regulatory text specific recommended broadband and risk hazard sources to consult in making the required assessments. There was confusion about whether or when consultation with these sources was required. They are recommended, not required sources. Removing these references from the regulatory text eliminates this confusion.

#### A. General Comments

*Comment: Support for the rule.* The majority of commenters supported the proposed rule. These commenters commended HUD on recognizing the importance of requiring jurisdictions to assess broadband access for low- and moderate-income households and to consider how to incorporate resilience to natural hazard risks in their planning efforts.

*HUD Response.* HUD appreciates the support of the commenters and agrees that these changes to the Consolidated Planning process should aid jurisdictions in addressing two emerging needs of communities in this changing world.

*Comment: The rule is an unfunded mandate.* Several commenters stated that the proposed rule represented an overreach of HUD's authority and that the changes were an unfunded mandate.

*HUD Response.* The commenters are not correct that the two new assessments impose an unfunded mandate. As an initial matter, HUD notes that the rule's scope is limited to requiring consideration of the broadband and natural hazards resilience needs of low-income communities. The rule does not mandate that any actions be taken in response to the required assessments. Jurisdictions retain the discretion to consider the most appropriate methods to address their assessments, taking into account other needs identified as part of the Consolidated Planning process as well as financial and other resource constraints. Further, HUD notes that the Consolidated Planning process is required only to the extent jurisdictions voluntarily seek to participate in HUD's community planning and development programs. Accordingly, there is no mandate for jurisdictions choosing not

to receive such funding. The concept of unfunded mandates excludes voluntarily-assumed requirements imposed as a condition for receipt of Federal assistance.

*Comment: The proposed regulatory changes are administratively and economically burdensome.* Several commenters wrote that the proposed rule imposes an administrative burden, especially on smaller communities. The commenters wrote that the financial burden would unduly stretch already limited CDBG and HOME program funding. The commenters also objected that HUD underestimated the administrative burden of complying with the new requirements. Some of these commenters focused on the administrative burden associated with the expanded consultation requirements, which now include broadband internet service providers, organizations engaged in narrowing the digital divide, and agencies engaged in resilience planning. These commenters stated that HUD's estimates of the administrative burden failed to account for the person-hours required to locate, engage, evaluate, and compile recommendations from qualified public and private entities within either content area. The commenters wrote that HUD should refrain from pursuing the changes or make the two new assessments optional.

*HUD Response.* As noted in the proposed rule, HUD has sought to minimize the costs and burdens imposed on communities by allowing the assessments to be completed using readily available online data sources. HUD further minimizes the burden imposed on jurisdictions by providing an electronic template for completing the Consolidated Plan. This template, first used in 2012, provides a uniform and flexible template that helps ensure the Consolidated Plan is complete per the regulations found in 24 CFR part 91. Many of the data tables within the Consolidated Plan template are pre-populated with the most up-to-date housing and economic data available, and HUD plans to input data for both broadband and resilience assessment requirements. While grantees will need to provide explanations relating their funding priorities to the pre-populated data, they do not need to incur the costs or time of searching for, entering, and compiling the data. HUD also notes that the rule does not require jurisdictions to use the pre-populated data; jurisdictions may opt to use other data of their choice.

HUD anticipates providing grantees with data early in Federal Fiscal Year 2018. HUD will not require grantees to

incorporate these new requirements into their Consolidated Plan process until HUD is able to make the data available to all grantees. To provide such time, the regulatory text provides that the new requirements apply to Consolidated Plans submitted on or after January 1, 2018.

With respect to the consultation requirements, HUD notes the Consolidated Plan has always served as a planning document for the jurisdiction as a whole. Jurisdictions are already required to consult with public and private agencies, business and civic leaders, and units of local government. The inclusion of the newly specified entities does not substantively alter the cost or administration of the already required participatory process.

*Comment: The new proposed rule lacks necessary specificity of how the two new assessments are to be conducted.* Several commenters wrote that the proposed rule lacked sufficient specificity regarding the required contents of the new assessments and the criteria HUD will use to evaluate the adequacy of the assessment. The commenters wrote that this lack of details would make it difficult for jurisdictions to comply with the new requirements. One of the commenters asked whether the data sources cited by the community would be subject to review by HUD. The commenters urged HUD to provide additional guidance to communities on how it plans to measure compliance with the rule.

*HUD Response:* As it does on other components of the Consolidated Plan, HUD will provide technical assistance and training materials to assist jurisdictions in meeting the new requirements. However, HUD notes that the requirements of the new rule are not entirely unfamiliar, as the Consolidated Planning process already requires jurisdictions to identify non-housing community development needs that would aid communities in developing viable urban communities, providing a suitable living environment and expanding economic opportunities principally for low-income and moderate-income persons. (See 24 CFR 91.215(f).) With respect to data, as noted in response to an earlier comment, HUD plans to pre-populate data in the electronic Consolidated Plan template. Through the standardized template with prepopulated data tables at the jurisdictional level and providing the ability to map community needs, jurisdictions will be able to ascertain and satisfy HUD's needs assessment expectations. To ensure that jurisdictions have engaged in analysis regarding community broadband and

natural hazard resilience needs, plans will be reviewed for compliance with the new requirements. Guidance will be developed for the field staff to support consistent implementation of this policy. In order to aid grantees, HUD will provide in its guidance best practices and examples for incorporating broadband and natural hazards into the Consolidated Plan.

*Comment: HUD should first establish eligible activities for the two new assessments, before requiring that such assessments be undertaken.* A commenter wrote that the two new assessments do not directly address CDBG's objectives. The commenter stated that before any changes are made to the consultation and citizen participation regulations, HUD should update the eligible activities and guidance regarding these kinds of activities. The commenter stated that, for instance, income payments, including payments for utilities such as Internet, are not considered an eligible CDBG activity. The commenter stated that CDBG funding could be used to make utility payments, including Internet payments, to ensure low- and moderate-income families have access to the Internet. Another commenter asked whether CDBG funds can be used to assist in broadband infrastructure or otherwise connect housing assisted by HUD to broadband.

*HUD Response:* One of the statutory objectives of the CDBG program is to "provid[e] . . . [a] suitable living environment," which encompasses a range of related goals and activities such as improving the safety and livability of neighborhoods; increasing access to quality public and private facilities and services; and reducing the isolation of income groups within a community or geographical area through the spatial deconcentration of housing opportunities for persons of lower income, the revitalization of deteriorating or deteriorated neighborhoods, and the conservation of energy resources. The two new assessments required under this rule align with this objective. With respect to eligible activities, while HUD does not have regulatory authority to add new eligible activities to the CDBG program beyond those authorized in statute, the CDBG program already includes numerous eligible activities, such as rehabilitation, through which grantees can assist broadband connectivity and natural hazard resilience efforts directly. When determining their public facility, housing rehabilitation, economic development, and infrastructure needs, grantees may wish to consider high performing infrastructure to ameliorate/

withstand natural hazards, as well as ways to use eligible activities to meet community broadband needs. HUD has provided guidance on using existing eligible activities for these purposes,<sup>2</sup> and will also be providing additional technical assistance and guidance on how CDBG funds may be used to address both broadband and resilience needs in the community.

*Comment: HUD's regulations should be generally stated and guidance should provide the necessary specificity.* A commenter wrote that as proposed, HUD requires very specific data sources to be included in the Consolidated Plan. The commenter stated that this is problematic because data sources often change or are renamed. The commenter stated that HUD's regulations should list general information that is required in the Consolidated Plan while HUD guidance and other materials that are regularly updated, such as the "Consolidated Plan in IDIS Desk Guide," should provide recommended data sources. The commenter stated that this will allow HUD to update data sources easily in circumstances where sources change or new sources become available.

*HUD Response:* HUD appreciates the suggestion made by the commenter, and has revised the rule accordingly. As recommended, the regulation no longer identifies specific recommended sources. These suggested sources of data will now be listed in guidance to facilitate updating as new data becomes available or data sources are re-named. Jurisdictions will still be able to use either the data identified by HUD and pre-populated in the electronic Consolidated Plan template or other data sources of the jurisdiction's choice, for which the source is cited in the jurisdiction's Consolidated Plan.

*Comment: The rule includes no mandate thereby providing no assurance goals will be met.* A commenter wrote that despite HUD's recognition of the importance of access to broadband and the increasing risk of natural hazards, the proposed rule does not mandate jurisdictions take any action, or even formulate actions steps, to address these needs. The commenter wrote that while it is often true that "jurisdictions are in the best position to decide how to expend their HUD funds," requiring concrete plans of

<sup>2</sup> Please see the Frequently Asked Questions (FAQs) for the CDBG, HOME, and Housing Trust Fund programs available at the following links: <https://www.hudexchange.info/resource/4891/cdbg-broadband-infrastructure-faqs/> <https://www.hudexchange.info/onecpd/assets/File/HOME-FAQs-Broadband.pdf> <https://www.hudexchange.info/resource/4420/htf-faqs/>.

action instead of just data collection is the only real way to ensure HUD's stated goals are met.

*HUD Response:* A fundamental principle of the Consolidated Planning process, as well as of HUD's community development formula programs (for which the Consolidated Plan is the submission vehicle) is that grantees have the flexibility and responsibility for developing their own programs and funding priorities, based on their own assessment of their needs. HUD does not mandate what objectives grantees should achieve or what activities grantees are to undertake with their formula funding. It will be up to the jurisdiction through its needs assessment process to determine whether to select activities related to these issues as a priority need. The grantee would identify the financial and organizational resources available to address its priority needs. In the Consolidated Planning process, the level of resources available will play a key role in determining strategies and goals. Once broadband or increasing resilience have been selected as a priority need, grantees would then develop a set of goals based on the availability of resources, and local organizational capacity.

*Comment:* The new assessments are already made by agencies within each State tasked with such assessments. A commenter stated that new assessments should not be required of State housing agencies. The commenter stated that these assessments are already made by those State agencies charged with technology authority or charged with emergency management. The commenter stated that generally, for each State, these assessments are made through programs that are not part of the Consolidated Planning process.

*HUD Response:* HUD agrees that jurisdictions often already have assessments undertaken by other agencies regarding both broadband access and natural hazard resiliency. HUD is encouraging through its Consolidated Planning process a collaborative consultation process. HUD also encourages jurisdictions to use these plans developed by other agencies in identifying community needs and priorities. The Consolidated Planning process provides the opportunity for jurisdictions to reference existing plans and HUD is not requiring a separate, distinct study to be undertaken. It is up to each jurisdiction to determine which agencies or departments will be responsible for developing its Consolidated Plan and for administering the HUD community development formula funding received through each

block grant program. All other jurisdictions (including States) are encouraged to ensure collaboration among internal and external agencies and staff to take full advantage of relevant expertise. Ideally, State agencies would develop these plans in alignment with each other, not only to reduce duplication of work but also to ensure that Federal investments are more aligned throughout the State and in their communities.

*Comment:* Consider requiring assessments for broadband adoption and increasing resilience to natural hazards beyond the context of housing needs. Several commenters wrote that HUD should consider requiring assessments in Consolidated Plans beyond just housing needs. The commenter stated that even though Consolidated Plans are focused on housing needs, communities would benefit if jurisdictions are required to at least analyze how funds could be used for broadband adoption and enhancing resilience to natural hazard risks for communities as a whole.

*HUD Response:* The Consolidated Plan is not exclusively concerned with housing needs. HUD's Consolidated Plan regulations include both a housing needs assessment and a non-housing community development plan. Specifically, under 24 CFR 91.215 (for local governments) and 24 CFR 92.315 (for States), jurisdictions must provide a description of priority non-housing community development needs eligible for assistance under HUD's community development programs. In line with the goals of this rulemaking, HUD strongly encourages jurisdictions to consider implementing actions to support broadband access and adoption and increase resilience in their non-housing community development efforts, but such decisions on priorities are determined by grantees.

*Comment:* These two new Consolidated Plan assessments require input by the residents of the community. A commenter stated that assessing broadband and natural hazards concerns of the community beyond the data points and institutional input required in the proposed rule is essential for local governments and States in assessing the true needs of the community. The commenter stated that without direct communication with the households that are affected by these issues, States and localities cannot properly assess the full needs of the communities they serve. The commenter urged HUD to require jurisdictions to create a public process where members of the community have opportunity to comment on

Consolidated Plans, and that HUD should consider a community participation structure similar to the requirement under HUD's Affirmatively Furthering Fair Housing (AFFH) regulation.

*HUD Response:* HUD's Consolidated Plan regulations already require jurisdictions to undertake a citizen participation and consultation process (see, subpart B of the Consolidated Plan regulations at 24 CFR part 91, entitled "Citizen Participation and Consultation"). The AFFH citizen participation process was modeled on the citizen participation and consultation process required by HUD's Consolidated Plan regulations. HUD does not believe that a separate citizen participation and consultation process is required for the two new assessments established by this rule, as was established under the AFFH rule. HUD's AFFH rule implemented a requirement, affirmatively furthering fair housing, under a separate statute, the Fair Housing Act. That is not the case here.

*Comment:* Broadband access and natural hazard risk resilience should be included in the jurisdictions' Assessment of Fair Housing required by HUD's Affirmatively Furthering Fair Housing regulation. A commenter wrote that in addition to addressing concerns about broadband access and resilience to natural hazard risks in their Consolidated Plans, HUD should require jurisdictions to incorporate these assessments into their Assessment of Fair Housing required under HUD's AFFH rule. The commenter stated that HUD's AFFH rule aims to aide States and local governments "in taking a meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics." The commenter stated that under the AFFH rule, jurisdictions are charged with taking meaningful actions that "transform racially and ethnically concentrated areas of poverty into areas of opportunity."

*HUD Response:* While HUD, in this rule, is not mandating inclusion of the broadband access and resilience assessments in the Assessment of Fair Housing required under HUD's AFFH rule, jurisdictions may voluntarily elect to include them in their assessment required under the AFFH rule. As noted, HUD encourages jurisdictions to ensure collaboration among State and local agencies and staff to take full advantage of relevant expertise among all agencies and employees, be they internal or external to the jurisdiction.

The suggestion made by the commenter may be one possible way of achieving that goal.

*B. Specific Comments on Narrowing the Digital Divide*

*Comment: The National Broadband Map and Form 477 do not provide current data and HUD should therefore allow use of State and local data.*

Several commenters objected to use of National Broadband Map and Form 477 data to determine broadband availability. A commenter questioned the accuracy of data quality and accuracy within the broadband services sector. Another commenter wrote that Federally collected data on broadband access and adoption is often of inconsistent quality, unverified, not released in a timely manner, and insufficient for the planning needs of many communities. Commenters stated that the National Broadband Map has not been updated or maintained and currently shows data from the fall of 2014, and this outdated resource could lead to confusion and inaccurate information. A commenter requested that HUD, in partnership with the Department of Commerce's National Telecommunications and Information Administration (NITA), pre-certify broadband coverage data and maps that communities could use.

With respect to the Form 477, commenters wrote that the data has not been mapped and is difficult to access. To address these concerns, the commenters suggested that HUD allow Consolidated Plans to include data on broadband access collected directly through State and local broadband efforts. A commenter wrote that currently 37 States still have active broadband planning teams with data and resources that are likely more up-to-date than current federal data. Another commenter wrote that few communities have the ability and knowledge base to "consult with . . . broadband internet service providers" as would be required in proposed revisions to the consultation and citizen participation requirements. The commenter stated that HUD would need to provide substantial levels of policy and practical guidance to enable local staff to determine broadband "needs" for a specific subset of the overall population within each community.

*HUD Response:* While HUD does not agree with the commenters' objections to use of the National Broadband Map and Form 477, it is sympathetic to the general concerns expressed regarding the need to ensure that data sources are accurate and up-to-date. As noted in response to an earlier comment, this

final rule does not codify specific recommended data sources. These will now be listed in guidance to facilitate updating as new data becomes available or data sources are re-named. It was not HUD's intent to mandate use of the National Broadband Map or Form 477. While HUD plans to provide pre-populated data in the electronic Consolidated Plan template, jurisdictions are not required to use such data and may use alternative data. The template's default data can be replaced or complemented by other data identified by the jurisdiction, for which the source is cited in the jurisdiction's Consolidated Plan. Further, HUD is committed to aiding jurisdictions with meeting the new requirements contained in this rule, and will supplement the rule with guidance as may be needed. As it does on other components of the Consolidated Plan, HUD will provide technical assistance and training materials to assist jurisdictions in meeting these new requirements.

*Comment: The rule offers no suggested sources for States and communities to assess the extent to which the need for connection to the broadband service in the household units is being met.* A commenter wrote that the data sources identified in the rule are not adequate to permit jurisdictions to assess the extent to which broadband services have actually penetrated the market of low-to-moderate income households in a given community. This commenter suggested two readily available federal sources for actual household connection data which should be suggested, but not required, by the rule. In contrast to commenters that submitted concerns about the data in the immediately preceding comment, the first source recommended by the commenter is FCC's Form 477 Census Tract Data on Internet Access Services, which the commenter stated provides a summary of reported connections for each tract and compares the total to the tract's total Census households. The commenter stated that this form, along with the FCC's national interactive color-coded map, make it reasonably easy to rank or map a state or community's Census tracts by household broadband penetration and have an easy first look at their tracts' penetration levels. The second source recommended by the commenter is the American Community Survey (ACS) data on household computer ownership and Internet access.

*HUD Response:* HUD appreciates the suggestions of additional data sources that may be useful to jurisdictions in preparing the required broadband

assessment. HUD notes that the Form 477 is already included as a suggested data source. As previously addressed in this preamble, jurisdictions may either use the data sources suggested by HUD or other data identified by the jurisdiction, for which the source is cited in the jurisdiction's Consolidated Plan.

*Comment: Do not ignore other causes of digital exclusion other than availability in the housing market analysis.* A commenter stated that in creating a framework through its Consolidated Plan process for community dialogue leading to possible action toward greater digital access and inclusion, HUD should recognize that low rates of household Internet access among low- and moderate-income residents can be the result of many causes other than physical availability of service, including the following: Unaffordability of available Internet services to low-income residents; a lack of convenient opportunities for residents to gain digital literacy skills; a failure to communicate the value of available Internet services and tools; and other factors specific to communities, such as language, cultural barriers, etc.

*HUD Response:* HUD appreciates the concerns raised by the commenter. The Consolidated Plan contains both a housing need assessment and a non-housing community plan development component. HUD encourages jurisdictions to look at their broadband and resiliency needs across all components of the Consolidated Planning process. The jurisdiction has the ability to include an infrastructure assessment as well as public services assessment as part of its non-housing community development plan. HUD is cognizant that the adoption of broadband internet is an equally critical component of closing the digital divide and is contingent on many factors other than the availability of internet service. This rule, however, is but one part of HUD's broader efforts to expand the access and use of broadband internet. HUD also notes that the jurisdictions are free to expand their broadband assessment to include the types of issues listed by the commenter, based on their identification of local needs and circumstances.

*Comment: Consultation requirements should include other identified stakeholders.* Several commenters expressed support for the proposed rule requiring the consultation of broadband stakeholders in preparation for creating Consolidated Plans. The commenters suggested additional stakeholders that should be included in the consultation



process. One commenter specifically recommended that State planning programs be identified as possible partners in the locations they are available. Another commenter suggested that HUD clarify that public-private initiatives or partnerships (like a local community technology planning team or task force, which might not have a formal legal identity or corporate status) will qualify as an "organization engaged in narrowing the digital divide." The commenter stated that the needs of often-voiceless, low-income communities with low adoption rates will not always register with broadband providers, but allowing these public-private organizations to voice the needs of low-income communities can help establish a business case for improved service offerings and options. Yet another commenter suggested adding language to include "local social service and public agencies providing digital literacy, public internet access, or other broadband adoption programs." The commenter stated that these may include, but are not limited to: Adult literacy and education providers; K–20 schools; youth program providers; libraries; and small business and workforce training program providers.

**HUD Response:** The purpose of the Consolidated Planning process is to aid jurisdictions, as a whole, in identifying their housing and community development needs and funding priorities. The Consolidated Plan builds on a participatory process that includes citizens, organizations, businesses, and other stakeholders. In carrying out these already required consultations, HUD encourages jurisdictions to conduct the broadest possible outreach, including State and local agencies and other entities identified by the commenters.

**Comment:** *Require grantees to submit progress reports in closing the digital divide.* A commenter recommended that HUD revise the language at the final rule stage to state that after submission and acceptance of the Consolidated Plan, communities are expected to develop a reasonable and achievable strategy for closing the digital divide. The commenter stated that this language should leave no doubt as to the expectation that progress will begin immediately. The commenter stated that HUD should mandate that communities provide regular progress reports as they take their first steps into closing the digital divide.

**HUD Response:** Grantees are currently required to submit progress reports on the priority needs and goals they select during the Consolidated Planning process. Under HUD's Consolidated Plan regulations, within 90 days after

the end of its program year, a grantee must submit a Consolidated Annual Performance and Evaluation Report (CAPER) to HUD. The primary purpose of the CAPER is to report on accomplishments of funded activities within the program year and to evaluate the grantee's progress in meeting one-year goals it has described in the Annual Action Plan and long-term goals it has described in the Consolidated Plan.

**Comment:** *Encourage jurisdictions to partner with successful ConnectHome communities.* A commenter stated that to ease and facilitate the assessment of broadband needs as part of the Consolidated Planning process, HUD should recommend and/or establish connections between applicants and successful ConnectHome communities that have developed and implemented their own connection plans. The commenter stated that this additional resource would dramatically increase the information available to each community while further reducing administrative and financial costs as communities share best practices. Another commenter suggested that HUD document and widely share data and promising practices from the 28 ConnectHome pilot communities, and assess what strategies have been most (and least) successful in supporting broadband access and adoption. The commenter encouraged HUD to regularly undertake and make public an analysis of findings from broadband access and adoption strategies jurisdictions reported in their Consolidated Annual Performance and Evaluation Report or other relevant reporting processes. The commenter also requested that HUD establish a single-stop data center that contains links to all relevant resources.

**HUD Response:** HUD agrees that ConnectHome communities could be a valuable resource for other jurisdictions. HUD encourages collaboration, where possible, between jurisdictions in developing and implementing their plans to expand access to broadband internet. As the commenter notes, such collaboration can be a cost-effective way to share successful strategies and best practices. HUD will seek ways to facilitate sharing of best practices of the ConnectHome communities. For example, HUD is developing a playbook that provides suggestions and best practices for communities seeking to expand digital inclusion. The suggestions identified in the playbook are based on HUD's experience and expertise developed during implementation of the ConnectHome initiative.

**Comment:** *Examine how HUD programs may limit the ability of grantees to invest funds in broadband access and adoption.* A commenter suggested that HUD assess how existing rules and legislation governing HUD programs may limit the ability of grantee governments to invest funds in broadband access and adoption. The commenter offered as an example of such limitation the "public services cap" on grantees' permissible use of CDBG grant funds. The commenter stated that any local investment of CDBG funds in digital literacy training, technical assistance or even consumer premises equipment to support household internet adoption is currently classified as a public service expenditure and limited by the cap, which means it competes for a fixed pool of dollars with all kinds of ongoing community needs such as emergency homeless shelters.

**HUD Response:** As with all its programs and initiatives, HUD will, on an ongoing basis, review and assess the impact of legislative and regulatory requirements on program participants. Where appropriate or necessary to policy goals, HUD will seek changes through the appropriate vehicle, rulemaking, legislation or other policy action that may facilitate a change. However, HUD does not agree with the commenter that the CDBG program unduly limits activities to expand access and adoption of broadband internet. The CDBG regulations allow the use of grant funds for a wide range of eligible activities including public services, which is not the only activity a community can use to address its broadband needs. Grantees have the flexibility and responsibility for developing their own programs and funding priorities, based on their own assessment of their needs. Additionally, other funding associated with the Consolidated Plan, such as HOME and Housing Trust Fund funds, may be used for the actual costs of constructing or rehabilitating single family or multifamily housing, including the costs to wire the property for broadband internet, which could help address a community's broadband needs.

### C. Specific Comments on Increasing Resilience to Natural Hazards

**Comment:** *Include a definition of resilience.* A commenter stated that resilience is a term that means many things to many people. The commenter recommended that a definition of resiliency be included in HUD's regulations in 24 CFR part 91.

**HUD Response:** HUD will provide technical assistance and training



materials to assist jurisdictions in meeting the new requirements. This will include guidance to communities on how to assess their resilience to natural hazard risk. As a guide, HUD points to the definition of the term “resilience” used by HUD for the National Disaster Resilience Competition, which is already familiar to HUD grantees and communities participating in HUD programs. Specifically, in that notice of funding availability, HUD defined resilience to mean “the ability to anticipate, prepare for, and adapt to changing conditions and withstand, respond to, and recover rapidly from disruptions.”

*Comment: For consistent evaluation of resilience, HUD should work with other Federal agencies to develop guidance and tools that support communities and practitioners.* A commenter encouraged HUD to work with other Federal agencies to develop guidance and tools that support communities and practitioners, and noted that several tools already exist and were identified in the proposed rule. The commenter specifically noted as helpful tools the Integrated Rapid Visual Screening (IRVS) Tool, the Community Resilience Planning Guide, and Hazus MH FEMA. The commenter stated that to the extent practical, the resilience evaluations required within the Consolidated Plan should mirror requirements contained in other hazard identification and mitigation plans conducted at the State and local level. The commenter stated that this should include at a minimum the State Hazard Mitigation Plan required to receive certain funding from the Federal Emergency Management Agency (FEMA), the Threat and Hazard Identification and Risk Assessment (THIRA) process, and planning and assessment requirements associated with Department of Transportation, Economic Development Administration and other Federal programs. The commenter also stated that the rule should require consultation with additional community resources such as geological and meteorological agencies, energy and sustainability offices, and building code departments. Another commenter urged HUD to include academic institutions as resources that should be consulted. Yet another commenter stated that in addition to supporting communities’ access to critical governmental resources for assessing resilience to natural hazards, HUD should convene a group of expert stakeholders from the non-governmental organization community to strategize how to implement effective resilience

tactics, as well as hosting a broader clearinghouse of readily available online data sources—including those available in the private sector and nongovernmental organizations—to achieve resilience solutions.

*HUD Response:* HUD notes that the final rule already provides jurisdictions with the flexibility to consult with community resources such as those identified by the commenter. HUD also strongly encourages jurisdictions to leverage and integrate existing assessments of climate and hazard related risks into their Consolidated Plan analysis where the jurisdiction deems appropriate. With regard to the suggestion that HUD work with other Federal agencies, HUD notes that it currently works with other agencies to develop guidance and tools that support communities and practitioners. For example, HUD conferred with various Federal agencies in the development of this rule. More recently, HUD has worked collaboratively with a group of expert stakeholders from non-governmental organizations to strategize about the implementation of effective resilience tactics to achieve resilience solutions through its National Disaster Resilience Competition (NDRC).

*Comment: Establish minimum investment requirements.* A commenter stated that while the identification of hazards and opportunities to mitigate them is an important step to making communities more resilient, once such efforts are institutionalized, the commenter expressed hope that HUD will establish requirements that communities invest in a minimum level of mitigation before Federal investments are made within the community. The commenter stated that such requirements will enhance the community and assure limited federal funds are used responsibly.

*HUD Response:* HUD agrees with the commenter that identification of hazards and opportunities to mitigate them is an important first step, and appreciates the suggestion for establishing minimum investment requirements. However, such a mandate runs contrary to the approach HUD has taken with its Consolidated Planning regulations.

*Comment: Expand the organizations with which jurisdictions should consult.* A commenter stated that the proposed rule is a step in the right direction, but that to further this important work, jurisdictions should be required to consult not only with the list of proposed agencies, but also with a wide range of organizations working on adaption to the decline of cheap fossil fuel energy, the depletion of fresh water,

access to fresh food, complex environmental crises like climate change and biodiversity loss, and the issues of social, economic and health equity. The commenter stated that such information is consistent with HUD’s new AFFH Data and Mapping Tool and could be included as part of the assessment of fair housing. The commenter stated that limiting mandatory consultation to “agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies” is too narrow for a full evaluation of vulnerability to natural hazards and ensuring resilience of low- and moderate-income households.

The commenter stated that a number of public and private organizations not listed in the proposed rule are immersed in activities that enhance community resilience. For example, organizations promoting home weatherization engage in energy conservation, help prepare communities for a decline in cheap energy, and contribute to efforts to improve neighborhood conditions; organizations that focus on public health are able to provide local data and findings on health inequity, such as asthma rates and food deserts; and community organizations, colleges/universities, and other non-profits are currently looking at and responding to the climate crisis. The commenter stated that without casting a broad net, planning efforts will be incomplete and continue the ill-suited forms of planning for the new realities our communities face. Another commenter stated that it was important for HUD grantees to consult with agencies responsible for economic development and housing in the private sector. The commenter stated that it is important to add this additional category because the current HUD proposal seems to only cover agencies responsible for “public land and water resources,” which would exclude the many low- and moderate-income facilities regulated and affected by local agencies responsible for economic development and housing in the private sector.

*HUD Response:* The commenters offer very good suggestions on agencies with whom to consult with respect to resilience. However, HUD does not mandate consultation with these entities. As already noted in this preamble, the approach taken in the Consolidated Plan is for jurisdictions to determine their needs, decide which needs to fund, conduct outreach to residents in their communities, and consult with individuals and agencies that will aid them in good community

planning. The citizen participation and consultation process provides the opportunity for a wide variety of stakeholders to participate in the Consolidated Planning process. As mentioned previously, the Consolidated Plan includes a non-housing community development plan that provides opportunity for a jurisdiction to assess its neighborhood conditions, including economic needs, in its efforts to develop viable communities.

*Comment: Natural hazard risks should be assessed by the appropriate government agency, not the government's housing and/or economic development agency, and be done on a project-level basis.* A commenter that is a government economic development agency stated that it is not the appropriate agency to assess natural hazard risks for low- and moderate-income households, and that there are other governmental organizations charged with assessing mitigating these risks. The commenter stated that it can consult with the governmental agency charged with assessing and mitigating risks and seek their input on Consolidated Planning, but that it would not be appropriate for the economic development agency to have a directive or management role in this effort. The commenter also stated it is more impactful for this type of review to take place at the project level. Once funded, each project goes through an environmental review process. Many hazards are assessed, ranging from hazardous waste and radiation to floodplain analysis. The commenter stated that if a project site is in the floodplain, it must go through a potentially lengthy and burdensome process to determine if they can move the project or mitigate the impact.

*HUD Response:* HUD addressed a similar comment early on in this Section of the preamble that requested that HUD not mandate broadband or natural hazards risk resilience assessments by a housing and/or economic development agency when a State or local government has other agencies charged to address these matters. As noted by HUD in response to that earlier comment, HUD agrees that jurisdictions often already have assessments undertaken by other agencies regarding both broadband and resiliency. This final rule directs agencies to existing resources to guide them in these two areas. Through its Consolidated Planning process, HUD encourages a collaborative consultation process instead of duplication of efforts. Given that HUD also encourages jurisdictions to use other plans that identify community needs and

priorities, the Consolidated Planning process provides the opportunity for jurisdictions to reference existing plans and is not requiring a separate, distinct study to be undertaken. It is up to each State or local government to determine which agencies or departments will be responsible for developing its Consolidated Plan and for administering the different HUD funding covered by HUD's Consolidated Plan regulations. All jurisdictions (including States) are certainly encouraged to ensure collaboration among internal and external agencies and staff to take full advantage of all relevant expertise.

*Comment: The National Climate Assessment and the Climate Resilience Toolkit are confusing.* A commenter stated that the National Climate Assessment and the Climate Resilience Toolkit are very confusing. The commenter stated that it was hard to understand how a State could use this toolkit in a meaningful way in developing its Consolidated Plan. The commenter stated that it shares data from its State's Homeland Security and Emergency Management Department in its plans and then relies on site-specific environmental reviews once projects are funded. The commenter stated that these would seem to be better approaches to assessing natural hazard risks to low- and moderate households for States. In contrast to this comment, another commenter stated that the Climate Resilience Toolkit is useful for screening and planning purposes. This commenter also stated that while GIS tools that integrate topography, hydrology, and social science are readily available on the Internet, these tools are not likely to be commonly used by housing programs. The commenter suggested that HUD provide technical assistance in the form of webinars and workshops to train housing staff on the use of these tools, and stated that training programs are readily available through NOAA and EPA.

Another commenter stated that many of the natural hazard resources named in HUD's proposed rule are not data sources, but instead are plans and toolkits with already-made strategies [§ 91.210(a)(5)(i), § 91.210(a)(5)(ii), and § 91.210(a)(5)(iii)]. The commenter stated that the housing market analysis section of the Consolidated Plan is intended to contain data with analysis that will inform the later sections which include strategies and goals. The commenter stated that because HUD is regulating the use of plans and strategies in this data section of the Consolidated Plan, HUD is taking away the grantee's efforts to create place-based strategies based on current data.

*HUD Response:* By referring to resources, plans, and toolkits, HUD is encouraging jurisdictions to review what's been proposed and discussed, and see whether it fits into the Consolidated Planning efforts. HUD is developing guidance, resources, and tools to help grantees work with these sources. Further, as already noted in this section, HUD plans to provide pre-populated data in both CPD Maps and the eCon Planning Suite template. Jurisdictions may use alternative data in the Consolidated Planning process and are not required to use the default data provided by the system. Default data can be replaced or complemented by specifying a survey or administrative data source. If an alternative source is specified, the jurisdiction will be required to identify the source and provide basic information on how the data was collected. The jurisdiction also has the option of providing notes under each table in which alternate data is used to indicate what was changed or why the change was necessary. Because the public can view much of the default data in CPD Maps, these notes may be useful to avoid confusion during the citizen participation process.

*Comment: Expand approved sources of data to be made available to jurisdictions for use, and require use of local data.* A commenter stated that jurisdictions should be required to both identify and include local data when describing vulnerabilities of housing occupied by low- and moderate-income households due to increased natural hazards. The commenter stated that, for example, local data regarding the quality of a jurisdiction's housing stock should be considered in the planning process, and similarly, geographic location of the low- and moderate-income households (which is available through HUD's AFFH Assessment Tool Map) should be addressed in planning with regard to vulnerabilities of housing.

*HUD Response:* As noted earlier, jurisdictions are already able to use alternative data. While HUD plans to prepopulate data in both CPD Maps and the eCon Planning Suite template, jurisdictions may use alternative data in the Consolidated Planning process and are not required to use the default data provided by the system. If an alternative source is specified, the jurisdiction will be asked to identify the source and provide basic information on how the data was collected.

*Comment: Issue guidance on how to undertake the required analysis.* A commenter strongly encouraged HUD to establish more specific guidance for jurisdictions on how to complete the

required analysis. The commenter stated that such guidance should not only include a step-by-step process for assessing community vulnerability to climate change and natural hazard risks but also should facilitate the identification and incorporation of actions that build resilience to these risks in the Consolidated Planning process. The commenter stated that developing more detailed guidance also would reduce the burden placed on jurisdictions by providing greater clarity on how to conduct a robust resiliency analysis, and would enhance consistency among and improve confidence in resiliency analyses as well as facilitate the review and approval of Consolidated Plans by HUD.

*HUD Response:* HUD plans to provide further guidance once the rule is implemented, but since the Consolidated Plan is completed through the e-Con Planning Suite template, the template provides a uniform and flexible template that helps ensure the Consolidated Plan is complete per the regulations found in 24 CFR part 91. Each screen in the template cites the specific section(s) of the regulations that the screen is designed to capture. Each screen includes a combination of prepopulated data tables and narrative sections that set a baseline for HUD's expectations for the amount of information required. HUD anticipates providing this same format for both broadband and resilience assessment requirements.

*Comment: Ensure that grantees take steps to reduce the risks of natural hazards.* A commenter stated that HUD's proposed rule does not ensure that grantees will take steps to reduce these risks or disparities. The commenter stated that, as written, the proposed rule explicitly, "does not mandate that actions be taken to address . . . climate change adaptation needs" and requires nothing of grantees beyond gaining knowledge of climate change risks. The commenter stated that HUD's rule should ensure that grantees take reasonable and adequate steps to both assess climate change risks and develop and incorporate reasonable and effective climate change risk mitigation strategies into their Consolidated Plans and project designs. The commenter stated that without such strategies, the rule would continue to allow HUD to invest in community development projects that may not be resilient to the effects of climate change and could put communities at risk. This commenter also stated that to ensure some level of accountability HUD's final rule should state that if grantees invest HUD funds in community development projects

that do not include designs and/or strategies to reduce identified climate risks, HUD could reduce funding to that grantee in the future.

*HUD Response:* Through the Consolidated Planning process, jurisdictions will continue to have the flexibility to determine their own needs and priorities for distributing HUD funds. The rule provides for the incorporation of broadband and resilience to natural hazard risks into the existing needs assessment and market analysis required under the Consolidated Planning process. However, it is up to the jurisdiction through its needs assessment process to determine whether to select either of these issues as a priority need. The grantee would identify the financial and organizational resources available to address its priority needs. In the Consolidated Planning process, the level of resources available will play a key role in determining strategies and goals. Once broadband access or increasing resilience have been selected as a priority need, grantees would then develop a set of goals based on the availability of resources, and local organizational capacity. However, the statutory authority for the Consolidated Plan process and the formula funding programs remain the same. HUD has no authority to require that grantees carry out certain types of activities or to achieve specific objectives.

*Comment: Look at climate risk between disasters, not just risk post-disaster.* A commenter stated that it is essential that jurisdictions look at climate risk between disasters, not just in a post-disaster context. The commenter stated that identifying vulnerabilities during calmer times gives the jurisdiction the opportunity to address those challenges before the next disaster. The commenter stated that HUD should be mindful that pre-disaster planning is a preferable process, as post-disaster—when communities are in crisis—is an incredibly difficult time to be strategic. In response to HUD's specific inquiry regarding post-disaster reviews, another commenter stated that it strongly believes that jurisdictions should be required to conduct reviews and revisions of their resilience analysis following any major disaster. The commenter stated that this post-disaster review would not only enable jurisdictions to determine if the disaster introduced new hazard risks, but would also serve an important function in forcing jurisdictions to face and reconcile weaknesses and oversights within their previous plans.

*HUD Response:* HUD agrees that it is important to review needs not only in

a post-disaster context but also between disasters. The inclusion of an assessment of resilience in the Consolidated Plan is not intended to apply to the post-disaster context, but rather is designed to help all grantees be better prepared if a disaster were to occur in the future. The Consolidated Plan is based on a community's strategic plan over the next 3–5 years. The use of climate resilience data will help a community identify its vulnerabilities and determine whether there are priorities that the jurisdiction can address, as well as develop preventive measures to address known issues in advance of a disaster occurring. HUD appreciates the commenter responding to its specific inquiry about post-disaster reviews. HUD is not mandating such review in this final rule but encourages jurisdictions to undertake these types of assessments.

*Comment: Ensure communities are aware of local hazard mitigation plans.* A commenter stated that guiding communities to consider and integrate this information into their Consolidated Plans is an excellent move by HUD, assuring that risk reduction dovetails with a community's economic and social development goals. The commenter stated that its concern is that communities may not be aware of the existence of local hazard mitigation plans, and may unfortunately duplicate efforts that have already been expended on their behalf. The commenter stated that its hope is that in the guidance for the rule, HUD would direct communities to explore with local emergency managers and planners the existence of current local hard mitigation plans, consider the content of those plans (which often includes information about low-income areas and vulnerability), and then use the information to inform decisions made in the Consolidated Plans, referring to the mitigation plan documents for justification or further data. The commenter stated that in this way, there will be no duplication of effort, no confusion as to valid risk assessment data, and the integration of mitigation measures, policies and programs will be a seamless practice across a community's planning portfolio.

*HUD Response:* HUD's rule addresses the commenter's concern by requiring jurisdictions to consult with State and local emergency managers (who are responsible for developing the State and local hazard mitigation plans).

*Comment: Coordinate and align with existing Federal, State and local natural hazard risk management plans.* A commenter stated that while it understands HUD's intent to ensure that

communities consider resilience to natural hazard risks as a part of the Consolidated Plan, the proposal goes about it in the wrong way. The commenter stated that instead of asking communities to undertake potentially new, unnecessary, and duplicative analysis, HUD should focus on encouraging coordination and alignment with the pre-existing Federal, State, and local plans that they already follow to comply with the various programs that focus on resilience and natural hazard planning. The commenter stated that it is concerned by the list of resources in the rule and cites to the “Impact of Climate Change and Population Growth on the National Flood Insurance Program Through 2100” as an example of such concern. The commenter expressed concerns that the implication that this study could be included as the basis of specific management decisions at a community level, since it would seem to run counter to the scope and objectives of the study. The commenter stated that the uncertainty that remains in accounting for mapping future conditions, such as risks due to changes caused by climate change, is the very reason that multiple segments of the National Flood Insurance Program (NFIP) continue to examine the issue and how it might best be addressed. The commenter stated that given that it is an ongoing topic currently being studied by issue area experts such as the Technical Mapping Advisory Council (TMAC), this is not something that individual communities should be expected to get out in front of. The commenter further stated that as the NFIP falls completely outside the jurisdiction and expertise of HUD, the potential unintended consequences may not be fully understood. The commenter stated that if HUD chooses to move forward with promulgation of this rulemaking and provide communities with a list of suggested resources for them to consider, HUD should concentrate on more practical planning resources which will still provide communities flexibility such as the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST).

**HUD Response:** HUD agrees that it will continue to encourage coordination and alignment with the pre-existing Federal, State, and local plans that focus on resilience and natural hazard planning is a benefit to the jurisdiction.

**Comment:** *Require States and local jurisdictions to take action to improve natural hazard resilience to protect Federal taxpayer investments.* A commenter expressed strong support for

the rule but expressed disappointment that the rule does not require actions to be taken. The commenter stated that it believes that there should be a much stronger attempt to compel States and communities to take action to improve natural hazard resilience to protect federal taxpayer investments—not merely just require an assessment of it.

**HUD Response:** HUD reiterates that the Consolidated Planning process provides States and local government the flexibility and responsibility to determine where HUD funding should be expended. Through the Consolidated Planning process, jurisdictions will continue to have the flexibility to determine their own needs and priorities for distributing funds covered by the Consolidated Plan process. It will be up to a jurisdiction through its needs assessment process to determine whether to select either of these issues as a priority need. HUD has no authority to require that grantees carry out certain types of activities or to achieve specific objectives.

**Comment:** *Ensure that jurisdictions comply with the Federal Flood Risk Management Standard (FFRMS).* A commenter stated that HUD must ensure that jurisdictions funded by HUD comply with the FFRMS, established by Executive Order 13690 (E.O. 13690) and Executive Order 11988 (E.O. 11988). The commenter stated that the FFRMS not only reinforces the original intent of E.O. 11988—“to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative,” but expands upon it by requiring the federal government to “take action, informed by the best-available and actionable [climate] science,” to improve the nation’s resilience to flooding.

The commenter stated that the importance of transitioning from an emphasis on flood protection to a broader focus on flood risk management cannot be overstated because floodwaters can never be completely controlled, nor the risks associated with flooding completely eliminated. This is especially true when the impacts of climate change are considered.

**HUD Response:** HUD is addressing this issue through separate rulemaking.

#### IV. This Final Rule

As noted in Section III of this preamble, this final rule makes one change from the proposed rule. In response to public comment, HUD no longer identifies in the regulatory text specific recommended sources for

Consolidated Plan jurisdictions to consult for both assessments. When included in the regulatory text, commenters thought these were required sources to consult, rather than recommended sources. HUD agrees with the commenters that such sources may change over time or their names may change, or new sources will be introduced. HUD agreed with the commenters that the better approach is to list these sources outside of the regulation, in guidance.

**Consultation and citizen participation requirements (§§ 91.100, 91.105, 91.110, 91.115).** HUD’s currently codified Consolidated Plan regulations require that local governments and States consult public and private agencies that provide assisted housing, health services, and social and fair housing services during preparation of the Consolidated Plan. Under the currently codified regulations, local governments and States are also required, in their citizen participation plan, to encourage the participation of local and regional institutions and businesses in the process of developing and implementing their Consolidated Plans. This rule amends these requirements to specify that local governments and States must consult with public and private organizations, including broadband internet service providers, and other organizations engaged in narrowing the digital divide. Further, the citizen participation plan must encourage their participation in implementing any components of the plan designed to narrow the digital divide for low-income residents. The rule also requires local governments and States to consult with agencies whose primary responsibilities include the management of flood prone areas, public land, or water resources, and emergency management agencies in the process of developing the Consolidated Plan.

**Contents of Consolidated Plan (§§ 91.5, 91.200, 91.200, 91.210, 91.300, 91.310).** The rule makes several changes to these sections in subparts C and D of HUD’s regulations 24 CFR part 91, which establish the required contents of the Consolidated Plan.

First, the rule requires that, in describing their consultation efforts, local governments and States describe their consultations with public and private organizations, including broadband internet service providers, other organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies.

Second, the jurisdiction must also describe broadband needs in housing occupied by low- and moderate-income households based on an analysis of data, identified by the jurisdiction, for its low- and moderate-income neighborhoods.

Third, the rule requires the jurisdiction to provide an assessment of natural hazard risk to low- and moderate-income residents based on an analysis of data identified by the jurisdiction. Possible sources of such data include (1) the most recent National Climate Assessment, (2) the Climate Resilience Toolkit, (3) the Community Resilience Planning Guide for Buildings and Infrastructure Systems prepared by the National Institute of Standards and Technology (NIST), or (4) other climate risk-related data published by the Federal government or other State or local government climate risk related data, including FEMA-approved hazard mitigation plans which incorporate climate change. HUD encourages the use of other plans, including a jurisdiction's hazard mitigation plan, in identifying community needs and priorities.

By undertaking these two analyses as part of their Consolidated Planning, HUD believes that jurisdictions become better informed of two emerging community needs in the world today: (1) The importance of broadband access, which opens up opportunity to a wide range of services, markets, jobs, educational, cultural and recreational opportunities; and (2) the importance of being cognizant and prepared for environmental and geographical conditions that may threaten the health and safety of communities. As noted earlier in this preamble, HUD is not mandating that jurisdictions take actions in either of these areas, but HUD believes that these are two areas that must be taken into consideration in a jurisdiction's planning for its expenditure of HUD funds.

## V. Findings and Certifications

### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline,

expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action” as defined in section 3(f) of the Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As noted, the regulatory amendments are designed to assist Consolidated Plan jurisdictions in assessing two emerging needs of communities in this changing world. Specifically, the final rule directs States and local governments to consider broadband access and natural hazard resilience in their consolidated planning efforts by using readily available data sources. Where access to broadband Internet service is either not currently available or only minimally available, jurisdictions will be required to consider ways to bring broadband Internet access to low- and moderate-income residents, including how HUD funds could be used to narrow the digital divide for these residents. Further, where low- and moderate-income communities are at risk of natural hazards, including those that may be exacerbated due to climate change, States and local governments must consider ways to incorporate hazard mitigation and resilience into their community planning and development goals, including the use of HUD funds.

### *Benefits and Costs of the Final Rule*

#### A. Benefits

The Consolidated Planning process benefits jurisdictions by establishing the framework for a community-wide dialogue to identify housing and community development needs for 1,255 jurisdictions, including 1,205 localities and all 50 States. Rather than a piecemeal approach to planning based on differing program requirements, the Consolidated Plan enables a holistic approach to the assessment of affordable housing and community development needs and market conditions. HUD established the Consolidated Plan, through a 1994 final rule, for the explicit purpose of linking disparate program planning requirements, thereby ensuring “that the needs and resources of . . . [jurisdictions] are included in a comprehensive planning effort to revitalize distressed neighborhoods and

help low-income residents locally.”<sup>3</sup> The Consolidated Plan replaced a dozen separate planning mechanisms with a unified approach enabling communities to make data-driven, place-based investment decisions.

New housing and community development needs have arisen in the 21 years since the Consolidated Plan was created. Two of the most pressing emerging needs facing communities in the twenty-first century are the digital divide and climate change. Despite the benefits described above of a comprehensive approach to planning and the allocation of scarce Federal dollars, jurisdictions are not currently required to consider either the digital divide or climate change resilience in development of their Consolidated Plans. Jurisdictions may therefore place a low priority on assessing, and using Federal dollars to address, these critical issues relative to other needs included in the Consolidated Plan. As a worst-case scenario, omitting these needs from the consolidated planning process could mean that communities elect to defer considering these needs.

The direct benefits provided by the final rule are, therefore, to help ensure that Consolidated Plan jurisdictions consider broadband access and natural hazard resilience as part of their comprehensive assessment and planning efforts, including their determination of the most effective use of HUD grant funds.

#### B. Costs

The costs of the revised consultation and reporting requirements will not be substantial since the regulatory changes made by this final rule build upon similar existing requirements for other elements covered by the consolidated planning process rather than mandating completely new procedures.

A complete Consolidated Plan that contains both a Strategic Plan and Annual Action Plan is submitted once every 3 to 5 years. An Annual Action Plan is submitted once a year. HUD data indicate that the cost of preparing the Strategic Plan for a locality is \$5,236, and for a State is \$14,382. The cost of preparing the Annual Action Plan is \$1,904 for a locality and \$6,392 for each State. HUD estimates that the increase in costs resulting from addressing the new elements under the new rule will be minimal. Specifically, HUD estimates that cost to a locality of preparing the Strategic Plan will increase to \$5,406, while the cost to a State will increase to \$14,552. This represents an increase of \$170 per locality as well as per State.

<sup>3</sup> 60 FR 1878 (January 5, 1994).

The cost of preparing the Annual Action Plan will also increase by the same amount, to \$2,074 for a locality and \$6,562 for a State. While these are not trivial amounts, they are not substantial when considered in proportion to HUD

grant funding (for example, the average CDBG grant to entitlement communities in FY 2012 was approximately \$1.7 million).<sup>4</sup>

The amounts of the increased costs are based on HUD's estimate of the

increased number of hours it will take jurisdiction to complete the new assessments. The table below summarizes the cost of the increased burden hours across all jurisdiction that submit a Consolidated Plan.

Consolidated plan tasks	Number of respondents	Increased burden hours	Cost per hour <sup>5</sup>	Completed consolidated plan
<b>Localities</b>				
Strategic Plan Development .....	1205	5	34	\$204,850
Action Plan Development .....	1205	5	34	204,850
<b>States</b>				
Strategic Plan Development .....	50	5	34	8,500
Action Plan Development .....	50	5	34	8,500
<b>Total</b> .....				<b>\$426,700</b>

Further, and as noted elsewhere in this preamble, HUD has taken several actions to further mitigate the cost of the regulatory changes. Jurisdictions will be able to base the required assessments on data that are already readily available on the Internet, and provided to grantees via the eCon Planning Suite. Therefore, jurisdictions will not have to incur the expense and administrative burdens associated with collecting data. Moreover, the proposed rule does not mandate that actions be taken to address broadband needs or climate change needs. Consolidated plan jurisdictions are in the best position to decide how to expend their HUD funds. However, HUD believes that the additional analyses required by this proposed rule may highlight areas where expenditure of funds would assist in opening up economic opportunities through increased broadband access or mitigate the impact of possible natural hazard risks and climate change impacts. HUD leaves it to jurisdictions to consider any appropriate methods to promote broadband access or protect against the adverse impacts of climate change, taking into account the other needs of their communities, and available funding, as identified through the consolidated planning process.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to

security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulation Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339.

#### *Paperwork Reduction Act*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), and assigned an OMB control number 2506-0117.

#### *Impact on Small Entities*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The rule will amend the Consolidated Plan regulations to require that States and local governments consider (1) broadband Internet service access for low- and moderate-income households to; and (2) the risk of potential natural hazards, including those that may be exacerbated due to climate change, to low- and moderate-income residents in their jurisdictions. As noted above under the heading "Regulatory Review"

in the "Findings and Certifications" section of this preamble, HUD's analysis of the economic costs associated with the new regulatory requirements indicate that the final rule will not impose significant economic burdens on HUD grantees, irrespective of their size.

The RFA defines small governmental jurisdictions as those with a population of less than 50,000 persons.<sup>6</sup> As discussed above, the Consolidated Planning process establishes the framework for identifying housing and community development needs for 1,255 jurisdictions, including 1,205 localities and all 50 States. Although HUD does not have precise data indicating the number of small Consolidated Plan localities as defined by the RFA, data from the Decennial census indicates that there are 758 large incorporated places.<sup>7</sup> This leaves an estimated 447 small Consolidated Planning jurisdictions. This number represents a minority of 37 percent of all jurisdictions. As noted above, HUD estimates that cost to a locality of preparing the Strategic Plan (which is submitted once every 3 to 5 years) will increase by \$170 per locality. The cost of preparing the Annual Action Plan will also increase by the same amount. Assuming submission of the Strategic Plan on 3-year cycle, the total annual costs directly attributable to this rule is \$270 per locality.<sup>8</sup> The increased costs are minimal when considered in proportion to HUD grant funding. For example, and as noted above, the average CDBG grant to entitlement

<sup>4</sup> Eugene Boyd, *Community Development Block Grants: Recent Funding History* (Congressional Research Service, February 6, 2014), available online at: <https://www.hsdl.org/?view&did=750383>.

<sup>5</sup> Assumes a blended hourly rate that is equivalent to a GS-12, Step 5 Federal Government Employee

<sup>6</sup> 5 U.S.C. 601(5).

<sup>7</sup> <https://www.census.gov/popest/data/cities/totals/2015/>.

<sup>8</sup> Dividing the increased cost of preparing the Strategic Plan by three to arrive at an annual figure (\$170/3 = \$57), and adding to the \$170 increased cost of preparing the Annual Action Plan. \$57 + \$170 = \$227.

communities in FY 2012 was approximately \$1.7 million).

Moreover, HUD has taken several measures to even further minimize the costs associated with complying with the rule. As discussed above, jurisdictions will have the option to complete the required assessments using data that has already been compiled and readily available on the Internet. Jurisdictions will, therefore, not have to incur the expense and administrative burdens associated with collecting and analyzing data. Further, the rule does not mandate that any actions be taken in response to the required assessments. Jurisdictions retain the discretion to consider the most appropriate methods to address their assessments, taking into account other needs identified as part of the Consolidated Planning process as well as financial and other resource constraints.

This rule therefore, which only requires consideration of the broadband and natural hazards resilience needs of low-income communities, has a minimal cost impact on all grantees subject to the Consolidated Planning process, whether large or small, and will not have a significant economic impact on substantial number of small entities.

#### *Environmental Review*

This final 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 final 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 imposes either 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 would not have federalism implications and would 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) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

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

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

For the reasons discussed in the preamble, HUD amends 24 CFR part 91 as follows:

#### **PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS**

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

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

#### **Subpart A—General**

■ 2. In § 91.100, add two sentences to the end of paragraph (a)(1) to read as follows:

##### **§ 91.100 Consultation; local governments.**

(a) \* \* \*

(1) \* \* \* When preparing the consolidated plan, the jurisdiction shall also consult with public and private organizations. Commencing with consolidated plans submitted on or after January 1, 2018, such consultations shall include broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies.

■ 3. In § 91.105, add two sentences at the end of paragraph (a)(2)(ii) to read as follows:

##### **§ 91.105 Citizen participation plan; local governments.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \* The jurisdiction shall encourage the participation of public and private organizations. Commencing with consolidated plans submitted on or after January 1, 2018, such consultations

shall include broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan.

\* \* \* \* \*

■ 4. In § 91.110, add two sentences at the end of paragraph (a) introductory text to read as follows:

##### **§ 91.110 Consultation; States.**

(a) \* \* \* When preparing the consolidated plan, the State shall also consult with public and private organizations. Commencing with consolidated plans submitted on or after January 1, 2018, such consultations shall include broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies.

\* \* \* \* \*

■ 5. In § 91.115, add a sentence at the end of paragraph (a)(2)(ii) to read as follows:

##### **§ 91.115 Citizen participation plan; States.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \* Commencing with consolidated plans submitted in or after January 1, 2018, the State shall also encourage the participation of public and private organizations, including broadband internet service providers, organizations engaged in narrowing the digital divide, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies in the process of developing the consolidated plan.

\* \* \* \* \*

#### **Subpart C—Local Governments; Contents of Consolidated Plan**

■ 6. In § 91.200, redesignate paragraph (b)(3)(iv) as paragraph (b)(3)(vi), and add new paragraphs (b)(3)(iv) and (v) to read as follows:

##### **§ 91.200 General.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Commencing with consolidated plans submitted on or after January 1, 2018, public and private organizations, including broadband internet service providers and organizations engaged in narrowing the digital divide;



(v) Commencing with consolidated plans submitted on or after January 1, 2018, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies; and

\* \* \* \* \*

■ 7. Revise § 91.210(a) to read as follows:

**§ 91.210 Housing market analysis.**

(a) *General characteristics.* (1) 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.

(2) 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.

(3) 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.

(4) Commencing with consolidated plans submitted on or after January 1, 2018, the jurisdiction must also describe the broadband needs of housing occupied by low- and moderate-income households based on an analysis of data, identified by the jurisdiction, for its low- and moderate-income neighborhoods. These needs include the need for broadband wiring and for connection to the broadband service in the household units and the need for increased competition by having more than one broadband Internet service provider serve the jurisdiction.

(5) Commencing with consolidated plans submitted on or after January 1, 2018, the jurisdiction must also describe the vulnerability of housing occupied by low- and moderate-income households to increased natural hazard risks associated with climate change based on an analysis of data, findings, and methods identified by the jurisdiction in its consolidated plan.

\* \* \* \* \*

**Subpart D—State Governments;  
Contents of Consolidated Plan**

■ 8. In § 91.300, remove the word "and" following the semicolon at the end of paragraph (b)(3)(iii), redesignate paragraph (b)(3)(iv) as paragraph (b)(3)(vi), and add new paragraphs (b)(3)(iv) and (v) to read as follows:

**§ 91.300 General.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Commencing with consolidated plans submitted on or after January 1, 2018, public and private organizations, including broadband internet service providers and organizations engaged in narrowing the digital divide;

(v) Commencing with consolidated plans submitted on or after January 1, 2018, agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies; and

\* \* \* \* \*

■ 9. Revise § 91.310(a) to read as follows:

**§ 91.310 Housing market analysis.**

(a) *General characteristics.* (1) Based on data available to the State, the plan must describe the significant characteristics of the State's housing markets (including such aspects as the supply, demand, and condition and cost of housing).

(2) Commencing with consolidated plans submitted on or after January 1, 2018, the State must describe the broadband needs of housing in the State based on an analysis of data identified by the State. These needs include the need for broadband wiring and for connection to the broadband service in the household units, the need for increased competition by having more than one broadband Internet service provider serve the jurisdiction.

(3) Commencing with consolidated plans submitted on or after January 1, 2018, the State must also describe the vulnerability of housing occupied by low- and moderate-income households to increased natural hazard risks due to climate change based on an analysis of data, findings, and methods identified by the State in its consolidated plan.

\* \* \* \* \*

Dated: December 14, 2016.

Harriet Tregoning,

Principal Deputy Assistant Secretary for  
Community Planning and Development.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2016–30421 Filed 12–15–16; 8:45 am]

BILLING CODE 4210–67–P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9803]

RIN 1545–BL87

**Treatment of Certain Transfers of  
Property to Foreign Corporations**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to certain transfers of property by United States persons to foreign corporations. The final regulations affect United States persons that transfer certain property, including foreign goodwill and going concern value, to foreign corporations in nonrecognition transactions described in section 367 of the Internal Revenue Code (Code). The regulations also combine certain sections of the existing regulations under section 367(a) into a single section. This document also withdraws certain temporary regulations.

**DATES:** *Effective date:* These regulations are effective on December 16, 2016.

*Applicability date:* For dates of applicability, see §§ 1.367(a)–1(g)(5), 1.367(a)–2(k), 1.367(a)–4(b), and 1.367(a)–6(j); 1.367(d)–1(j); and 1.6038B–1(g)(7).

**FOR FURTHER INFORMATION CONTACT:** Ryan A. Bowen, (202) 317–6937 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in the regulations have been submitted for review and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–0026.

The collections of information are in § 1.6038B–1(c)(4) and (d)(1). The collections of information are mandatory. The likely respondents are domestic corporations. Burdens