

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 92, 93, 570, 574, 578, 880, 881, 883, 884, 886, 891, 905, 983

[Docket No. FR 5890-P-01]

RIN 2501-AD75

### Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

**SUMMARY:** Through this proposed rule, HUD continues its efforts to narrow the digital divide in low-income communities served by HUD by providing, where feasible and with HUD funding, broadband infrastructure to communities in need of such infrastructure. Broadband is the common term used to refer to a very fast connection to the Internet. Such connection is also referred to as high-speed broadband, broadband Internet, or high-speed Internet. In this proposed rule, HUD proposes to require installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD. Installation of broadband infrastructure at the time of new construction or substantial rehabilitation is generally easier and less costly than when such installation is undertaken as a stand-alone effort. The proposed rule, however, recognizes that installation of broadband infrastructure may not be feasible for all new construction or substantial rehabilitation, and, therefore, the proposed rule allows limited exceptions to the installation requirements. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by HUD funding will provide

a platform for individuals and families residing in such housing to participate in the digital economy, and increase their access to economic opportunities.

**DATES:** *Comment due date:* July 18, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule. All communications must refer to the above docket number and title. To receive consideration as public comments, comments must be submitted through one of the two methods specified below.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*No Facsimiled Comments.* Facsimiled (faxed) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (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 (this is a toll-free number). Copies of all comments submitted are available for inspection

and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For Community Planning and Development programs, Marion McFadden, Office of Community Planning and Development, Room 7204, telephone, 202-708-2111 (this is not a toll-free number). For Office of Multifamily Housing programs, Katie Buckner, Office of Housing, Room 6222, telephone 202-402-7140 (this is not a toll-free number). For Office of Public and Indian Housing programs, Dominique Blom, Office of Public and Indian Housing, Room 4130, telephone 202-402-4181 (this is not a toll-free number). The address for all individuals is Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410-0500. Persons with hearing or speech impairments may access these numbers through 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 Proposed Rule

The purpose of this proposed rule is to require installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD.<sup>1</sup> This rulemaking does not require a HUD-funded grantee to undertake new construction or substantial rehabilitation, but when a grantee does choose to pursue such activity for multifamily rental housing with HUD funding, this proposed rule would require installation of broadband infrastructure. While the proposed rule only requires affected grantees to install one form of broadband infrastructure, HUD suggests that grantees consider whether installing more than one form of broadband infrastructure would be beneficial to encourage competition among service providers on quality and price. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed and

<sup>1</sup> This proposed rule applies to all projects with project-based Section 8 housing assistance payment (HAP) contracts (other than Mod Rehab or Mod Rehab Single Room Occupancy (SRO) projects), regardless of whether the properties receive specific funding to pay directly for substantial rehabilitation or new construction, as defined in this proposed rule.

substantially rehabilitated with or supported by HUD funding will provide a platform for individuals and families residing in such housing to participate in the digital economy, and increase their access to economic opportunities.

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

This proposed rule would require installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental units funded by the following programs:

1. Choice Neighborhoods Implementation Grant program;
2. Community Development Block Grant (CDBG) program, including the CDBG Disaster Recovery program;
3. Continuum of Care program;
4. HOME Investment Partnerships program;
5. Housing Opportunities for Persons With AIDS program;
6. Housing Trust Fund program;
7. Project-Based Voucher program;
8. Public Housing Capital Fund program;
9. Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs; and
10. Supportive Housing for the Elderly and Persons with Disabilities program.

The requirements of the proposed rule would not apply to multifamily rental housing that only has a mortgage insured by HUD's Federal Housing Administration or with a loan guaranteed under a HUD loan guarantee program.

HUD is proposing to define broadband infrastructure as cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit meeting the definition created by the Federal Communications Commission (FCC), which currently is 25 Megabits per second (Mbps) download, 3 Mbps upload. In addition, HUD is proposing that, for programs that do not already have a definition of substantial rehabilitation, substantial rehabilitation be defined as work on the electrical system that is equal to or greater than 75 percent of the cost of replacing the entire electrical system, or when the cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the

multifamily rental housing after the rehabilitation is complete.

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

The costs and benefits of this proposed rule are difficult to quantify, but they can be described qualitatively. This proposed rule only requires that the broadband infrastructure provided is to receive high-speed Internet that is "accessible" in each unit; it does not require those recipients of funding undertaking new construction or substantial rehabilitation to provide a regular subscription to broadband service (even at a cost) to current or future residents. Furthermore, the definition of broadband infrastructure in the proposed rule is broad enough to include coaxial cable television (TV) wiring that supports cable modem access or even permanent infrastructure that would provide broadband speeds to dwelling units wirelessly. The rulemaking also provides for exceptions to the installation requirements for where the installation is too costly to provide due to location or building characteristics.

A recent survey by the National Association of Homebuilders found that just 4 percent of the surveyed multifamily housing developers never installed landline wires and jacks in multifamily units completed in the past 12 months.<sup>2</sup> In recent years, HUD's competitive grants for new construction under the Choice Neighborhoods program have sought the provision of broadband access. Therefore, this rulemaking simply proposes to codify what is considered common practice in the private market today when new construction or substantial rehabilitation is undertaken.

Given the wide range of technologies that may be employed to meet the requirements of this proposed rule, it is not possible to specify the cost of the technology and how much additional burden this may be for owners or developers building or providing substantial rehabilitation to HUD-assisted rental housing. If the broadband infrastructure is wiring connected to proximate telephone or cable company networks, the cost is not expected to be significant, as all electrical work in a multifamily project is estimated to be

<sup>2</sup> NAHB, Multifamily Market Survey 3rd Quarter 2015. November 2015. There were 90 responses, and of the responses, 18 percent indicated it was Not Applicable, presumably because they had not completed any projects in the past 12 months. The survey covers all multifamily construction including lower quality Class B and Class C. It does not provide details on the developers or projects that did not install landlines.

only about 10 percent of the construction cost;<sup>3</sup> running an additional cable through existing electrical conduits would be a minimal incremental cost. If the broadband infrastructure is wireless, the cost will be for the equipment, which varies greatly by the design and size of the project, as does the cost per unit. Given that the costs of installation of broadband infrastructure are only a portion of the 10 percent of construction costs, the requirement proposed by this rulemaking is not expected to measurably reduce the size of the housing or the number of units to be constructed. At most, installation of broadband infrastructure may reduce the provision of other amenities or nonessential finishes, but HUD considers even these reductions. Additionally, the proposed rule only applies to new construction or substantial rehabilitation that is supported with HUD-provided resources.

Materials on the benefits of narrowing the digital divide are voluminous. Having broadband Internet in the home increases household income<sup>4</sup> and yields higher education achievement for students.<sup>5</sup> On July 2015, the Council of Economic Advisers issued the report "Mapping the Digital Divide," which examines progress in the United States in narrowing the digital divide and the work that still needs to be done, especially in the Nation's poorest neighborhoods and most rural communities.<sup>6</sup> However, this proposed rule's limited scope in only requiring the installation of infrastructure instead of providing Internet access also limits the benefits of the proposed rule. The benefit of the proposed rule is that where broadband Internet service can be made available, the tenant, residing in housing with broadband infrastructure, will be assured of the ability to access broadband Internet service, whether they choose and are able to afford Internet service or not. This puts

<sup>3</sup> 2015 *National Building Cost Manual*. Ed. Ben Moselle. Carlsbad, CA: Craftsman Book Company. [https://www.craftsman-book.com/media/static/previews/2015\\_NBC\\_book\\_preview.pdf](https://www.craftsman-book.com/media/static/previews/2015_NBC_book_preview.pdf), pg. 19.

<sup>4</sup> Ericsson, Arthur D. Little, and Chalmers University of Technology. Socioeconomic Effects of Broadband Speed. September 2013. <http://www.ericsson.com/res/thecompany/docs/corporate-responsibility/2013/ericsson-broadband-final-071013.pdf>.

<sup>5</sup> Davidson, Charles M. and Michael J. Santorelli. "The Impact of Broadband on Education." December 2010. [https://www.uschamber.com/sites/default/files/legacy/about/US\\_Chamber\\_Paper\\_on\\_Broadband\\_and\\_Education.pdf](https://www.uschamber.com/sites/default/files/legacy/about/US_Chamber_Paper_on_Broadband_and_Education.pdf), pg. 24.

<sup>6</sup> See Council of Economic Advisers. "Mapping the Digital Divide." *Issue Brief*. July 2015. [https://www.whitehouse.gov/sites/default/files/wh\\_digital\\_divide\\_issue\\_brief.pdf](https://www.whitehouse.gov/sites/default/files/wh_digital_divide_issue_brief.pdf).

broadband Internet service within reach, especially where other charitable and public social programs, including HUD's ConnectHome program, provide free or reduced-cost service.

## II. Background

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."<sup>7</sup> In this memorandum, the President noted that access to high-speed broadband is no longer a luxury, but it is 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, commenced with the participation of 28 communities.<sup>8</sup> Through contributions made by the Internet service providers and other organizations participating in the pilot, residents living in public and HUD-assisted housing in these 28 communities will receive discounted broadband service, 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, knowledge is a pillar to achieving the American Dream—a catalyst for upward mobility as well as an investment that ensures each generation has opportunities to succeed.

<sup>7</sup> See Barack Obama. "Presidential Memorandum—Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training." March 23, 2015. <https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr>.

<sup>8</sup> See Connect Home. "About the Pilot." <http://connecthome.hud.gov/pilot>.

Many low-income Americans do not have broadband Internet at home, contributing to the estimated 66 million Americans who lack basic digital literacy skills.<sup>9</sup> Without broadband adoption and the skills to use Internet technology at home, children and adults can 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 proposed rule presents one such additional effort.

## III. This Proposed Rule

### A. Multifamily Rental Housing Covered by This Proposed Rule

This proposed rule would apply to new construction and substantial rehabilitation of multifamily rental housing in the HUD programs that authorize and fund such activities. These programs are listed in Section II.B of this preamble. The proposed rule would not apply to multifamily rental housing with a mortgage insured by HUD's Federal Housing Administration (FHA) or with a loan guaranteed under a HUD loan guarantee program.<sup>10</sup> Further, this proposed rule would not apply to new construction or substantial rehabilitation of single-family or single-unit housing.

HUD proposes to require installation of broadband infrastructure in individual housing units at the time of new construction or substantial rehabilitation of multifamily rental housing, because while such installation is not without cost, the cost can be reduced by providing the installation at the time when housing is first being built or substantially rehabilitated.

### B. HUD Programs Covered by This Proposed Rule

As provided in section I.B. of this preamble, this proposed rule would apply to multifamily rental housing that is to be newly constructed or substantially rehabilitated with funds under the following HUD programs, as

<sup>9</sup> See Connect Minnesota. "Digital Literacy: A Critical Skill for all Minnesotans." July 2013. [http://www.connectednation.org/sites/default/files/mn\\_digital\\_literacy\\_final.pdf](http://www.connectednation.org/sites/default/files/mn_digital_literacy_final.pdf).

<sup>10</sup> See the Section 108 Loan Guarantee program, for which the regulations are found in 24 CFR part 570, subpart M; the Loan Guarantee program for Indian Housing, for which the regulations are found in 24 CFR part 1005; the Section 184 Loan Guarantees for Native Hawaiian Housing, for which the regulations are found in 24 CFR part 1007; and the Title VI Loan Guarantee Program, for which the regulations are found in 24 CFR part 1000, subpart E.

implemented through the regulations or under authorities cited below:

1. Choice Neighborhoods Implementation Grant program, for which the requirements are found in HUD notices of funding availability (NOFAs);
2. Community Development Block Grant (CDBG) program, for which the regulations are found in 24 CFR part 570;
3. Continuum of Care (CoC) program, for which the regulations are found in 24 CFR part 578;
4. HOME Investment Partnerships (HOME) program, for which the regulations are found in 24 CFR part 92;
5. Housing Opportunities for Persons With AIDS (HOPWA) program, for which the regulations are found in 24 CFR part 574;
6. Housing Trust Fund (HTF) program, for which the regulations are found in 24 CFR part 93;
7. Project-Based Voucher program, for which the regulations are found in 24 CFR part 983;
8. Public Housing Capital Fund program, for which the regulations are found in 24 CFR part 905;
9. Section 8 project-based housing assistance payments programs, including, but not limited to, the Section 8 New Construction, Substantial Rehabilitation, Loan Management Set-Aside, and Property Disposition programs; and
10. Supportive Housing for the Elderly and Persons with Disabilities program, for which the regulations are found in 24 CFR part 891.

One of HUD's major new construction and substantial rehabilitation programs, the Choice Neighborhoods program, already requires broadband infrastructure in new construction units and permits the use of Choice Neighborhood funds for broadband infrastructure in substantially rehabilitated units. In addition, Choice Neighborhood grantees may use up to 15 percent of their grants for Critical Community Improvements, of which neighborhood broadband programs are considered an eligible expense. The Choice Neighborhoods program supports locally driven strategies to address struggling neighborhoods with distressed public or HUD-assisted housing through a comprehensive approach to neighborhood transformation. The program is designed to catalyze critical improvements in neighborhood assets, including vacant property, housing, services, and schools. One of the three core goals of the Choice Neighborhoods program is to replace distressed public and assisted housing with high-quality, mixed-income

housing.<sup>11</sup> The Choice Neighborhoods program is implemented through annual NOFAs. HUD's Fiscal Year (FY) 2014 Choice Neighborhoods NOFA requires housing to be built with broadband Internet infrastructure.<sup>12</sup>

### C. When Installation of Broadband Infrastructure May Be Infeasible

As noted in the Summary, HUD recognizes that installation of broadband infrastructure will not be feasible for every new construction or substantial rehabilitation of multifamily rental housing proposed to be covered by this proposed rule. For example, HUD recognizes that constructing or undertaking substantial rehabilitation of multifamily rental housing in certain areas may make installation of broadband infrastructure infeasible. As the Rural Utilities Service of the U.S. Department of Agriculture (USDA) stated in a final rule entitled "Economic Benefits of Broadband Deployment in Rural Areas," published on February 6, 2013,<sup>13</sup> bringing broadband services to rural areas presents challenges because rural systems must contend with lower household density than urban systems. Similarly, the particular type or structure of covered multifamily rental housing to be substantially rehabilitated may also make the installation of broadband infrastructure infeasible. The proposed rule therefore offers exceptions to broadband installation requirements when a funding recipient determines that installing broadband infrastructure is not feasible. Recipients and owners will be responsible for maintaining documentation that justifies the recipient's determination of infeasibility. HUD will consider providing additional guidance on this issue when the final rule becomes effective.

### D. Rule Terminology

#### Broadband

As noted in the Summary, "broadband" is the common term used to refer to a very fast connection to the Internet. Such connection is also referred to as high-speed broadband or high-speed Internet. HUD recognizes that broadband is defined by several

<sup>11</sup> United States Department of Housing and Urban Development. "Choice Neighborhoods." [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/cn](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/cn).

<sup>12</sup> See United States Department of Housing and Urban Development. "Choice Neighborhoods Planning Grants Notice of Funding Availability." June 4, 2014. <http://portal.hud.gov/hudportal/documents/huddoc?id=13CNP-FR5800N13.pdf>.

<sup>13</sup> <http://www.gpo.gov/fdsys/pkg/FR-2013-02-06/pdf/2013-02390.pdf>.

agencies as Internet access of at least a certain speed.<sup>14</sup> HUD is proposing to require that, where feasible, infrastructure be installed to provide every housing unit covered by this proposed rule with the ability to access the Internet that meets the definition adopted by the FCC—currently 25 Mbps download, 3 Mbps upload—regardless of whether any Internet service provider offers such access in a given location. This will provide the capacity for future broadband adoption without having to undertake additional renovation work. If the FCC modifies its definitions in the future, HUD's requirements for any new construction or substantial rehabilitation undertaken after the definition change will also change.

#### Broadband Infrastructure

The broadband infrastructure that needs to be installed to provide families in covered multifamily rental housing with broadband access will vary according to the housing being constructed or rehabilitated and the plans of the entity doing such construction or rehabilitation. Therefore, HUD proposes a flexible definition, allowing entities undertaking new construction or substantial rehabilitation to install the broadband infrastructure that is most feasible given the specifics of the construction or substantial rehabilitation to be undertaken. HUD proposes to require installation of cables, fiber optics, wiring, or other infrastructure, as long as the installation results in broadband accessibility in each dwelling unit. HUD proposes only to require the installation of broadband infrastructure on the property, not to require that grantees be responsible for ensuring an external connection between the property and an Internet service provider (ISP).

#### Substantial Rehabilitation

While some of the HUD programs listed in Section II.B of this preamble define what is meant by "substantial rehabilitation," the majority of the covered programs do not define this term. Therefore, for the sole purpose of determining when substantial rehabilitation of covered multifamily rental housing would trigger installation of broadband infrastructure and, except in the HOPWA program, where substantial rehabilitation is already

<sup>14</sup> For example, see the U.S. Department of Agriculture definition at 7 CFR 1738.2 (requiring download speeds of at least 4 Mbps, or the Federal Communications Commission's definition in its 2015 Broadband Progress Report at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-10A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-10A1.pdf) (defining broadband as having download speeds of at least 25 Mbps).

defined, HUD proposes to define "substantial rehabilitation" to mean:

- (1) Significant work on the electrical system of the multifamily rental housing. "Significant work" is defined as work that is equal to or greater than 75 percent of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than 4 units, "entire system" refers to the electrical system of the building(s) undergoing rehabilitation; or
- (2) Rehabilitation of the multifamily rental housing in which the estimated cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than 4 units, the replacement cost used in this determination would be the replacement cost of the building(s) undergoing rehabilitation.

### E. Compliance Timeline

HUD intends for this proposed rule to apply to projects that have not yet established their budgets and had funding approved, in order to give recipients and owners adequate time to factor the installation of broadband infrastructure into their new construction or substantial rehabilitation plans.

### F. Rule's Objective

With this proposed rule, HUD seeks to take another important step toward narrowing the digital divide by providing residents in covered multifamily rental housing that is to be newly constructed or substantially rehabilitated with infrastructure that supports access to broadband Internet service, thereby increasing access to educational and economic opportunities for these residents.

## IV. Specific Questions for Comments

While HUD welcomes comments on all aspects of this proposed rule, HUD is seeking specific comment on the following questions:

1. In light of the policy objectives discussed in the preamble, should this proposed rule be applied to other HUD programs, particularly additional multifamily housing programs (such as Rental Supplement (RS), Rental Assistance Payment (RAP), Moderate Rehabilitation Programs (Mod Rehab), etc.) or programs addressing single-family housing? Should any programs covered by this proposed rule be removed?

2. Given that the definition of the term “substantial rehabilitation” will determine which projects (other than new construction) are affected by this rulemaking, should the definition be changed in any way?

3. How much does it cost to add the installation of broadband infrastructure to a pre-planned new construction or rehabilitation project? Are HUD’s estimates for the labor and materials costs for installing broadband infrastructure accurate? What data can the public share with HUD about the most cost-effective way for broadband infrastructure to be installed during a new construction or rehabilitation project?

4. The proposed rule provides exceptions to the requirements if compliance would be infeasible due to cost, location, or structural concerns. Are these exceptions too broad or too narrow? What is the best way for grantees to demonstrate to HUD that installation of broadband infrastructure is infeasible, and what would appropriate sanctions be if grantees do not comply even if it was feasible? Do any grantees have experience with a project in which installing broadband infrastructure was physically or economically infeasible, and under what circumstances was it infeasible?

5. When evaluating whether the rehabilitation being done meets the threshold in the definition of substantial rehabilitation, should HUD use the pre-rehabilitation estimates for the project alone, or should HUD include increases in rehabilitation costs that arise in the process of rehabilitation?

**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 proposed 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 discussed, this proposed rule furthers HUD’s efforts to narrow the digital divide in low-income communities served by HUD. Specifically, HUD proposes to require installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded by HUD. As noted in the Executive Summary, the costs and benefits of this proposed rule are difficult to quantify, but they can be described qualitatively.

*A. Benefits*

The evidence demonstrating the benefits of narrowing the digital divide is well documented. In just one example, a study conducted by a former Chair of the President’s Council of Economic Advisers used data on the amount of time Internet users spend online to estimate that Internet access produces thousands of dollars of consumer surplus per user each year.<sup>15</sup> As noted above, however, the benefits of Internet technology have not been

evenly distributed and research shows that there remain substantial disparities in both Internet use and the quality of access. This digital deficit is generally concentrated among older, less educated, and less affluent populations.<sup>16</sup>

HUD recognizes that the proposed rule’s limited scope in only requiring the installation of infrastructure, instead of providing Internet access, also limits the benefits of the proposed rule. Specifically, the benefit of the proposed rule is that where broadband Internet can be made available at a limited price, the tenant, residing in housing with broadband infrastructure, will be assured of the ability to access broadband Internet service, whether they choose and are able to afford Internet service or not. This proposed rule, therefore, would put broadband Internet service within reach where other charitable and public social programs, including HUD’s ConnectHome program, provide free or reduced cost service.

*B. Costs*

It is not possible to specify the exact costs that recipients and owners may incur as a result of the proposed rule, given the variety of available technologies that may be used to satisfy the new broadband requirements. However, available data indicates that any costs associated with this proposed rule will be minimal.

As is displayed on table I, broadband Internet access can be provided using two general technologies: Wired and wireless, each with several specific technologies. Broadband can be delivered over wired lines using very-high-bit-rate digital subscriber lines (VDSL), cable lines, power lines (BPL), or fiber optic platforms. Using wireless technologies, broadband can be provided using satellite, fixed wireless, mobile wireless, and Wi-Fi platforms.

TABLE I—TYPES OF BROADBAND TECHNOLOGIES

Platform	Connection type	Access requirement	
		Part of infrastructure	Not part of infrastructure
<b>Wired</b>			
Digital Subscriber Line (VDSL) .....	Copper wire .....	Yes .....	Router & Modem.
Cable Modem .....	Copper wire .....	Yes .....	Router & Modem.
Fiber .....	Fiber Optic wire .....	Yes .....	Router & Modem.
Broadband over Power Lines (BPL) .....	Copper wire .....	Yes .....	Router & Modem.
<b>Wireless</b>			
Satellite .....	Over the Air—satellite .....	None .....	Router & Modem.

<sup>15</sup> Council of Economic Advisers July 2015 report, *supra*, citing Austan Goolsbee and Peter J. Klenow, *Valuing Consumer Products by the Time Spent*

*Using Them: An Application to the Internet* National Bureau of Economic Research Working

Paper No. 11995 (February 2006) available online at: <http://www.nber.org/papers/w11995>.

<sup>16</sup> *Ibid.*

TABLE I—TYPES OF BROADBAND TECHNOLOGIES—Continued

Platform	Connection type	Access requirement	
		Part of infrastructure	Not part of infrastructure
Fixed Wireless .....	Over the Air—Longer Range Directional Equipment.	None .....	Router & Modem.
Mobile Wireless .....	Over the Air—Cellular .....	None .....	Router & Modem.
Wireless Fidelity (WiFi) .....	Over the Air—Short-Range Wireless Technology.	None .....	Router & Modem.

Whereas wired lines technologies may require some sort of physical infrastructure consisting of internal wiring within the dwelling unit, wireless technologies do not require any additional physical infrastructure within the building. With wireless technology, the signal travels through the air to the customer, who uses a connection technology, such as a modem, to access the services. For wireless technologies, the infrastructure cost to the property boundary (connection to the service provider) is nil (\$0). However, the availability of wireless broadband service is limited and evolving, so HUD expects many

builders will opt to install wired broadband infrastructure.

Building costs of installing wired infrastructure are limited to in-dwelling wiring, as this is all that is required by the proposed rule. Within the unit or the building, the electrical work consists of running cable (meeting the requirements of category (Cat) 5e or Cat 6 wire), installing jacks and plates, and minor construction work (such as drilling and patching walls). Fiber optic cables are rarely run in the dwelling unit but are installed by the service provider outside the unit; the non-fiber optic wiring then makes broadband accessible within the unit. Depending

on the market, some of the cost is also born by the service provider.

The average per-unit cost for wiring for broadband Internet is approximately \$200 <sup>17</sup> (see table II). These costs are simply estimates of one method of complying with the requirements of the proposed rule. Labor costs will also vary based on the region and whether the installation is being done as part of substantial rehabilitation or new construction. At most, installation of broadband infrastructure may reduce the provision of other amenities or nonessential finishes, but even these reductions are considered unlikely.

TABLE II—SAMPLE COST TO INSTALL ELECTRICAL WIRING (1 WIRING)

Item	Quantity	Low	High
<b>Electrical Wiring Labor (Hours)</b> Labor estimate to install electrical wiring, route, secure, and connect new NMB-B wiring run for single receptacle, up to a 40' run. Includes planning, equipment, and material acquisition, area preparation and protection, setup and cleanup.	2.1 hours .....	\$160.07	\$205.10
<b>Electrical Wiring Materials and Supplies</b> Cost of related materials and supplies typically required to install electrical wiring including connectors, fittings, and mounting hardware.	1 Wiring (unit) .....	20.00	25.00
Total Costs (1 Wiring) .....	.....	180.07	230.10

HUD also notes that the proposed rule is drafted so as to minimize the costs of the new installation requirements. For example, the proposed rule does not mandate any rehabilitation or construction, and the decision to undertake such activities appropriately remains with recipients and owners. Rather, the scope of the proposed regulatory changes is limited to requiring the installation of broadband infrastructure if the recipient or owner elects to undertake new construction or substantial rehabilitation. The proposed rule minimizes the economic impacts on recipients and owners by recognizing that the installation of broadband infrastructure is generally less burdensome and costly at the time of new construction or substantial

rehabilitation than when such installation is undertaken as a stand-alone effort.

Moreover, this proposed rule only requires the installation of broadband infrastructure that is “accessible” in each unit. The proposed rule does not require recipients or owners to provide a regular subscription to broadband Internet service (even at a cost) to residents. Also minimizing the economic costs of the proposed regulatory changes is the fact that the proposed definition of broadband infrastructure is broad enough to include cable television, fiber optic cabling, and wireless infrastructure providing appropriate broadband connectivity to the individual units. As discussed above in this Executive

Summary, multifamily HUD or standard-market new construction typically provides telephone landline and cable TV connectivity. Further, HUD’s competitive grants for new construction under the Choice Neighborhoods program have, in recent years, sought the provision of broadband.

A review of HUD internal databases, summarized on table III, shows that in 2013, the 58,677 units within the targeted programs were newly constructed or rehabilitated. However, HUD’s data did not contain specific information to be able to determine how many of the units that underwent rehabilitation met the definition of “substantial rehabilitation” contained in the proposed rule, so the number of

<sup>17</sup> [http://www.homewyse.com/services/cost\\_to\\_install\\_electrical\\_wiring.html](http://www.homewyse.com/services/cost_to_install_electrical_wiring.html)

affected units would be smaller than is contained in the table. In addition, data on affected units newly constructed

using CDBG funding is unavailable, as grantee reports do not separate

multifamily from single-unit new construction.

TABLE III—HUD-ASSISTED NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

	Sec. 8 RAD	811 PRAC	202 PRAC	Sec. 8 202	HOPE VI	PIH	CDBG	HOME Rental	Totals
<b>New Construction</b>									
2012 .....		506	2,405		146	703			
2013 .....	110	583	2,034		44	297		19,424	22,492
2014 .....	100	482	1,592					11,596	
<b>Rehabilitation</b>									
2012 .....			25			36			
2013 .....	199	15		109		16	20,918	14,928	36,185
2014 .....		28	15				15,716	6,965	
FY 2013 Totals .....									58,677

Further, a review found that multifamily (5-plus unit) HUD or standard-market new construction typically provides telephone landline and many provide cable TV connectivity.<sup>18</sup> A recent survey by the National Association of Homebuilders found that just 4 percent of the surveyed multifamily housing developers did not install landline wires and jacks in multifamily units completed in the past 12 months.<sup>18,19</sup> In recent years, HUD's competitive grants for new construction under the Choice Neighborhoods program have required the provision of broadband.<sup>20</sup> Therefore, this proposed rule simply codifies what is considered common practice in several programs.

Accordingly, most recipients and owners already meet the standards established in the proposed rule, and the new regulatory requirements will

<sup>18</sup>For example under "Class 4 Low Average Quality" the Craftsman 2015 National Building Cost Manual lists cable TV as a standard feature. Only "Class 5" minimum quality does not list cable or a computer network as a standard feature. All electrical work is estimated to be 10 percent of project cost. 2015 National Building Cost Manual, *supra*, p. 19.

<sup>19</sup>NAHB, Multifamily Market Survey, *supra*.

<sup>20</sup>Note that HUD's definition of accessibility is more restrictive than the FCC's because HUD considers only the building itself.

<sup>20</sup>United States Department of Housing and Urban Development. "Choice Neighborhoods Planning Grants Notice of Funding Availability," *supra*, p. 32. "Broadband Access. All FY2014 and FY2015 Implementation Grantees will be required, as part of their Transformation Plan, to include infrastructure that permits unit-based access to broadband Internet connectivity in all new units. Grantees may use Choice Neighborhoods funds to provide unit-based broadband Internet connectivity, which includes the costs of installing broadband infrastructure and hardware in units, but not the costs of Internet service for residents. Regular and informed Internet adoption can increase access to the job market, as well as health, education, financial and other services. Further, in-home broadband Internet access is an attractive, and in most cases, standard amenity that can be used to market the mixed-income community created through the Transformation Plan."

impose minimal, if any, new economic costs. HUD has addressed those rare situations where the proposed new requirements may prove too costly by granting exceptions to the installation requirements where the installation is economically infeasible due to location or building characteristics.

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 202-708-3055 (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 (this is a toll-free number).

#### Impact on Small Entities

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

The proposed rule would provide that for new construction or substantial rehabilitation of multifamily rental housing funded by HUD, as part of the new construction or substantial rehabilitation to be undertaken, such activity must include installation of broadband infrastructure. None of the HUD-covered programs listed in this proposed rule require a grantee to undertake new construction or substantial rehabilitation. Instead, new construction and substantial rehabilitation are eligible activities that

grantees may take using HUD funds. Therefore, small entities will not incur any costs than they otherwise would incur by voluntarily undertaking new construction or substantial rehabilitation, since the costs of these activities, including the installation of broadband infrastructure, are funded by HUD. For these reasons, this proposed rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this proposed rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that will meet HUD's objectives, as described in this preamble.

#### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

#### Paperwork Reduction Act

The information collection requirements contained in this proposed rule must be submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) for review and approval. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated to be minimal. The reporting of new construction or substantial rehabilitation activity under the programs covered by this proposed rule is not increased through the installation of broadband infrastructure. However,

the information collection that is new is the documentation required of the grantee that the location of proposed new construction makes installation of broadband infrastructure infeasible, or that the cost of installing the infrastructure would result in a fundamental alteration in the nature of

its program or activity or in an undue financial burden. The total number of grantees that undertake new construction or substantial rehabilitation, as defined in this proposed rule, with HUD funds is currently low, and this is reflected in the respondents.

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Burden hours per response	Total burden hours
Documentation of inability to undertake installation of broadband infrastructure .....	1,000	1	2	2,000
Totals .....	1,000	1	2	2,000

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

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposed rule. Comments must refer to the proposal by name and docket number (FR-5890-P-01) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202-395-6947, and Collette Pollard, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection, during regular

business hours, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500, or online at [www.regulations.gov](http://www.regulations.gov). Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (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 (this is a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.218, 14.225, 14.228, 14.239, 14.241, 14.267, 14.850, 14.871, and 14.872.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-

housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 92

Administrative practice and procedure, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs-housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 570

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

24 CFR Part 574

Community facilities, Grant programs-housing and community development, Grant programs-social programs, HIV/AIDS, Low and moderate income housing, Reporting and recordkeeping requirements.



**24 CFR Part 578**

Community development, Community facilities, Grant programs-housing and community development, Grant programs-social programs, Homeless, Reporting and recordkeeping requirements.

**24 CFR Part 880**

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 881**

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 883**

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 884**

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

**24 CFR Part 886**

Grant programs-housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 891**

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 905**

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

**24 CFR Part 983**

Grant programs-housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5, 92, 93, 570, 574, 578, 880, 881, 883, 884, 886, 891, 905, and 983 as follows:

**PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS**

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d), Sec. 327, Pub. L. 109–115, 119 Stat. 2936, Sec. 607, Pub. L. 109–162, 119 Stat. 3051, E.O. 13279, and E.O. 13559.

■ 2. In § 5.100, add the definitions of “Broadband infrastructure” and “Substantial rehabilitation” in alphabetical order, to read as follows:

**§ 5.100 Definitions.**

\* \* \* \* \*

**Broadband infrastructure** means cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure that is capable of providing access to Internet connections in individual housing units that meet the definition of “advanced telecommunications capability” determined by the Federal Communications Commission under section 706 of the Telecommunications Act of 1996 (47 U.S.C. 1302).

\* \* \* \* \*

**Substantial rehabilitation**, for the purposes of determining when installation of broadband infrastructure is required as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a program, means work that involves:

(1) Significant work on the electrical system of the multifamily rental housing. “Significant work” means complete replacement of the electrical system or other work that is equal to or greater than 75 percent of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than 4 units, “entire system” refers to the electrical system of the building undergoing rehabilitation; or

(2) Rehabilitation of the multifamily rental housing in which the estimated cost of the rehabilitation is equal to or greater than 75 percent of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than 4 units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.

\* \* \* \* \*

**PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM**

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

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

■ 4. Amend § 92.251 by revising the introductory text of (a)(2) and adding paragraphs (a)(2)(vi) and (b)(1)(x) to read as follows:

**§ 92.251 Property standards.**

(a) \* \* \*

(2) *HUD requirements.* All new construction projects must also meet the requirements described in this paragraph:

\* \* \*

(vi) *Broadband infrastructure.* If the housing is a building with more than 4 rental units, the construction must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the participating jurisdiction documents that:

(A) The location of the new construction makes installation of broadband infrastructure infeasible; or  
(B) The cost of installing the infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

(b) \* \* \*

(1) \* \* \*

(x) *Broadband infrastructure.* If the housing is a building with more than 4 rental units, any substantial rehabilitation, as defined in 24 CFR 5.100, must provide for installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the participating jurisdiction documents that:

(A) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;  
(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(C) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

\* \* \* \* \*

**PART 93—HOUSING TRUST FUND**

■ 5. The authority citation for part 93 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 6. Amend § 93.301 by revising the introductory text of (a)(2) and adding paragraphs (a)(2)(vi) and (b)(1)(x) to read as follows:

**§ 93.301 Property standards.**

(a) \* \* \*

(2) *HUD requirements.* All new construction projects must also meet the requirements described in this paragraph:

\* \* \*

(vi) *Broadband infrastructure.* If the housing is a building with more than 4 rental units, the construction must

include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee documents that:

(A) The location of the new construction makes installation of broadband infrastructure infeasible; or

(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

(b) \* \* \*

(1) \* \* \*

(x) *Broadband infrastructure.* If the housing is a building with more than 4 rental units, any substantial rehabilitation, as defined in 24 CFR 5.100, must provide for installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee documents that:

(A) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(B) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(C) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

\* \* \* \* \*

**PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS**

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

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

■ 8. In § 570.202, add paragraph (g) to read as follows:

**§ 570.202 Eligible rehabilitation and preservation activities.**

\* \* \* \* \*

(g) *Broadband infrastructure.* Any substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee documents that:

(1) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

■ 9. In § 570.204 add paragraph (a)(5) to read as follows:

**§ 570.204 Special activities by Community-Based Development Organizations (CBDOs).**

(a) \* \* \*

(5) Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee documents that:

(i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

\* \* \* \* \*

■ 10. Add paragraph (c)(4) to § 570.482 to read as follows:

**§ 570.482 Eligible activities.**

\* \* \* \* \*

(c) \* \* \*

(4) *Broadband infrastructure in housing.* Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the State documents that:

(i) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(ii) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(iii) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

\* \* \* \* \*

**PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS**

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

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

■ 12. Add § 574.350 to subpart D to read as follows:

**§ 574.350 Additional standards for broadband infrastructure.**

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 574.3, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 578—CONTINUUM OF CARE PROGRAM**

■ 13. The authority citation for part 578 continues to read as follows:

**Authority:** 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

■ 14. In § 578.45, add paragraph (d) to read as follows:

**§ 578.45 Rehabilitation.**

\* \* \* \* \*

(d) *Broadband infrastructure.* Any substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee documents that:

(1) The location of the substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

■ 15. In § 578.47, add paragraph (c) to read as follows:

**§ 578.47 New construction.**

\* \* \* \* \*

(c) *Broadband infrastructure.* Any new construction of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee documents that:

(1) The location of the new construction makes installation of broadband infrastructure infeasible; or

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden.

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

■ 16. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 17. Add § 880.212 to subpart B to read as follows:

**§ 880.212 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION**

■ 18. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 19. Add § 881.212 to subpart B to read as follows:

**§ 881.212 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES**

■ 20. The authority citation for part 883 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 21. Add § 883.314 to subpart C to read as follows:

**§ 883.314 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

■ 22. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 23. Add § 884.125 to subpart A to read as follows:

**§ 884.125 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS**

■ 24. The authority citation for part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 25. Add § 886.139 to subpart A to read as follows:

**§ 886.139 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

■ 26. Add § 886.339 to subpart C to read as follows:

**§ 886.339 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES**

■ 27. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 28. In § 891.120, add paragraph (f) to read as follows:

**§ 891.120 Project design and cost standards.**

\* \* \* \* \*

(f) *Broadband infrastructure.* Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

■ 29. Add § 891.550 to subpart E to read as follows:

**§ 891.550 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

**PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM**

■ 30. The authority citation for part 905 continues to read as follows:

**Authority:** 42 U.S.C. 1437g, 42 U.S.C. 1437z-2, 42 U.S.C. 1437z-7, and 3535(d).

■ 31. In § 905.312, add paragraph (e) to read as follows:

**§ 905.312 Design and construction.**

\* \* \* \* \*

(e) *Broadband infrastructure.* Any new construction or substantial rehabilitation, as defined in 24 CFR 5.100, of a building with more than 4 rental units must include installation of

broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the PHA documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be rehabilitated makes installation of broadband infrastructure infeasible.

**PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

■ 32. The authority citation for part 983 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

■ 33. Add § 983.157 to subpart D to read as follows:

**§ 983.157 Broadband infrastructure.**

Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than 4 rental units must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner documents that:

(1) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(2) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(3) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Dated: April 21, 2016.

**Julián Castro,**

*Secretary.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 91**

[Docket No. FR 5891-P-01]

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, Department of Housing and Urban Development.

**ACTION:** Proposed 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 proposed rule would amend 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 proposed rule would require 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 into their decisions on how to invest HUD funds. The second concept to be added to the Consolidated Plan process would require 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:** *Comments Due Date:* July 18, 2016.

**ADDRESSES:** Interested persons are invited to submit comments responsive to this proposed rule to the Office of General Counsel, Regulations Division, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0001. All submissions should refer to the above docket number and title. Submission of public comments may be carried out by hard copy or electronic submission.

1. *Submission of Hard Copy Comments.* Comments may be submitted by mail or hand delivery. Each commenter submitting hard copy comments, by mail or hand delivery, should submit comments to the address above, addressed to the attention of the