

submitted within 30 calendar days instead of 15 calendar days if your combination product received marketing authorization under a device application.

(3) If your combination product contains a biological product constituent part, you must submit:

- (i) Biological product deviation reports; and
- (ii) Fifteen-day reports as described in § 600.80 of this chapter, which must be submitted within 30 calendar days instead of 15 calendar days if your combination product received marketing authorization under a device application.

(d) *Other reporting requirements for combination product applicants.* (1) If you are the combination product applicant for a combination product that contains a device constituent part and that received marketing authorization under an NDA, ANDA, or BLA, in addition to the information otherwise required in the periodic safety reports you submit under § 314.80 or § 600.80 of this chapter, your periodic safety reports must also include a summary and analysis of the reports identified in paragraphs (c)(1)(i) and (ii) of this section that were submitted during the report interval.

(2) If you are the combination product applicant for a combination product that received marketing authorization under a device application, in addition to the reports required under paragraphs (b) and (c) of this section, you must submit reports regarding postmarketing safety events if notified by the Agency in writing that the Agency requires additional information. We will specify what safety information is needed and will require such information if we determine that protection of the public health requires additional or clarifying safety information for the combination product. In any request under this section, we will state the reason or purpose for the safety information request, specify the due date for submitting the information, and clearly identify the reported event(s) related to our request.

§ 4.103 What information must you share with other constituent part applicants for the combination product?

(a) When you receive information regarding an event that involves a death or serious injury as described in § 803.3 of this chapter, or an adverse experience as described in § 314.80(a) of this chapter or § 600.80(a) of this chapter, associated with the use of the combination product, you must provide the information to the other constituent part applicant(s) for the combination

product no later than 5 calendar days of your receipt of the information.

(b) With regard to information you must provide to the other constituent part applicant(s) for the combination product, you must maintain records that include:

- (1) A copy of the information you provided,
- (2) The date the information was received by you,
- (3) The date the information was provided to the other constituent part applicant(s), and
- (4) The name and address of the other constituent part applicant(s) to whom you provided the information.

§ 4.104 How and where must you submit postmarketing safety reports for your combination product or constituent part?

(a) If you are a constituent part applicant, you must submit postmarketing safety reports in accordance with the regulations identified in § 4.102(b) that are applicable to your product based on its application type.

(b) If you are a combination product applicant, you must submit postmarketing safety reports required under § 4.102 in the manner specified in the regulation applicable to the type of report, with the following exceptions:

(1) You must submit the postmarketing safety reports identified in § 4.102(c)(1)(i) and (ii) in accordance with § 314.80(g) of this chapter if your combination product received marketing authorization under an NDA or ANDA or in accordance with § 600.80(h) of this chapter if your combination product received marketing authorization under a BLA.

(2) You must submit the postmarketing safety reports identified in § 4.102(c)(2)(ii) and (c)(3)(ii) in accordance with § 803.12(a) of this chapter if your combination product received marketing authorization under a device application.

§ 4.105 What are the postmarketing safety reporting recordkeeping requirements for your combination product or constituent part?

(a) If you are a constituent part applicant:

(1) You must maintain records in accordance with the recordkeeping requirements in the applicable regulation(s) described in § 4.102(b).

(2) You must maintain records required under § 4.103(b) for the longest time period required for records under the postmarketing safety reporting regulations applicable to your product under § 4.102(b).

(b) If you are a combination product applicant, you must maintain records in

accordance with the longest time period required for records under the regulations applicable to your product under § 4.102.

Dated: December 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

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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-F-02]

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: Final rule.

SUMMARY: Through this 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. In this final rule, HUD requires installation of broadband infrastructure at the time of new construction or substantial rehabilitation of multifamily rental housing that is funded or supported by HUD, the point at which such installation is generally easier and less costly than when undertaken as a stand-alone effort. The rule, however, recognizes that installation of broadband infrastructure may not be feasible for all new construction or substantial rehabilitation, and, therefore, it 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: *Effective date:* January 19, 2017.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact the following people (the telephone numbers are not toll-free):

Office of Community Planning and Development programs: Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development, Room 7100, 202–708–2690.

Office of Multifamily Housing programs: Katie Buckner, Office of Recapitalization, Office of Housing, Room 6226, 202–402–7140.

Office of Public and Indian Housing programs: Dominique Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Room 4130, 202–402–4181.

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 telephone number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of this Rule

The purpose of this 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. This rule does not require a funding recipient to undertake new construction or substantial rehabilitation, but when a funding recipient does choose to pursue such activity for multifamily rental housing with HUD funding, this rule requires installation of broadband infrastructure. While the rule only requires affected funding recipients to install one form of broadband infrastructure, HUD suggests that funding recipients 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 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.

B. Summary of Major Provisions of this Rule

This rule requires 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;¹ and

10. Section 202 and Section 811 Supportive Housing for the Elderly and Persons with Disabilities programs.

The requirements of the rule do 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 defines broadband infrastructure as cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure—including wireless infrastructure—as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (FCC's) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download, 3 Mbps upload.² In addition, for programs that do not already have a definition of substantial rehabilitation, HUD defines substantial rehabilitation as work on the electrical system with estimated costs equal to or greater than 75 percent of the cost of replacing the entire electrical system, or when 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. The definition of substantial rehabilitation for purpose of the installation of broadband infrastructure does not affect definitions of rehabilitation already in place for other purposes.

¹ This 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 rule.

² Federal Communications Commission, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, GN Docket No. 14–126, Rel. Feb. 4, 2015, at para. 45 (available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-10A1.pdf).

C. Costs and Benefits of This Rule

The costs and benefits of this rule are difficult to quantify, but they can be described qualitatively. This rule only requires that the broadband infrastructure provided be able 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 broadband service to current or future residents even if residents pay for such service. Furthermore, the definition of broadband infrastructure in the rule includes coaxial cable television (TV) wiring that supports cable modem access or even permanent infrastructure that would provide broadband speeds to dwelling units wirelessly. The rule also provides for exceptions to the installation requirements 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 4 percent of the surveyed multifamily housing developers never installed landline wires and jacks in multifamily units completed in the past 12 months.³ In recent years, HUD's competitive grants for new construction under the Choice Neighborhoods program have sought the provision of broadband access. Therefore, this rule would simply 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 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 consists of 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 only about 10 percent of the construction cost;⁴ thus, running an additional cable through existing electrical conduits would be a minimal

³ 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.

⁴ 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, pg. 19.

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 imposed by this rule 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 unlikely. Additionally, the rule only applies to new construction or substantial rehabilitation that is supported with HUD-provided resources, not to existing buildings where substantial rehabilitation is not contemplated.

Materials on the benefits of narrowing the digital divide are voluminous. Having broadband Internet in the home increases household income⁵ and yields higher education achievement for students.⁶ 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.⁷ However, this rule’s limited scope in only requiring the installation of infrastructure instead of providing Internet access also limits the benefits of the rule. The benefit of the 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 broadband Internet service within reach, especially where other charitable and public social programs, including HUD’s ConnectHome program, provide free or reduced-cost service.

⁵ 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>.

⁶ 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, pg. 24.

⁷ 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.

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.”⁸ 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 May 18, 2016, at 81 FR 31181, HUD published a proposed rule seeking to require the installation of broadband infrastructure on all new construction or substantial rehabilitation in multifamily projects supported by HUD. This proposed rule was an outgrowth of the President’s memorandum and HUD’s own Digital Opportunity Demonstration, known as “ConnectHome.” The comment period on the proposed rule closed on July 18, 2016. HUD received 25 comments on the proposed rule from a variety of commenters, including State or local government economic development offices, the National Association of Home Builders, Internet service providers, housing authorities, and nonprofit organizations.

III. Changes From the Proposed Rule

HUD is not changing any of the substantive requirements that were in the proposed rule. Rather, in response to questions raised by public comments, HUD is offering two clarifications in the regulatory text.

First, in the definition in 24 CFR 5.100, HUD is basing the threshold for substantial rehabilitation on the pre-rehabilitation estimates for the work. HUD recognizes that, in the course of rehabilitation, certain cost or work changes may result in the project exceeding the threshold to be defined (for the purposes of installing broadband infrastructure) as substantial rehabilitation. However, in these instances, the funding recipients are already facing higher costs than expected, and to add additional,

⁸ 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>.

unplanned-for requirements would be an undue burden.

Second, HUD has clarified the point in the planning process for new construction or substantial rehabilitation at which a project must be, as of the effective date of this rule, to not be subject to the rule’s requirements. Due to the different nature of each program covered by this rule, a tailored approach was necessary, instead of a single declaration for all of the programs.

In addition to these two regulatory changes, HUD will offer some future clarifying guidance on how funding recipients are to determine whether installing broadband infrastructure would be infeasible for a given project. This is to be a case-by-case determination, and is very fact-specific. The ultimate decision, however, will be up to the funding recipient, who will also have to maintain adequate documentation of the determination.

IV. Public Comments and HUD Responses

Adoption of the Internet Franchise Policy Framework

A commenter urged HUD to adopt the policy framework of the Internet Franchise (found at <https://webpass.net/franchise>), which the commenter stated directly addresses the issues in HUD’s rule and would eliminate the need for rulemaking in this area. The commenter stated that creating a new set of rules for a small subset of properties—those supported by HUD—is not helpful. HUD should adopt broadly applicable Internet access rules that can be a model for the whole country.

HUD Response: HUD appreciates the suggestion but believes the approach provided in HUD’s rule is the appropriate approach for HUD programs. In addition, HUD is not able to regulate Internet access for housing not assisted by HUD.

Capacity or Speed

Commenters asked that HUD encourage the installation of infrastructure that is “future-proofed” against higher Internet speeds than what meets the current broadband definition, perhaps by encouraging fiber optic connections to accomplish that goal or by requiring that the infrastructure have capacity of 150 percent of the current standards. Commenters also suggested that, rather than just considering bandwidth capacity, HUD should require that the technology allow for the use of common Internet applications (including voice-over-Internet protocols, or VOIP, and other streaming services).

Commenters suggested that HUD find ways to provide incentives to provide the highest level of broadband capacity.

Commenters also asked how HUD intended to communicate and implement new speed standards from the FCC.

HUD Response: HUD is not mandating that funding recipients install a specific type of infrastructure. Rather, HUD has specifically written the definition of broadband infrastructure to allow funding recipients to choose the form of infrastructure that is most appropriate for their circumstances, including future technologies that we cannot imagine today.

HUD believes that, rather than requiring installation of infrastructure meeting a standard higher than the FCC's then-current definition of "advanced telecommunications capability," it is enough to install infrastructure that meets that definition, especially as in some areas that speed is more than what may be currently available. Further, HUD believes that by requiring that each unit has access to infrastructure that allows broadband speeds, every family will be able to use Internet applications, such as VOIP, as desired. However, this is established as the minimum. Nothing prevents funding recipients from aiming higher, and nothing prevents other local authorities from establishing higher standards as a local requirement for funding or from using HUD funding to pay for the cost differential of getting to that higher level.

In addition, by tying the infrastructure requirements to the FCC's definition, future changes by the FCC will automatically be incorporated into HUD's requirements. When the definition is revised in the future, HUD will evaluate the most appropriate way to notify its funding recipients covered by this rule of the change.

Costs

Commenters responded to HUD's estimates on the cost of installing broadband infrastructure. Many commented that the estimates of the costs of labor and material were too low, particularly when a project is undergoing rehabilitation. Commenters stated that the costs would vary widely across the country, depending on the construction type, the number of units involved, and the regional labor costs. Commenters also stated that HUD should account for operation and maintenance costs for the infrastructure, which may be significant. Commenters stated that the study by the National Association of Home Builders did not specifically address broadband access,

and, therefore, it should not be used as evidence that installing broadband is already current practice.

Commenters also suggested that HUD has not justified the costs of compliance with the rule with enough benefits. Some commenters stated that in rural areas, limited access to broadband equipment installers can inflate installation and service costs.

HUD Response: The benefits of narrowing the digital divide through expansion of Internet service are well documented. The Council of Economic Advisers Brief, issued in March 2016, and entitled "The Digital Divide and Economic Benefits of Broadband Access," demonstrates such benefits. (See https://www.whitehouse.gov/sites/default/files/page/files/20160308_broadband_cea_issue_brief.pdf.) HUD understands that the costs of installing broadband infrastructure will vary given the geographic area in which the construction or substantial rehabilitation is to take place and that, given such variations, the costs of labor and materials will not be uniform across the Nation. Some costs may be lower because the jurisdiction in which the installation is occurring may already have a strong broadband infrastructure in place that would reduce the cost of a HUD funding recipient to provide such infrastructure. However, given the comments received, HUD has revised its costs analyses found in Section V of this preamble.

Whatever the cost of the installation of a broadband infrastructure, that cost is borne by HUD in the funds awarded to the funding recipient, or the HUD funds are taken into account when leveraging them for rehabilitation funding. There is no mandate in any of the HUD programs covered by this rule to undertake new construction or substantial rehabilitation.

While HUD funds will cover the cost of installation of the broadband infrastructure, HUD understands that, in tight budgetary times, installing broadband infrastructure may be too expensive for the construction budget to incorporate, given other construction or rehabilitation requirements such as energy efficiency features or improvements or accessible housing features needed by the elderly or persons with disabilities. In such cases, the final rule provides that a funding recipient may be exempted from compliance if 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.

HUD will continue to explore the possibilities of reducing the cost of

broadband infrastructure, including allowing HUD funds to be used for operation or maintenance costs or facilitating group purchases to reduce the costs of the infrastructure itself.

Exceptions

Many commenters weighed in on the exceptions to the broadband infrastructure requirements. Several requested examples of projects that would fall under the listed exceptions or more detailed definitions of the provided exceptions. Commenters suggested that, in addition to the exemptions currently included, HUD provide an exception for scattered-site properties with 1 to 4 units.

Some commenters stated that having a building in a rural location should not exempt the housing provider from providing broadband infrastructure as, while the connection to the building may be more expensive, a rural location does not increase the price of installing infrastructure in the building itself. Other commenters stated that requiring the installation of infrastructure where broadband is not currently available could result in the buildings having obsolete infrastructure when broadband access is provided.

Regarding the feasibility determination, some commenters believed that the owner should be the proper entity to determine whether installing broadband infrastructure is feasible, while others stated that HUD should make that determination, moving as quickly as possible to avoid delays in projects. Commenters also requested additional information on the infeasibility exception, particularly what documentation developers should maintain about any determination of feasibility, and any specific formula or source of pre-rehabilitation estimates that HUD will require. Commenters asked at what point a project would be considered infeasible; some stated that the threshold of feasibility should be set such that costs of broadband installation that are over 5 percent of the construction budget should be considered infeasible.

Commenters suggested that HUD should consider the costs of maintaining and operating the infrastructure in determining feasibility. Commenters reminded HUD that, in the future, increased speed requirements could impact the feasibility of installing broadband infrastructure. Commenters also suggested that HUD encourage installation of broadband infrastructure in common areas if it is too expensive to install in every unit.

HUD Response: This rule only applies to buildings with more than 4 rental

units, so HUD does not believe an exemption for scattered-site properties is needed.

For the existing exemptions from the rule's requirements, this rule places the burden of determining whether or not an exemption applies and documenting the basis for the determination on the funding recipient. HUD will provide additional guidance with examples and possible ways to make such determinations. HUD also appreciates and supports the suggestion that if a funding recipient determines that providing broadband infrastructure to every unit is too expensive, the funding recipient should consider providing broadband infrastructure to common areas at the property.

HUD notes that a building's location in a rural area not currently served by broadband does not necessarily mean that broadband will not be available in the foreseeable future. In addition, the current unavailability of broadband service to a property does not automatically mean that installing the broadband infrastructure is cost prohibitive. However, HUD acknowledges that, in some situations, the fact that broadband will not be available to a property for an extended time period could be a legitimate justification for meeting the "location" exemption, particularly if the window before broadband service is available is long enough to potentially render any infrastructure installed now obsolete by the time such service is available.

In some programs, maintenance and operating costs are considered eligible expenses of the funding program, and, therefore, there is no need to consider those costs when determining the cost feasibility of installing the broadband infrastructure in the first place. At this time, it is beyond the scope of this rulemaking to amend other program regulations (which are sometimes based on statutory limitations) to allow such costs when it is not currently allowable. However, HUD will continue to look for situations in which program regulations can be revised to allow Internet operation and maintenance costs to be eligible uses of program funds.

Effectiveness Timeline

Commenters also asked for additional detail on the timing of when the requirements of the new rule would apply. Some stated that for substantial rehabilitation, HUD should state that any project beyond the earliest stage of project budget development should be exempted from the rule. Commenters also suggested that the rule should not apply if a request for proposals (RFP) has been issued for a given project.

HUD Response: HUD fully recognizes that imposing additional requirements on projects that have already established budgets would have negative impacts on those new construction or substantial rehabilitation plans. HUD has, therefore, put specific applicability language into each program's regulations specifying the date or point in the development process after which projects will be subject to these new requirements. HUD intends in particular to issue additional guidance for the Project-Based Voucher (PBV) program and any substantial rehabilitation that may occur after a Housing Assistance Payments (HAP) contract has been signed.

However, HUD encourages funding recipients who are currently developing projects for new construction or substantial rehabilitation that would not be covered by this rule to seriously consider whether they can include broadband infrastructure in those construction or rehabilitation plans.

Infrastructure Design

Commenters suggested other changes to HUD's requirements for the broadband infrastructure. Several stated that the broadband wiring should enter the building at a central point and then flow to each unit and common space in the building. Commenters stated that HUD should encourage building owners to consider ways to future proof the infrastructure, including how to replace broken wires and how to make access points easily accessible. Others wrote that HUD should specify that buildings using wireless should have sufficient access points to ensure that each unit has fast, reliable service.

Commenters also stated that HUD should require broadband infrastructure be provided for common areas and meeting spaces.

Some commenters objected to HUD allowing broadband over power lines (BPL) or very-high-bit-rate digital subscriber lines (VDSL), as the commenters felt those technologies needed significant improvements and more widespread adoption to become viable ways of receiving broadband.

HUD Response: This final rule does not require a specific form of broadband infrastructure, as long as the infrastructure meets the speed requirements and complies with State and local building codes. This rule does not supersede any State or local building codes that may apply to the installation of broadband infrastructure. HUD expects funding recipients to consider the costs of installation, as well as operation and maintenance, when deciding which form of broadband infrastructure to install. HUD also

encourages all funding recipients to include broadband infrastructure in a way that conforms to standards for resilient construction.

In addition, HUD is not requiring the installation of broadband infrastructure in common areas and meeting spaces, but HUD highly encourages funding recipients to do so when possible. In projects where installing such infrastructure in individual units is cost prohibitive, HUD encourages funding recipients to install broadband infrastructure in common areas, unless the recipient determines that is also cost prohibitive.

Internet Service Providers (ISPs)

Several commenters stated that HUD should encourage housing providers to install broadband infrastructure that enables multiple competitive providers in the same project, or a managed solution to allow for subsidized services. Commenters stated that HUD should prohibit owners from entering into arrangements with providers that limit other providers' access to inside wiring, interfering with the right of residents to request or receive broadband service from a specific provider, or entering into exclusive marketing arrangements in HUD-supported housing.

Commenters stated that infrastructure running from the street to the building should have sufficient conduit capacity to allow for use by multiple providers.

HUD Response: As noted in response to the prior comments, HUD leaves the precise nature or manner of installation of broadband infrastructure to standards and requirements set by State and local codes. HUD does recognize that it is important to provide as much choice as possible regarding service providers. However, sometimes, exclusive contracts allow for the provision of broadband service at a much lower rate than would otherwise be available. HUD therefore declines at this time to restrict housing providers' ability to enter into limited service contracts, but would like to recommend caution for public housing agencies (PHAs) considering exclusivity contracts.

Programs

Commenters were divided on whether HUD should include additional programs beyond those in the proposed rule. Some wrote that HUD should not include more programs. Others asked that HUD include all programs providing housing assistance for low-income populations, which may make the regulation easier to enforce in general. Commenters also stated that HUD should include all multifamily

programs, while reconsidering including Continuum of Care (CoC) programs, as they help with shelter needs, not long-term housing solutions.

HUD Response: The number of HUD programs that provide for new construction and substantial rehabilitation has not expanded greatly over the years. HUD's Choice Neighborhoods program was the successor to HUD's HOPE VI program. HUD's Housing Trust Fund program is a new program that provides, among other things, for the production of affordable housing. If future HUD programs, whether existing or new, provide for the new construction or substantial rehabilitation of multifamily rental housing, HUD will incorporate these requirements into those programs. In addition, CoC funds long-term housing solutions as well as temporary housing solutions. Therefore, HUD finds it appropriate to include broadband infrastructure in these projects.

Sanctions

Commenters suggested some sanctions HUD could consider. Some stated that HUD should fine owners for inappropriate use of exemptions from the requirements, perhaps using the funds for digital literacy programs. Commenters stated that HUD could, in egregious cases, disqualify recipients from future HUD funding. Other commenters suggested that instead of sanctions, HUD could require funding recipients to develop ways to bring the Internet to a project's residents.

HUD Response: For every HUD program, there are corrective and remedial actions available to HUD for funding recipients who do not follow their regulatory requirements. These corrective and remedial actions vary among programs, depending on existing statutory and regulatory authority. At this time, developing additional program-specific remedies is outside the scope of this rulemaking. However, in the event that a funding recipient does not follow the requirements of this rule, HUD will use the options currently available to pursue such violations.

Substantial Rehabilitation

Commenters suggested that HUD reconsider applying the requirements to substantial rehabilitation projects. Others suggested that HUD expand the definition to include other trigger activities, such as updating or replacing coaxial cables, installing fiber optics, or installing Ethernet. Commenters stated that the definition of substantial rehabilitation should not include the electrical system standard, because work on electrical systems does not

always translate easily into providing broadband infrastructure.

Commenters addressed HUD's question about how to determine whether a rehabilitation project rises to the level of substantial rehabilitation. Some stated that HUD should rely on pre-rehabilitation cost estimates because, if there are unexpected expenses that take the project over the substantial rehabilitation threshold, adding broadband requirements on top of those expenses may be too much for the project. However, other comments stated that HUD should use actual costs to judge the substantial threshold.

Commenters also asked how the standard applies to scattered sites, where only a single unit or a few units are being renovated.

HUD Response: HUD believes that it is important to include substantial rehabilitation in this rule to maximize the number of families who can benefit from the rule, while minimizing costs as much as possible. In addition, HUD believes that maintaining the electrical system standard as one way to determine substantial rehabilitation is appropriate, as such work would likely result in exposing a building's basic infrastructure in such a way as to allow for the installation of broadband infrastructure.

HUD appreciates the responses to the question about which construction costs to use when determining whether or not work rises to the level of substantial rehabilitation. HUD has decided that the percentage-of-cost threshold for substantial rehabilitation should be based on the pre-rehabilitation cost estimates, and this has been incorporated into the substantial rehabilitation definition.

Because this rule only affects structures with more than 4 rental units, scattered-site housing with fewer than 4 rental units is not covered by the rule.

Additional HUD Support for Broadband

Commenters stated that HUD should couple the rule with additional support for subsidies and digital literacy programs, including treating the provision of broadband service as an eligible expenditure in affordable rental housing. Others asked for additional funding for the infrastructure costs themselves. Commenters further stated that HUD could leverage its size and buying power to secure broadband service at lower prices. Some suggested that HUD should explore additional subsidies to use "white space" in the over-air spectrum in rural areas for wireless Internet or to subsidize seniors or families with children.

Commenters also suggested that HUD should coordinate with the United States Department of Agriculture (USDA) to work with "last mile" connection issues.

HUD Response: This rule, and HUD's broadband rule providing for assessing Internet service needs in the consolidated planning process, are not HUD's final responses to narrowing the digital divide. Through HUD's ConnectHome initiative, HUD is striving to narrow the digital divide in the housing arena. In addition, HUD has and will continue to work with other Federal agencies, such as the USDA and the National Telecommunications and Information Administration.

HUD encourages funding recipients to make their own connections with other programs, or to establish local requirements to accomplish these goals. HUD will continue to seek out opportunities to foster such partnerships at the national and local level. Several HUD programs can be used to pay for such complementary services, and HUD encourages funding recipients to leverage those resources. HUD will also continue to explore ways to expand the eligibility of such complementary services and for infrastructure work in HUD programs. However, Congress, not HUD, establishes program funding levels, so we are unable to provide additional programmatic funds at this time.

Other Comments

Commenters asked HUD to expand the scope of the rule beyond new construction and substantial rehabilitation to also include existing facilities. Commenters also disagreed with HUD's encouragement to deploy competing infrastructure or delivery mechanisms.

HUD Response: As noted in responses above, this rule and its companion broadband rule regarding the consolidated planning process are not HUD's final responses to narrowing the digital divide. HUD is continuing to examine other areas for which HUD has authority and oversight to determine whether there are other avenues HUD can take to narrow the digital divide. At this time, however, it is outside the scope of this rulemaking to require funding recipients to retrofit existing buildings with broadband infrastructure unless rehabilitation work is being undertaken with HUD program funding.

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 Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed, this rule furthers HUD’s efforts to narrow the digital divide in low-income communities served by HUD. Specifically, HUD is requiring 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 rule are difficult to quantify, but they can be described qualitatively.

A. Benefits

The benefits of narrowing the digital divide are 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.⁹ 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,¹⁰ as well as in persons with disabilities.¹¹

Additionally, individuals with vision, learning, and physical disabilities affecting manual dexterity rely on assistive technologies to interact with computers and the Internet, and such technologies function best on broadband Internet. Without access to broadband infrastructure, these individuals may have limited access to basic services that are now offered online.

HUD recognizes that the rule’s limited scope in only requiring the installation of infrastructure, instead of providing

Internet access, also limits the benefits of the rule. Specifically, the benefit of the rule is that where broadband Internet can be made available at a limited price, the tenants, 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 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 rule, given the variety of available technologies that may be used to satisfy the new broadband requirements. However, available data indicate that any costs associated with this 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
Wired:			
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.
Wireless:			
Satellite	Over the Air—satellite	None	Router & Modem.
Fixed Wireless	Over the Air—Longer Range Directional Equipment.	None	Router & Modem.
Mobile Wireless	Over the Air—Cellular	None	Router & Modem.
Wireless Fidelity (Wi-Fi)	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

⁹ 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>.

¹⁰ *Ibid.*

¹¹ Eve Hill, Department of Justice, Testimony before the Senate Committee on Health, Education,

Labor, and Pensions (February 7, 2012), available online at <http://www.justice.gov/sites/default/files/testimonies/attachments/02/07/12/02-07-12-crt-hill-testimony.pdf>.

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 (\$0.00). However, the availability of wireless broadband service is limited and evolving, so HUD expects many builders will install wired broadband infrastructure to ensure that the requirements of this rule are met.

Building costs of installing wired infrastructure are limited to in-dwelling

wiring, as this is all that is required by the 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 borne by the service provider.

The average per-unit cost for wiring for broadband Internet is approximately \$200 (see Table II). These costs are simply estimates of one method of complying with the requirements of the 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)¹²

Item	Quantity	Low	High
Electrical Wiring Labor (Hours)—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
Electrical Wiring Materials and Supplies—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 rule is drafted so as to minimize the costs of the new installation requirements. For example, the 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 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 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 rule only requires the installation of broadband infrastructure that is “accessible” in each unit. The 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 regulatory changes is the fact that the definition of broadband infrastructure includes 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, 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 rule, so the number of affected units would be smaller than is contained in the table. In addition, data on affected units newly constructed using CDBG funding are 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
New Construction									
2012 .....	.....	506	2,405	.....	146	703	.....	.....	.....
2013	110	583	2,034	.....	44	297	.....	19,424	22,492
2014	100	482	1,592	.....	.....	.....	.....	11,596	.....
Rehabilitation									
2012 .....	.....	.....	25	.....	.....	36	.....	.....	.....

¹² http://www.homewyse.com/services/cost_to_install_electrical_wiring.html.

TABLE III—HUD-ASSISTED NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION—Continued

	Sec. 8 RAD	811 PRAC	202 PRAC	Sec. 8 202	HOPE VI	PIH	CDBG	HOME Rental	Totals
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 units) HUD or standard-market new construction typically provides telephone landlines and many provide cable TV connectivity.¹³ 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.^{14 15} In recent years, HUD’s competitive grants for new construction under the Choice Neighborhoods program have required the provision of broadband.¹⁶ Therefore, this rule simply codifies what is considered common practice in at least one program.

Accordingly, most recipients and owners already meet the standards established in the rule, and the new regulatory requirements will impose minimal, if any, new economic costs. HUD has addressed those rare situations where the new requirements may prove too costly by allowing exceptions to the installation requirements where the installation is documented to be economically infeasible due to location or building characteristics.

¹³ 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.

¹⁴ NAHB, Multifamily Market Survey, *supra*.
¹⁵ Note that HUD’s definition of accessibility is more restrictive than the FCC’s because HUD considers only the building itself.

¹⁶ 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.”

The docket file is available for public inspection online at www.regulations.gov under the docket number and title of this rule.

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.

This rule provides 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 programs covered by this rule require a funding recipient to undertake new construction or substantial rehabilitation. Instead, new construction and substantial rehabilitation are eligible activities that funding recipients may take using HUD funds. Therefore, small entities will not incur any costs they would not otherwise 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 rule will not have a significant economic impact on a substantial number of small entities.

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 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 rule were submitted to OMB under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) for review and approval and are pending or are covered by OMB control numbers 2577–0269, 2577–0191, 2506–0165, 2506–0077, 2506–0085, 2506–0170, 2506–0199, 2506–0171, 2506–0133, 2577–0169, 2577–0157, 2502–0587, 2502–0612, 2502–0462, and 2502–0608. 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.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage 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)). That FONSI remains applicable to this final rule and is available for public inspection online at www.regulations.gov under the docket number and title of this rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempts 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 amends 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, including wireless infrastructure, that is capable of providing access to Internet connections in individual housing units, and that meets 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 for which the pre-construction cost estimate 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 pre-construction 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 paragraph (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.* For new commitments made after January 19, 2017 for a new construction housing project of 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 determines and, in accordance with § 92.508(a)(3)(iv), documents the determination 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.* For new commitments made after January 19, 2017 for a substantial rehabilitation project of 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 determines and, in accordance with § 92.508(a)(3)(iv), documents the determination 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 paragraph (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.* For new commitments made after January 19, 2017 for a new construction housing project of 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 determines and, in accordance with § 93.407(a)(2)(iv), documents the determination 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.* For new commitments made after January 19, 2017 for a substantial rehabilitation project of 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 grantee determines and, in accordance with § 93.407(a)(2)(iv), documents the determination 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 substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units, for which CDBG funds are first obligated by the recipient on or after April 19, 2017, must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the recipient determines and, in accordance with § 570.506, documents the determination 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 substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units, for which CDBG funds are first obligated by the recipient on or after April 19, 2017, must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the recipient determines and, in accordance with § 570.506, documents the determination 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)(5) to § 570.482 to read as follows:

§ 570.482 Eligible activities.

* * * * *

(c) * * *

(5) *Broadband infrastructure in housing.* Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units, for which CDBG funds are first obligated by the State's grant recipient on or after July 18, 2017, must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the State or the State's grant recipient determines and documents the determination 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.

* * * * *

■ 11. In § 570.506, redesignate paragraph (c) as paragraph (c)(1) and add a new paragraph (c)(2) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(c) * * *

(2) Where applicable, records which either demonstrate compliance with the requirements of § 570.202(g) or § 570.204(a)(5) or document the State's or State's grant recipient's basis for an exception to the requirements of those paragraphs.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

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

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

■ 13. 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, for which HOPWA funds are first obligated by the grantee or project sponsor on or after January 19, 2017 must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee or project sponsor determines and, in accordance with § 574.530, documents the determination that:

(a) The location of the new construction or 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 578—CONTINUUM OF CARE PROGRAM

■ 14. 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).

■ 15. 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 and funded by a grant awarded after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the grantee determines and, in accordance with § 578.103, documents the determination 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.

■ 16. 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 and funded by a grant awarded after January 19, 2017 must include installation of broadband infrastructure, as this term is defined in 24 CFR 5.100, except where the grantee determines and, in accordance with § 578.103, documents the determination 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

■ 17. 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.

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

§ 880.212 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or 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 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

■ 19. 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.

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

§ 881.212 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or 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 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

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

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

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

§ 883.314 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

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

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

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

§ 884.125 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

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

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

■ 26. Add § 886.140 to subpart A to read as follows:

§ 886.140 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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.

■ 27. Add § 886.340 to subpart C to read as follows:

§ 886.340 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 28. 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.

■ 29. 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 substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and funded by a grant awarded after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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.

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

§ 891.550 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and funded by a grant awarded after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or 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 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 31. 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).

■ 32. 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 substantial rehabilitation is defined in 24 CFR 5.100, of a building with more than 4 rental units and funded by a grant awarded or Capital Funds allocated after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the PHA determines and, in accordance with § 905.326, documents the determination 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

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

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

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

§ 983.157 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and where the date of the notice of owner proposal selection or the start of the rehabilitation while under a HAP contract is after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or 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.

Dated: December 15, 2016.

Nani A. Coloretti,

Deputy Secretary.

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB76

Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains an amendment to a final regulation that describes how states may design and operate payroll deduction savings programs for private-sector employees, including programs that use automatic enrollment, without causing the states or private-sector employers to have established employee pension benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA). The amendment expands the final regulation beyond states to cover qualified state political subdivisions and their programs that otherwise comply with the regulation. This final rule affects individuals and employers subject to such programs.

DATES: This rule is effective 30 days after the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Janet Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

A. The 2016 Final Safe Harbor Regulation

On August 30, 2016, the Department issued a final regulation establishing a safe harbor pursuant to which state governments can establish payroll deduction savings programs for private-sector employees, including programs with automatic enrollment, without causing either the state or the employers of those employees to have established employee pension benefit plans subject to ERISA. The Department published the safe harbor regulation in response to legislation in some states, and strongly-expressed interest in others, to encourage private-sector employees to save for retirement by giving those employees broader access to retirement savings arrangements through their employers. The safe harbor regulation became effective on October 31, 2016.

As the Department noted in the final regulation's preamble, concerns that tens of millions of America's workers do not have access to workplace retirement savings arrangements led some states to establish state-administered programs that allow private-sector employees to contribute salary withholdings to tax-favored individual retirement accounts described in 26 U.S.C. 408(a), individual retirement annuities described in 26 U.S.C. 408(b), and Roth IRAs described in 26 U.S.C. 408A (collectively, IRAs). California, Connecticut, Illinois, Maryland, and Oregon, for example, have adopted laws along these lines.¹ Those programs generally require certain employers that do not offer workplace savings arrangements to automatically deduct a specified amount of wages from their employees' paychecks, unless an employee affirmatively chooses not to participate in the program, and to remit those payroll deductions to state-administered programs consisting of IRAs established for each participating employee. All of these state initiatives allow employees to stop payroll deductions at any time once they have begun, and they typically require that employers provide employees with program-generated information, including information on employees' rights and various program features. None of the programs, however,

¹ California Secure Choice Retirement Savings Trust Act, Cal. Gov't Code §§ 100000–10044 (2012); Connecticut Retirement Security Program Act, P.A. 16–29 (2016); Illinois Secure Choice Savings Program Act, 820 Ill. Comp. Stat. 80/1–95 (2015); Maryland Small Business Retirement Savings Program Act, Ch. 24 (H.B. 1378) (2016); Oregon Retirement Savings Board Act, Ch. 557 (H.B. 2960) (2015).