



July 18, 2016

Regulations Division  
Office of General Counsel  
Department of Housing and Urban Development  
451 7th Street SW., Room 10276  
Washington, DC 20410-0500

Subject: Submission of Comments  
Docket No. FR-5891-P-01

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

The Council of State Community Development Agencies (COSCDA) represents state housing and community development agencies responsible for administering the Department of Housing and Urban Development (HUD) programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships (HOME) program and the McKinney-Vento Homeless Assistance Programs. On behalf of the members of COSCDA, I respectfully submit the following comments regarding the proposed rule on "Modernizing HUD's Consolidated Planning Process To Narrow the Digital Divide and Increase Resilience to Natural Hazards".

We appreciate the opportunity to comment on these proposed changes to the Consolidated Planning Process. Our general and more detailed comments are below.

General Comment:

COSCDA sees the proposal to require jurisdictions to consider two additional concepts (broadband access and disaster mitigation) in their Consolidated Planning (Con Plan) efforts as HUD overreaching its authority. This proposal is an unfunded mandate. We understand the importance of low- and moderate-income residents in communities having broadband access to improve their economic outlook and also of mitigating disasters particularly in low-and moderate-income (LMI) areas, however, states have maximum feasible deference to determine their own needs and priorities for distributing CPD funds. The inclusion of these two elements should be optional. This rule would require additional time and effort from already-stretched state staff. Including these elements in the Con Plan is not reasonable since most state agencies that administer the CPD programs do not have authority over the administration of either broadband assistance or disaster mitigation.

Specific comments:

91.110, 91.115 and 91.310: **Broadband needs of low-and moderate households.**

- HUD has not provided clear guidance on how to eligibly use CDBG to fund broadband projects. HUD has repeatedly stated broadband cannot be funded under the LMI area benefit national objective because there is no way to measure the LMI benefit in the service area. Anyone can connect once broadband service is provided, and it is thought LMI households are less likely to connect than non-LMI households. HUD has implied broadband can only be funded as an LMI direct benefit housing or job creation activity. Therefore, it appears the only eligible costs are residential, commercial, and industrial connections in areas that already have broadband service. It is unclear whether there is a demand or cost for these connections.
- In adherence with maximum feasible deference, states should determine the activities which will be funded through CPD funds in their states. Many states focus on critical infrastructure needs, such as water and wastewater issues. It would not be appropriate to utilize CDBG funds to assist broadband infrastructure needs in communities when other more serious health and safety issues are needed. Housing rehabilitation programs administered by housing and community development agencies through CPD usually address serious health and safety violations that need to be corrected. It would be not be appropriate to connect these homes to the Internet and not remedy a more serious concern. Broadband access may not be a priority in most states. Time and resources should be spent to develop real strategies to assist low-and moderate households with immediate health and safety concerns.
- HUD states in the proposed rule that “it does not anticipate that the costs will be significant.....since the regulatory changes...merely build upon similar existing requirements....rather than mandating completely new procedures.” COSCDA disagrees with this statement. The requirement to review communities’ access to broadband and to add additional public and private agencies and entities to consult with is a completely new requirement and will require additional time and effort to determine.
- States cover large areas. For state community development agencies to be tasked with evaluating every eligible town in the state to determine if they have broadband access or if they don’t have adequate competition would take time and funding resources away from other areas in the comprehensive planning process, even if this information is available in various formats on the Internet.

91.110, 91.115 and 91.31091.310: **Natural hazard risks to low-and moderate households**

- The proposed rule would require as part of CPD grantees’ required housing market analysis, an assessment of natural hazard risks to LMI residents. In many states, the state agencies that are responsible for submitting the Con Plan are not the agencies given administrative authority regarding assessing and mitigating risks from natural disasters. The responsible agencies usually offer the states’ strategy for emergency management and have in-depth knowledge of hazard mitigation in the state. It would not be appropriate for many state housing and community development agencies to be involved in a directive or management role with this effort.
- One of our members reviewed the national Climate Assessment and the Climate Resilience toolkit and found them to be very confusing. It was hard to understand how as a state, they could use this data in a meaningful way in their comprehensive plan.

- It is more impactful for this type of review to take place at the project level. Once funded, each project goes through an environmental review process. Many hazards are assessed ranging from hazardous waste and radiation to floodplain analysis. If a project site is in the floodplain it must go through the 8-step process to determine if they can move the project or mitigate the impact. States rely on site specific environmental reviews once projects are funded. These would seem to be better approaches to assessing natural disaster risks to low-and moderate households for states.
- HUD states in the proposed rule that “it does not anticipate that the costs will be significant.....since the regulatory changes...merely build upon similar existing requirements....rather than mandating completely new procedures.” For reasons similar to the broadband analysis requirement, COSCDA disagrees with this statement. The requirement to review communities’ natural hazard risks and to add additional public and private agencies and entities to consult with is a completely new requirement and will require additional time and effort to determine. The list of data sources regarding disaster risks in the proposed rule is long and substantial.
- HUD specifically invites public comments on the need for a post-disaster review (following a major disaster designation, reviewing and possibly revising the required resilience analysis). COSCDA does not recommend this type of post-disaster review or the requirement for such a reevaluation. For the reasons provided above, COSCDA does not recommend an assessment of natural hazard risks to low-and moderate–income residents as a requirement for the Con Plan. Such a review or reevaluation should be optional.

Other comments:

The proposed rule requires states to “add to the list of public and private agencies and entities that they now must consult with for preparation of their plans, to consult with public and private organizations, including broadband Internet service providers, organizations involved in narrowing the digital divide (e.g schools, digital literacy organizations)” and agencies whose primary responsibilities include the management of flood prone areas, public land or water resources, and emergency management agencies. The rule also requires jurisdictions (states) to encourage the participation of these entities in implementing relevant components of the plan. The requirement to consult with these additional entities will require increased time and effort, particularly when added to the requirement to describe broadband access and evaluate natural hazard risks for low- and –moderate income households. In many cases, private Internet providers are very guarded about where they have infrastructure, so it is nearly impossible to accurately determine what is truly available as that information is proprietary and not easy to obtain. Perhaps states could simply reference the state agencies’ websites that have more in-depth information on broadband access and natural hazard risks in the state and that actively work to resolve those issues and expand broadband coverage and mitigation efforts.

HUD writes: “Moreover, this proposed rule does not mandate that actions be taken to address broadband needs or climate change adaptation needs. Consolidated plan jurisdictions are in the best position to decide how to expend their HUD funds.” Although HUD writes in the proposed rule that it is not mandating that actions be taken, COSCDA is concerned that, if a state’s Con Plan assessment shows either of these needs but does not describe actions to be taken to address the needs, HUD will, in some cases, question why proposed actions are not included in a Con Plan assessment. HUD questioning may

lead to pressure to take actions, even though states are, as HUD acknowledges, in the best position to decide how to expend their HUD funds. HUD should adhere to its own statement in the proposed rule and “leave it to jurisdictions to consider any appropriate methods to promote broadband access or protect against the adverse impacts of climate change, taking into account the other needs of their communities, and available funding, as identified through the consolidated planning process.”

CPD Officials have recently admonished some states about their lack of capacity to effectively administer CPD programs, due to inadequate staffing levels and the excessive number of subgrantees and activities offered. HUD urged these states to reduce their program sizes and administrative burdens. This proposed rule would unnecessarily add to the administrative load of states ‘program management.

HUD has provided its cost estimate of preparing the Consolidated Plan and of the effect of the proposed regulatory change. HUD states that it does not anticipate the proposed regulatory changes will add much, if anything, to these costs. HUD also estimates the number of burden hours to adhere to the proposed regulatory change. COSCDA is concerned that HUD has significantly underestimated the additional cost as well as the number of burden hours to meet the proposed requirements.

Again, thank you for the opportunity to comment on this proposal. Please do not hesitate to contact me at 202-293-5820 if you need more information on any of our comments or recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dianne E. Taylor".

Dianne E. Taylor

Executive Director