

HUD Proposes Broadband Planning and Construction Rules

May 24, 2016

On May 18, 2016, the U.S. Department of Housing and Urban Development (HUD) proposed two sets of rules that are targeted at closing the digital divide for low- and medium-income families. HUD proposed to require state and local governments to analyze and assess broadband access, adoption, and competition as part of their comprehensive consolidated public housing plans, which serve as the basis for funding many HUD programs, including the Community Development Block Grant program. In addition, HUD has proposed to require that all new public housing construction and substantial rehabilitation funded by HUD include the installation of high-speed broadband facilities (such as Ethernet cabling and conduit).

These proposals could help bridge the digital divide faced by many households that benefit from HUD housing programs. This initiative could also benefit low- and middle-income neighborhoods generally, as the proposed change to the HUD planning process will include direct community engagement and an assessment of general community needs for digital inclusion. Public comment on these proposed rules is due July 18, 2016.

Assessing Broadband Access as Part of HUD Comprehensive Community Planning

To receive funding from many HUD programs, state and local governments must develop and maintain comprehensive housing plans. These plans typically focus on income, employment, education, and housing market data for low- and middle income neighborhoods in which HUD provides housing support. HUD is now proposing that these plans include an assessment of broadband access and adoption in those neighborhoods, in order to ensure that the digital inclusion needs are being addressed.

These “Consolidated Plans” (required by 24 C.F.R. part 91) must be completed by state and local governments and approved by HUD at least every five years in order for HUD to fund many local public housing programs. The HUD planning process is extensive: it includes community consultation, documentation of the need for public housing support, assessment of the local housing market, and development of a strategy for using HUD funding to meet community goals. There are dozens of these Consolidated Plans nationwide—for example, there are 47 effective plans in Ohio, 19 in Michigan, and 24 in Puerto Rico.

To include broadband access into this process, HUD proposes that these plans describe the broadband needs of low- and moderate-income households, assess the need for broadband wiring in housing units, and analyze broadband competition and choices available in low- and moderate-income neighborhoods. HUD anticipates that state and local housing authorities will use the National Broadband Map, FCC Form 477 data, or other data for this analysis. As noted in prior Connected Nation [Policy Briefs](#), while state programs from 2009-2014 collected and provided broadband availability data for the National Broadband Map, since 2014 the FCC has collected data on broadband availability and adoption directly from providers. However, while it has undertaken this responsibility, the FCC has not updated the National Broadband Map and instead has released some of its Form 477 [availability](#) and [adoption data](#)

only in raw formats. (FCC Form 477 broadband availability data by census tract is available only for fixed broadband services in CSV format; Form 477 adoption data for census tracts is current as of December 2014.)

In the [published notice](#), HUD states that if the broadband assessment shows that broadband “is not currently available or is minimally available,” state and local governments “must consider ways to bring broadband Internet access to low- and moderate-income residents,” and must determine “how HUD funds could be used to narrow the digital divide for low- and moderate-income residents.” HUD proposes to require state and local housing authorities to consult with broadband Internet service providers and “organizations engaged in narrowing the digital divide (e.g., digital literacy organizations)” in making these broadband assessments. An example of a public-private initiative targeted at closing the divide in public housing communities is the [ConnectHOME](#) pilot, which HUD is facilitating in 28 demonstration public housing communities across the nation.

HUD’s proposals would also require Consolidated Plans to look beyond housing to non-housing community broadband and digital inclusion needs that would be eligible for HUD funding. While HUD’s proposed rule would not require state and local housing authorities to invest directly in neighborhood broadband solutions, HUD believes that the additional analyses required by this rule may highlight areas in which funds for broadband would create economic development opportunities.

The HUD Consolidated Plan process was established in 1994 for the administration of several HUD programs, including the Community Development Block Grant (CDBG) program, the HOME Investment Partnerships program, the Emergency Solutions Grants program, and the Housing With Opportunities for Persons With AIDS program. [According to HUD](#), Consolidated Plans are “to help states and local governments assess their affordable housing and community development needs, in the context of market conditions at the time of their planning, and to make data-driven, place-based decisions on how to expend HUD funds in their jurisdictions.” HUD states that including broadband and digital inclusion needs in this planning process will help “ensure a more complete profile of the needs of their communities.”

All HUD-approved Consolidated Plans can be found on this website:
<https://www.hudexchange.info/consolidated-plan/con-plans-aaps-capers/>

To see the full text of the HUD broadband planning proposal, see:

U.S. Department of Housing and Urban Development, *Modernizing HUD’s Consolidated Planning Process to Narrow the Digital Divide and Increase Resilience to Natural Hazards*, 81 Fed. Reg. 31192 (May 18, 2016), <https://www.federalregister.gov/articles/2016/05/18/2016-11350/modernizing-huds-consolidated-planning-process-to-narrow-the-digital-divide-and-increase-resilience>

Broadband Infrastructure in HUD-Funded New Construction and Rehabilitation

In a [separate notice](#), HUD proposes to require broadband infrastructure to be included in any HUD-funded new construction or substantial rehabilitation of multifamily rental housing. HUD currently funds multifamily rental housing construction through a number of programs, including the Community Development Block Grant program, the Choice Neighborhoods Implementation Grant program, and the Section 8 project-based housing assistance programs.

The proposed rule defines “broadband infrastructure” to include cables, fiber optics, wiring, or other permanent infrastructure, such as wireless infrastructure. This infrastructure must be capable of

supporting the provision to each dwelling unit of “advanced” telecommunications services defined by the Federal Communications Commission (FCC). The FCC currently defines “advanced” residential broadband services to be 25 Megabits per second (Mbps) download and 3 Mbps upload. The HUD proposal focuses on the cost of internal wiring and providing in-building wireless access; these projects do not need to include the ongoing cost of providing residential Internet access.

In proposing the rule, HUD noted that 96% of surveyed multifamily housing developers included broadband infrastructure in their construction projects and that under the Choice Neighborhoods competitive grant program broadband infrastructure has been included in new HUD-funded construction. Broadband infrastructure (both in buildings and throughout neighborhoods) is also an approved expense for the Community Development Block Grant program.

The HUD proposal does allow for exceptions if the grantee can demonstrate that the “location” or the project “makes installation of broadband infrastructure infeasible” or that the cost of installation “would result in a fundamental alteration in the nature of its program or activity” or would be “an undue financial burden.” HUD specifically asks for comment on the cost of installing broadband infrastructure and how to identify and define situations in which that construction would be “infeasible.”

To see the full text of the HUD Broadband Infrastructure proposal, see:

U.S. Department of Housing and Urban Development, Narrowing the Digital Divide Through Installation of Broadband Infrastructure in HUD-Funded New Construction and Substantial Rehabilitation of Multifamily Rental Housing, 81 Fed. Reg. 31181 (May 18, 2016), <https://www.federalregister.gov/articles/2016/05/18/2016-11352/narrowing-the-digital-divide-through-installation-of-broadband-infrastructure-in-hud-funded-new>

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For more information about these federal broadband initiatives, as well as other broadband policy topics, please contact Connected Nation at policy@connectednation.org.