



NATIONAL LOW INCOME
HOUSING COALITION

*Dedicated solely to ending America's
affordable housing crisis*

THE CONSOLIDATED PLAN

A Potential Tool in the Affordable Housing Preservation Toolbox

February 2007

NLIHC's RegWatch is supported by The John D. and Catherine T. MacArthur Foundation.

THE CONSOLIDATED PLAN

A Potential Tool in the Affordable Housing Preservation Toolbox

Table of Contents

What is the ConPlan?	Page 1
Housing and Community Development Needs Assessment	Page 2
<i>Preservation Opportunities</i>	Page 3
Housing Market Analysis	Page 4
<i>Preservation Opportunities</i>	Page 4
Fair Housing	Page 6
<i>Preservation Opportunities</i>	Page 6
The Strategic Plan	Page 7
<i>Preservation Opportunities</i>	Page 9
The Annual Action Plan	Page 11
<i>Preservation Opportunities</i>	Page 12
The Five Stages of the ConPlan Process and Related Public Participation	Page 13
<i>Preservation Opportunities</i>	Page 15
Required Public Participation: Your Invitation to Be Involved	Page 17
<i>Preservation Opportunities</i>	Page 18
For More Information	Page 19
Appendix: Notes About Multifamily Data Sources	Page 20

The Consolidated Plan:

A Potential Tool in the Affordable Housing Preservation Toolbox

The Consolidated Plan (ConPlan) is a tool advocates can use to influence how federal housing and community development dollars are spent in their communities. The ConPlan is also an opportunity to highlight the need to preserve the existing stock of affordable housing. With the virtual elimination of federal resources for the construction of new public and assisted housing available to extremely low income people, maintaining previous years' federal investment in affordable housing is critical.

It is worthwhile for advocates to consider getting language about preservation added to local and state ConPlans, language that: describes the nature and extent of need to preserve affordable housing; makes preservation a high priority; and, directs federal and other resources toward preservation.

This guide presents a sketch of the ConPlan document and the process for creating it. The guide also suggests where affordable housing preservation language can be inserted in the ConPlan document, as well as when during the ConPlan process such language can be inserted and the jurisdiction's actions monitored.

Winning the inclusion of preservation language in the ConPlan does not guarantee that federal dollars will be allocated toward affordable housing preservation. However, it does strengthen opportunities to preserve affordable housing by establishing local public policy stepping stones that lend legitimacy and leverage for ongoing advocacy efforts.

What Is the ConPlan?

The Consolidated Plan, popularly called the ConPlan, merges into one process and one document all the planning and application requirements of four HUD block grants: HOME, Community Development Block Grants (CDBG), Emergency Shelter Grants (ESG), and Housing Opportunities for People With AIDS (HOPWA) grants. Annual performance reporting requirements of the four block grant programs are also merged into a set of documents called the CAPER. The ConPlan process and these four grant programs (in this guide, collectively referred to as "CPD" funds) are administered by HUD's Office of Community Planning and Development (CPD).

States, large cities, and urban counties that get any of these grants must have a ConPlan. In addition, Public Housing Agency (PHA) Plans (see the companion guide, *The PHA Plan: A Potential Tool in the Affordable Housing Preservation Tool Box*) must be consistent with the ConPlan. Many states cite their ConPlans when establishing priorities for allocating Low Income Housing Tax Credits (see the companion guide, *The QAP: A Potential Tool in the Affordable Housing Preservation Tool Box*).

In brief, the ConPlan requires a jurisdiction to estimate housing needs for various types of housing and categories of households; it also calls for a discussion of the nature of the

housing supply and the demand for different types of housing in the community. From this analysis of housing need, supply, and demand, a jurisdiction must create a long-range (5-year) Strategic Plan which is a policy statement of its funding and program priorities for housing. Each year, a jurisdiction must prepare an Annual Action Plan which indicates how all available resources will be used to fund housing activities intended to work toward the priority housing goals set out in the Strategic Plan.

What's In the ConPlan?

There are a number of elements in the ConPlan. This section of the guide briefly describes the elements relevant to affordable housing preservation, and highlights affordable housing preservation opportunities in each element. The regulations are frequently cited in this guide; those for cities and counties are in the Section "200" series (e.g., [24 CFR 91.200]), while regs for states are in the Section "300" series (e.g., [24 CFR 91.300]).

Housing and Community Development Needs Assessment

The ConPlan must estimate housing needs for the upcoming five years. Regulations say the needs in the ConPlan should reflect the public participation process (see pages 13 and 17). Housing data must be based on Census data provided by HUD, as updated by any properly conducted local study or "any other reliable source." NLIHC's *Out of Reach* (available at www.nlihc.org) is an excellent source of data, as is NLIHC's *Local Area Low Income Housing Database* (www.nlihc.org/research/lalihd/index.html).

[24 CFR 91.205(a)] and [24 CFR 91.305(a)]

The ConPlan must estimate housing needs by:

- Income categories, including households with incomes: below 30% of the area median income (AMI), referred to as "extremely low" income; between 30% and 50% of AMI ("low" income); between 50% and 80% of AMI ("moderate" income); and between 80% and 95% of AMI ("middle" income).
- Tenure type (whether the household rents or owns).
- Family type, including: small families (2-4 people); large families (5+); individuals; and elderly households.
- The number of people who pay too much for housing (over 30% and over 50% of their income), live in very poor quality housing, or live in overcrowded housing.

[24 CFR 91.205(b)(1)] and [24 CFR 91.305(b)(1)]

A snap shot of the first three bullet items is presented on Table 2A of the ConPlan.

The ConPlan must also estimate housing needs for:

- Public Housing residents (does not apply to states).
- Families on the public housing and Section 8 waiting lists (does not apply to states).
- Victims of domestic violence.
- Persons with HIV/AIDS and persons with mental or physical disabilities.

- Homeless facilities and services, discussed separately for individuals and for families, noting also the needs of those who have some form of shelter and those who do not. (A snap shot is presented on Table 1A of the ConPlan.)
 - The need for facilities and services for homeless "subpopulations" (for example those with drug addictions) must be described.
 - The ConPlan must describe the characteristics and needs of people who now have housing but who are threatened with homelessness.
- Supportive housing for elderly, frail elderly, and people with mental, physical, or developmental disabilities. (A snap shot is presented on Table 1B of the ConPlan.)
[24 CFR 91.205(b)(1) & (c) & (d)] and [24 CFR 91.305(c) & (d)]

Preservation Opportunities and the Needs Assessment

- ⇒ Be an active part of the public input process (see pages 13 and 17) to ensure that preservation of affordable housing is identified, discussed, and given greater attention.
 - Encourage public housing residents to talk about capital improvement needs.
 - Encourage residents of assisted housing to talk about poor maintenance of their projects or about time running out on the “use restrictions” placed on their buildings.
- ⇒ Has the jurisdiction used the most up-to-date information?
 - Have local planning bodies, universities, real estate associations, etc. conducted newer, independent studies?
 - Do the observations of residents suggest that changes have taken place, that the “official” data is now out of date?
- ⇒ Highlight data about the number of public and assisted housing units in the community.
 - Point out how many people live in these units, and if possible what their income ranges are.
 - Point out how many are elderly or handicapped.
- ⇒ Remind the public about public housing and Section 8 voucher waiting lists.
 - Look for the waiting list information in the Public Housing Agency Plan (PHA Plan), Annual Plan template, Item 1.B.*
 - Find your PHA Plan at www.hud.gov/offices/pih/pha/approved/.

*As this guide went to press, HUD issued a notice proposing to eliminate the template. Check NLIHC’s RegWatch web page (www.nlihc.org/regwatch/) to learn whether or to what extent any changes were made.

The Housing Market Analysis

Regulations require the ConPlan to contain a housing market analysis that includes a description of the supply of housing, demand for housing, and the condition and cost of housing. It must also show areas where low income people and different races and ethnic groups are concentrated (does not apply to states). [24 CFR 91.210(a)] and [24 CFR 91.310(a)]

The Housing Market Analysis must include specific inventories, including:

- Identification of all public housing developments (does not apply to states) and:
 - The number of units.
 - Their physical condition and revitalization needs. [24 CFR 91.210(b)(1)]
- The number of units assisted with other federal, state, or local funds, such as Section 8, Low Income Housing Tax Credits, and state or local housing trust funds (does not apply to states).
 - The type of household and income level served must be described.
 - There must be “an assessment of whether any units are expected to be lost from the inventory for any reason, such as the expiration of Section 8 contracts.” [24 CFR 91.210(b)(2)]
- The facilities and services for homeless people, broken down by emergency shelter and transitional housing. [24 CFR 91.210(c)] and [24 CFR 91.210(b)]
- The housing stock available to serve people with disabilities or with special needs, including people with AIDS (does not apply to states).
- The number of vacant or abandoned buildings, and whether they can be rehabbed (does not apply to states). [24 CFR 91.210(a)]

Preservation Opportunities and the Housing Market Analysis

- ⇒ Remind the jurisdiction that there must be “an assessment of whether any units are expected to be lost from the inventory for any reason, such as the expiration of Section 8 contracts.”
- Be sure this assessment is not only included, but accurate when the draft ConPlan comes out for comment.
 - Get the jurisdiction to list which projects (and the number of units) in the next five years have Section 8 contracts expiring, subsidized FHA-insured mortgages [Section 236 or 221(d)(3)BMIR] coming to term, Low Income Housing Tax Credit (LIHTC) “compliance periods” ending, or Rural Development Section 515 mortgages with expiring terms or hints of prepayment.
 - A simple resource for much of this information is available at the National Housing Trust website, www.nhtinc.org/data_map.asp. See the Appendix to learn more about this source.
 - See the Appendix to learn more about the direct data sources available from HUD.
 - Ask the jurisdiction to ask HUD which Project-based Section 8 properties are on HUD’s “watch list” because of financial or physical problems.

(Although there is no formal “watch list” for RD properties, advocates can ask their state ConPlan agencies to ask the state RD office for a list of any “troubled 515 projects”.) Be sure those properties are included in the Annual updates of the ConPlan.

- Periodically check HUD’s property disposition webpage (www.hud.gov/offices/hsg/mfh/pd/mfplist.cfm.) to detect trends in foreclosures of multifamily properties in your jurisdiction.
- ⇒ Even though the state ConPlan regs don’t require it, get your state to include information about the number of units assisted with other federal, state, or local funds.
- ⇒ Make sure that all public housing projects are included.
 - Make sure that their physical condition is accurately portrayed.
 - Make sure that there is a meaningful and realistic statement of revitalization needs presented. How does this compare with the PHA Plan, Part 7 “Capital Improvement Needs”?
 - Highlight the public housing units considered for demolition, sale, or “conversion” to vouchers. Look for this information in the PHA Plan at Part 8, “Demolition and Disposition” and Part 10 “Conversion of Public Housing.”*

**As this guide went to press, HUD issued a notice proposing to eliminate the template. Check NLIHC’s RegWatch webpage (www.nlihc.org/regwatch/.) to learn whether or to what extent any changes were made.*

- ⇒ Does the Market Analysis present the supply of housing in a way that shows various cost ranges, especially for rental units?
 - How much of that supply would be affordable to extremely low income people should they lose the federally-assisted housing they are currently living in?
 - What is the vacancy rate of those units affordable to extremely low income people - is it really available to them?
 - Are these units decent, safe, and sanitary?
 - How many (and what percentage) of the LIHTC units are targeted to people with extremely low incomes (below 30% AMI)?
- ⇒ Where are the vacant, affordable units in relation to where people are currently living and working?
 - If they lose their current, federally-assisted homes will they have access to basic services such as grocery stores, doctors, etc.?
 - If they lose their current, federally-assisted homes will they have unduly long and expensive commutes to jobs?

- ⇒ Will there be added pressure on the affordable market-rate rents if public housing is demolished or sold, or if a private owner “prepays” a HUD-subsidized mortgage or “opt outs” of the Project-based Section 8 program and converts units to condos?
 - Although tenants will get “tenant protection” or “enhanced” vouchers which stay in the community even after the displaced tenant no longer needs the voucher, if an assisted tenant moves, their former unit is no longer available to other low income residents in the future. This means that there is a net loss of affordable housing stock in the community.
 - The displaced public and assisted housing tenants with vouchers are then competing with other low income tenants for a limited supply of decent, affordable housing.

Fair Housing

Each year a jurisdiction must "certify" that it is "affirmatively furthering fair housing." This means that it: has an analysis of impediments ("AI") to fair housing choice; is taking appropriate actions to overcome the effects of impediments; and keeps records. The AI is a separate document that is not required to be a part of the Annual Action Plan. Although HUD's official "Fair Housing Planning Guide" says an AI "must be completed/updated in accordance with timeframes for the Consolidated Plan," HUD memos (September 2, 2004, most recently) have relaxed this requirement and merely say that jurisdictions "should...update the AI annually where necessary." [24 CFR 91.225(a)(1)] and [24 CFR 91.325(a)(1)]

Preservation Opportunities and Fair Housing

- ⇒ Is the loss of public or assisted housing an “impediment” to fair housing choice?
- ⇒ Will the loss of public or assisted housing have a “disparate impact” on people of a particular race or ethnicity, or who are disabled or elderly?
- ⇒ Is the Analysis of Impediments updated to take into consideration the impact of the demolition or conversion of public housing or the loss of assisted housing to market rate rents?
- ⇒ Does the AI indicate what actions the jurisdiction will take to address this problem?

The Strategic Plan

This "long-term" plan must be done at least every five years. The Strategic Plan has four overall requirements related to a jurisdiction's priorities for allocating funds to housing and community development activities.

- The Strategic Plan must describe a jurisdiction's "general" priorities for distributing its CPD money geographically and among various "categories of need," which are broken down by "activity" types (e.g., rental rehab) and household/tenure types (e.g., extremely low income renters). In addition to a description, jurisdictions must complete Table 2A (see discussion box below), which is a useful snapshot for advocates to review.
- The Strategic Plan must explain why a "category of need" is given allocation priority, particularly among extremely low, low, and moderate income households.
- The Strategic Plan must present the jurisdiction's "specific objectives" intended to address priority needs, and describe how all funds will be used to address those needs. These should be listed on Table 2C.
- The Strategic Plan must identify any obstacles to meeting underserved needs.

[24 CFR 91.215(a)(1)-(4)] and [24 CFR 91.315(a)(1)-(4)]

In addition to the above overall priority requirements, the Strategic Plan must also discuss priority needs relating to "affordable" housing, homelessness and special needs housing, and public housing.

For **affordable housing**, the Strategic Plan must explain how funding allocation priorities are based on the characteristics of the housing market, the severity of housing problems and extent of needs of the various income categories, as well as the needs of renters compared to owners. A HUD Guideline adds clarity to the regulations, repeating language in HUD's explanation of the 2006 regulations changes (the "preamble"), by declaring that a jurisdiction should also be explicit about how CPD funds will be used for the various types of housing activities, such as rehabilitation of rental units or acquisition of rental units. The regulations were changed in 2006 to reinstate as an affordable housing activity type (although only in parentheses and not on the tables) "preserving affordable housing units that may be lost from the assisted housing inventory for any reason."

[24 CFR 91.215(b)(1)] and [24 CFR 91.315(b)(1)]

For **homelessness**, the Strategic Plan must describe a jurisdiction's strategy for:

- Helping people avoid becoming homeless. HUD's Guideline adds that a jurisdiction must also describe its strategy for helping extremely low and low income people who are at "imminent" risk of becoming homeless.
- Reaching out to homeless people to determine their needs.
- Addressing needs for emergency shelter and transitional housing.
- Helping homeless people make the transition to permanent housing.

[24 CFR 91.215(d)(1)] and [24 CFR 91.315(d)]

For **public housing**, the regulations regarding the Strategic Plan only require a jurisdiction to describe how it will address the needs of public housing.

[24 CFR 91.215(c)] and [24 CFR 91.315(c)(2)]

HUD Guidelines add that the Strategic Plan should have a summary of the public housing agency's (PHA) strategy to serve the needs of extremely low, low, and moderate income families. The PHA's strategy for addressing the revitalization needs of public housing should also be summarized in the Strategic Plan. The HUD Guidelines provide an optional Table 4, "Priority Public Housing Needs," on which the PHA should identify all priority public housing restoration and revitalization needs that it either currently has or will have in the upcoming years. The Guide stresses that the priority needs should reflect the results of consultation with residents and the general ConPlan public participation process.

HUD's Priority Housing Needs and Activity Tables 2A

HUD has devised Table 2A, which forces jurisdictions to indicate whether specific types of needs are a priority. The first page of Table 2A ("Priority Housing Needs/Investment Plan Table") requires jurisdictions to indicate whether specific categories of need are priorities. Those categories of need are broken down between renters and owners; and, for each there is a further breakdown based on income level (e.g. extremely low, low, and moderate). For renters there is yet another level of detail, household size. In each category, jurisdictions must present a numerical estimate of the unmet need and the number of units it intends to assist in the future.

The second page of Table 2A ("Priority Housing Activities") lists specific categories of need based on the type of activity, such as "rehabilitation of existing rental units" or "acquisition of existing rental units." There is no specific category of need called "preservation of rental units;" however, preservation can be represented by rehab or acquisition. Here again, jurisdictions must indicate whether an activity type is a priority and indicate how many units it intends to assist in the future.

Preservation Opportunities and the Strategic Plan

- ⇒ Work to make preserving affordable housing a “priority need” in the Strategic Plan; and, if your jurisdiction uses “relative” priorities such as “high,” “medium,” or “low” priority, convince the decision-makers to designate preservation as a “high” priority.
- ⇒ Work to make the preservation genuine by getting “specific objectives” related to preservation as a “priority need” in the Strategic Plan.
 - Get “specific objectives” for public housing.
 - Get “specific objectives” for assisted housing.
 - Be sure the “specific objectives” follow HUD’s Guidelines by expressing proposed accomplishments in numerical terms (for example: number of Section 8 units preserved that encountered contract “opt outs;” the number of units saved as affordable to “low” income residents in “expiring” subsidized FHA-insured mortgage projects; or the number of units kept in the RD 515 program that could have been prepaid).
 - Be sure that the preservation “specific objectives” and numerical goals are also indicated on Transition Table 2C.
- ⇒ Be sure that the Strategic Plan describes how all funds that could reasonably be expected to be available (not just CPD dollars) will be used for each preservation “specific objective.”
 - Will the state set aside HOME and/or CDBG funds for preservation of RD Section 515 units?
 - How will the jurisdiction help preservation by assisting all parties access:
 - Any State Housing Trust Fund?
 - The Affordable Housing Program of the Federal Home Loan Bank?
 - Low Income Housing Tax Credits?
 - USDA’s Rural Development Section 515 loans?
 - HUD’s Mark-to-Market mortgage restructuring program for expiring project-based Section 8 units?
 - What will the jurisdiction do to help nonprofits acquire properties with expiring Project-based Section 8 contracts or “troubled” projects at foreclosure sales?
 - Will the jurisdiction have an affirmative policy of exercising its “right of first refusal” to purchase a troubled HUD-owned property?
- ⇒ Although there is no line on Table 2A or Table 2C for “preserving affordable housing,” advocates can reinforce the narrative statement of “specific objectives” to address “priority needs” by getting the jurisdiction to give priority to “rehabilitation of existing rental units” and “acquisition of existing rental units.”

- ⇒ If you are not successful in winning recognition of preservation as a “priority need,” be sure that the Strategic Plan explains why it is not considered a priority – this explanation might help with future advocacy efforts.
- ⇒ Be sure that the Strategic Plan complies with the regulations by describing how the characteristics of the housing market and the severity of housing needs of extremely low income renters provide the reasoning behind the priorities and actual use of funds for “preserving affordable housing units that may be lost from the assisted housing inventory for any reason.”
- ⇒ Be sure that the Strategic Plan summarizes the PHA’s plan for addressing the revitalization needs of public housing and for meeting the needs of extremely low income people if there is a plan to demolish public housing or convert it to market-rate housing.
 - Convince the jurisdiction to include the optional Table 4, “Priority Public Housing Needs.”
 - Do preservation activities get a “high” priority?
 - Do the priorities reflect the consultation with residents and with the community comments from ConPlan’s public participation process?
 - Does the PHA’s planned use of Capital Funds maximize maintenance and improvements? (If the ConPlan is silent, check out the PHA Plan, Part 7 “Capital Improvement Needs.”)
 - If the PHA has plans for “mixed-income” housing, do those plans include one-for-one replacement housing opportunities for extremely low income people?

The Annual Action Plan

The Annual Action Plan must describe each activity a jurisdiction will carry out with CPD funds in the upcoming year to address the “priority needs” and “specific objectives” in the Strategic Plan. In addition to a description, a jurisdiction must complete Table 3C, which is very useful for advocates.

[24 CFR 91.220(d)]

Most states do not directly carry out CDBG activities; instead, most states distribute CDBG to local governments which in turn undertake specific activities. States must describe how they will distribute funds to local governments and nonprofits, and there must be a description of all criteria used to select applications from localities. States must also describe how all CDBG money will be allocated among all funding categories (e.g., housing, economic development, public works, etc.).

[24 CFR 91.320(d)] and [24 CFR 91.320(k)(1)(i)]

Important required Action Plan elements, include:

- A summary of all resources expected to be available, including all federal (not just CPD dollars), state, local, and private resources. [24 CFR 91.220(c)] and [24 CFR 91.320(c)]
- A description of the reasoning behind allocation priorities. [24 CFR 91.220(d)] and [24 CFR 91.320(d)]
- An estimate of the number and type of households that will benefit (does not apply to states). [24 CFR 91.220(d)]
- The geographic areas that will get assistance and the reasons these areas have priority. [24 CFR 91.220(f)] and [24 CFR 91.320(f)]
- For CDBG-assisted activities, there must be enough detail about each activity (including location) that people can determine the degree to which they are affected (does not apply to states). [24 CFR 91.220(l)(1)(iv)]
- Actions to foster and maintain affordable housing. [24 CFR 91.220(k)] and [24 CFR 91.320(j)]
- An explanation of obstacles to meeting underserved needs, and actions to address them. [24 CFR 91.220(k)] and [24 CFR 91.320(j)]

The Action Plan must also indicate activities a jurisdiction will undertake in the upcoming year to address affordable housing, homelessness, and public housing needs.

Highlights include:

- One-year goals for the number of households to be provided affordable housing through rehabilitation, acquisition, new construction, or rental assistance activities. [24 CFR 91.220(g)] and [24 CFR 91.320(g)]
- Activities that will prevent homelessness, especially for those with incomes below 30% of the median. [24 CFR 91.220(i)] and [24 CFR 91.320(h)]
- Actions that will address the needs of public housing (does not apply to states). [24 CFR 91.220(h)]

Preservation Opportunities and the Annual Action Plan

- ⇒ Be sure the Annual Action Plan describes the actions your jurisdiction will take to “maintain” affordable housing.
- ⇒ Be sure the Action Plan summarizes all resources available to help preserve affordable housing.
- ⇒ Be sure that Table 3A contains “specific annual objectives” that reflect the Strategic Plan’s “specific objectives” relating to preservation.
 - Be sure specific annual objectives to be funded with CPD dollars are listed separately from those to be funded with other federal or non-federal funds.
 - Be sure numerical accomplishments are proposed for each preservation specific annual objective.
- ⇒ Be sure the Annual Action Plan describes how the PHA and the jurisdiction will use available resources to meet the ongoing needs of public housing residents by maintaining and/or renovating projects.
- ⇒ If you are working on the state ConPlan get the state to structure its CDBG and HOME distribution practices to provide a set aside or extra points for projects designed to preserve affordable housing.

Five Stages of the ConPlan Process and Related Public Participation

The ConPlan calendar has five stages. This section briefly describes the five stages and their related public participation requirements. Next, this section suggests preservation-related action opportunities at each stage.

1. Identify Needs

The law requires a public hearing to get peoples' ideas on housing needs. HUD's regulations require this hearing to take place before a “proposed” ConPlan, or a draft, is published for comment. (See page 17 for more about other public participation requirements, and page 2 for more about the content of the ConPlan’s “Housing Needs” component.)

[24 CFR 91.105(e)] and [24 CFR 91.115(b)(3)]

2. Proposed ConPlan

There must be a notice in the newspaper that a draft, or “proposed,” ConPlan is available. Complete copies of the proposed ConPlan must be in public places, such as libraries. A "reasonable number" of copies of a proposed ConPlan must be provided for free. There must be at least one public hearing "during the development of the ConPlan" (does not apply to states). The public must have at least 30 days to review and comment on the proposed ConPlan.

[24 CFR 91.105(b)(2) - (4)] and [24 CFR 91.115(b)(2) & (4)]

3. Final ConPlan

The jurisdiction must "consider" public comments about the proposed ConPlan, attach a summary of the comments to the final ConPlan, and explain in the final ConPlan why peoples’ suggestions were not used, if they were not. A copy of the final ConPlan must be available to the public.

[24 CFR 91.105(b)(5)] and [24 CFR 91.115(b)(5) & (f)]

4. Amendments to the ConPlan

The ConPlan must be amended if there are any changes in priorities, or in the purpose, location, "scope," or beneficiaries of an activity, or if money is used for an activity not mentioned in the Action Plan. If there is a “substantial amendment,” then public participation requirements are triggered. HUD allows the jurisdiction to define “substantial amendment.” At a minimum, however, the regulations for local governments say that a “substantial amendment” must include a change in the use of CDBG funds, and for states a change in the way a state allocates CDBG money to small towns and rural areas.

[24 CFR 91.105(c)(1)], [24 CFR 91.101(c)(1)], and 24 CFR 91.505(a) & (b)]

The public participation requirements for a “substantial amendment” include: giving "reasonable" notice that a “substantial amendment” is proposed; making the “substantial amendment” available to the public; and, providing 30 days for public review and comment. The jurisdiction must "consider" peoples' comments and attach a summary of them.

[24 CFR 91.105(c)(2) & (3)] and [24 CFR 91.115(c)(2) & (3)]

5. The Annual Performance Report

In the Performance Report, a jurisdiction shows what it actually did to meet housing needs. The Performance Report must include a description of the money available and how it was spent, the location of projects, the number of families and individuals assisted, and the number of people assisted by income category, including those with income below 30% of the area median income. [24 CFR 91.520]

The public participation requirements related to the Performance Report are similar to those for a “substantial amendment,” but with only a 15-day comment period. [24 CFR 91.105(d)] and [24 CFR 91.115(d)]

The Annual Performance Report contains a number of computer-based sets of records. Four of these are explicitly available to the public. For local jurisdictions, one is the Grantee Performance Report (GPR), also known as IDIS Report C04PR03; it applies only to CDBG, yet it provides extensive detailed information about each activity funded by CDBG. Advocates should be sure to get a copy of the GPR. Another report is called the CAPER (IDIS Report C04PR06), which is a general, aggregate picture of what the jurisdiction accomplished. For states, a Performance Evaluation Report is required which gives you basic information about each project funded with CDBG during the year.

For HOME-assisted activities, the key IDIS report is C04PR22, “Status of HOME Activities” which lists all HOME-assisted activities open and funded as well as closed out, by address, number of units, and dollar amounts committed and disbursed.

As this guide goes to press, CPD is beginning to implement an additional layer of reporting called “Performance Measurement System” which will include more information, including housing information such as how many units in a project are “affordable” and how many years they are required to be “affordable”. Chapter 4 of a Training Manual and Guide focuses on housing, www.hud.gov/offices/cpd/about/performance/training/index.cfm.

Preservation Opportunities During the Five ConPlan Stages

Opportunities at the Needs Identification Stage

The Needs Identification stage is the first opportunity to raise public awareness about the importance of preserving the existing stock. Advocates can take advantage of the public hearings to inform local elected officials, other policy makers, the media, and the community at large about the federal government's investment in affordable housing in previous years. Handouts and testimony can be prepared showing how much public and assisted housing there is and how important it is to residents.

Highlight the limited supply of affordable market-rate housing in the community, and talk about its low vacancy rate and/or substandard quality. Impress upon officials the added pressure on the affordable market-rate housing stock if federally-assisted units are lost.

Residents can testify about the sense of community they have at their public housing or assisted housing developments, and what it would mean to lose that sense of community if their developments are demolished or converted to market-rate housing. Tenants can also remind policy makers of the lifeline this affordable housing provides their families.

If projects are in jeopardy due to pressures to convert them to market rate housing or to some other use, underscore the hardship this will cause current and future residents. If a project is "troubled" due to poor maintenance, demonstrate how rehabilitation is a more responsible husbanding of this earlier public investment, and how rehabilitation is a far more economical alternative than new construction.

Opportunities at the Proposed ConPlan Stage

Get a copy of the proposed ConPlan to check whether affordable housing preservation was given the attention you requested. Just because preservation was stressed at the Needs Identification stage, that doesn't mean it was included or adequately addressed in the draft ConPlan. Although some discussion about preservation might have been added as a result of your advocacy efforts, check whether affordable housing preservation was deemed a "priority" need. (Some jurisdictions simply indicate whether a category of need is a "priority", while others indicate relative priority such as "high" priority or "medium" priority.)

Having affordable housing preservation recognized as a “priority” need is a good first step; however, it can be meaningless if no money will be allocated toward it. Be sure that the Annual Action Plan actually proposes to allocate an adequate amount of funds in the upcoming year for affordable housing preservation. Also, be sure that the Action Plan specifies the source(s) of the funds to be allocated, and then assess whether securing such funds in the indicated amounts is realistic. Study the details of programs proposed for preservation; are they designed to succeed? (See page 7 about priority setting in the Strategic Plan, and page 11 about allocating funds in the Annual Action Plan.)

Prepare comments about the draft ConPlan’s approach to affordable housing preservation, and deliver these comments verbally at the hearing, as well as in writing. If the draft language is good, be sure to support it. Suggest improvements if necessary. If affordable housing preservation was ignored or inadequately addressed in the draft ConPlan, despite strong input at the Needs Identification stage, raise the issue again (and think of new allies to bring on board or other decision-makers to inform and engage) .

Opportunities at the Final ConPlan Stage

If the final ConPlan does not adequately address affordable housing preservation despite input at the previous stages, then the final ConPlan must contain an explanation. The jurisdiction’s rationale for ignoring or shortchanging preservation might give advocates a handle for securing more support the next time around. Advocates do not have to wait for “the next time around;” they can immediately work to convince elected officials to amend the ConPlan.

Opportunities at the Amendments Stage

Advocates must be vigilant. Just because preservation of affordable housing was given priority status, it is possible that changes adversely affecting preservation will be made by a jurisdiction sometime over the course of the year. To ensure that advocates are notified of major changes affecting preservation, convince the jurisdiction to include in its definition of “substantial amendment” any changes to affordable housing preservation activities that impact the priority, scope, or beneficiaries of preservation activities. Advocates can work with jurisdiction staff to craft a definition that allows for practical changes without requiring public notice and comment (see page 13), while protecting preservation programs from being harmed.

Opportunities at the Annual Performance Report Stage

Be sure that affordable housing preservation programs aren't just on paper in response to your earlier advocacy...with little or no intent on the part of the jurisdiction to effectively carry them out. Ninety days after the close of the program year, the Annual Performance Report should be available. Obtain a copy and assess the extent to which affordable housing preservation programs were carried out. If there has not been sufficient action or expenditure of funds, work with staff and elected officials to identify and eliminate technical problems, and/or engage in new advocacy efforts to remove political obstacles.

Required Public Participation: Your Invitation to Be Involved

There are public participation requirements in addition to those mentioned in earlier paragraphs describing the five stages of the ConPlan. Each jurisdiction must have a written "citizen participation plan" that must be available to the public. The citizen participation plan must "provide for" and "encourage" public involvement in coming up with the ConPlan, and in reviewing any "substantial amendment" as well as the Annual Performance Report. The jurisdiction must encourage involvement by low income people, especially in low income neighborhoods and areas where CDBG money might be spent. Jurisdictions are "expected to take whatever actions are appropriate to encourage involvement by minorities, people who do not speak English, and disabled people." Local jurisdictions (not states) must also encourage involvement by public and assisted housing residents.

[24 CFR 91.105(a)(2)] and [24 CFR 91.115(a)(2)]

There must be "reasonable and timely" access to information and records relating to the ConPlan, and people must be able to review records from the last five years that are related to the ConPlan and any use of federal money covered by the ConPlan. For local jurisdictions (not states) the public must have "reasonable and timely" access to local meetings (such as community advisory committee meetings, council meetings, etc.).

[24 CFR 91.105(f) - (h)] and [24 CFR 91.115(g)]

Public hearings must be held after "adequate" notice to the public. "Publishing small print notices in the newspaper a few days before the hearing is not adequate notice," the regulations say, but "two weeks notice is adequate." HUD's Guidelines add that notice should be in nonlegal sections of newspapers, and in newspapers serving low income neighborhoods, minority populations, and non-English-speaking populations. Public Service Announcements over radio and television are encouraged by HUD, as are direct mailings and phone contacts to those who have requested it.

[24 CFR 91.105(e)(2)] and [24 CFR 91.115(b)(3)(i)]

Public hearings must be held at times and places convenient for low income people. HUD's Guidelines suggest holding hearings in the evening or on weekends, and in places at which low income people feel comfortable, especially in neighborhoods where most people who will benefit live. Where there are a "significant" number of people who do not speak English, the citizen participation plan must show how they can be involved. The jurisdiction must give written, "meaningful," and "timely" responses to written public complaints (15 days is "timely" if the jurisdiction gets CDBG).

[24 CFR 91.105(e)(3)&(4) and (j)] and [24 CFR 91.115(b)(3)(ii)&(iii) & (h)]

Preservation Opportunities in the Public Participation Process

Thanks to the work of advocates in the 1980s, the CDBG law, which is the base for the ConPlan public participation requirements, has the best public involvement provisions of any federal program. Advocates should take advantage of every opportunity built into the law and regulations to be actively engaged in the ConPlan process in order to ensure that the preservation of affordable housing is recognized in the ConPlan, given a high priority, and allocated sufficient funds.

- ⇒ Is the jurisdiction taking “whatever actions are appropriate to encourage involvement by minorities, people who do not speak English, and disabled people?”
- ⇒ Is the jurisdiction encouraging involvement by residents of public housing?
- ⇒ Is the jurisdiction encouraging involvement by residents of assisted housing?
- ⇒ Are advocates doing what they can to help residents of public and assisted housing articulate their needs to preserve their homes?

What Advocates Can Do

The ConPlan is a potentially useful advocacy tool for directing funds toward activities that will help preserve affordable housing because jurisdictions must provide for and encourage public participation, particularly by low income people. Advocates and residents should be actively engaged in the needs assessment and priority setting processes, making sure that all of the needs are identified, including preservation, and that these needs get assigned the level of priority they deserve. Through the Annual Action Plan public participation process, advocates and residents can strive to ensure that federal dollars are allocated to activities that will truly meet those high priority needs, including the preservation of affordable housing.

For More Information

- NLIHC's chapter on the ConPlan in the Advocate's Guide at www.nlihc.org/advocates/index.htm.
- HUD's Consolidated Plan web page is www.hud.gov/offices/cpd/about/conplan/index.cfm.
- HUD's "Guidelines for Preparing a Consolidated Plan: For Local Jurisdictions" is available at www.hud.gov/offices/cpd/about/conplan/toolsandguidance/guidance/#local.
- HUD's "Guidelines for Preparing a Consolidated Plan: For States" is available at www.hud.gov/offices/cpd/about/conplan/toolsandguidance/guidance/#states.
- The regulations are available at www.access.gpo.gov/nara/cfr/waisidx_05/24cfr91_05.html. However, this GPO address needs to be updated to incorporate some changes finalized on February 9, 2006 which are available at www.hud.gov/offices/cpd/about/conplan/finalrule.pdf. As of the date of this guide, the Code of Federal Regulations web site does not have the ConPlan regs on it either; perhaps by the time you are reading this it will be at www.access.gpo.gov/cgi-bin/cfrassemble.cgi.
- A detailed guidebook about the ConPlan for advocates is available at www.communitychange.org/shared/publications/downloads/conplan.pdf.

Appendix: Notes About Multifamily Data Sources

The National Housing Trust (NHT) website (www.nhtinc.org/data_map.asp.) has the following data:

- Project-based Section 8 projects, along with any FHA-insured mortgage maturity dates.
- Low Income Housing Tax Credit (LIHTC) projects.
- Rural Development (RD) Section 515 projects, however there is no information about expiration dates.

Direct HUD and RD sources are available; however, some have limited information and/or are not easily viewable and can only be downloaded at the national level in file formats such as Access, Excel, dbf, etc. The tables often have many fields, and users have to isolate their jurisdiction's projects from all other projects and then further identify those projects that expire in x years.

⇒ HUD's Multifamily Assistance and Section 8 Contract Database www.hud.gov/offices/hsg/mfh/exp/mfhdiscl.cfm can only be downloaded in its entirety. This yields two tables inside one Access database, one table for properties and one table for contracts.

⇒ HUD's Insured Multifamily Mortgage Data Base www.hud.gov/offices/hsg/comp/rpts/mfh/mf_f47.cfm.

⇒ HUD's Maturing Subsidized Mortgages data base www.hud.gov/offices/hsg/mfh/maturing_subsidized_mortgages.cfm. This is actually a webpage that has a PDF file of projects that expire before the year 2014. It was created in 2004 and does not seem to be updated.

⇒ HUD's Active Section 236 Projects data base www.hud.gov/offices/hsg/mfh/map/actloan/activesec236proj.cfm.

⇒ HUD's "PD&R" web site for the Low Income Housing Tax Credit program www.huduser.org/datasets/lihtc.html#data.

⇒ HUD's HOME Program "Open Activities Report" www.hud.gov/offices/cpd/affordablehousing/reports/open/.

⇒ RD's Section 515 (although there is no indication of mortgage term or threat of prepayment) http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp