

One local government suggested that HUD interpret "public hearing" to mean traditional public hearings, as well as, public meetings. This would give jurisdictions flexibility to use public meetings and other public forums to gather citizen comments. Formal public hearings in local government require city council members to be present and for comments to be tape recorded. The requirement for public hearing has been in the CDBG statute for many years, and HUD has not found it necessary to define what this means. Public hearings are governed by state and local law.

The question of how many hearings are required and at what point was raised by a number of commenters. Several local government representatives read the regulation to require two public hearings during the plan development process and believe only one should be required. The low-income advocates commented that the regulation should require three hearings, instead of two, each program year, indicating that they believe the CDBG statute requires three hearings. Various timeframes for these hearings were also suggested.

The proposed rule was based on the requirements of the CDBG statute, which requires (at 42 U.S.C. 5304(a)(3)(D)) that a jurisdiction have a citizen participation plan that

Provides for public hearings to obtain citizen views and respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance * * *

One local government requested that the regulation clearly say how many hearings are required and what topics are required to be covered. In an attempt to give jurisdictions as much flexibility as possible, the regulation requires a minimum of two public hearings, since the statutory language uses the plural "hearings," to be conducted at two different stages of the process. Under this wording, the jurisdiction may combine the hearing on needs for the coming year's planning with the hearing on the previous year's performance, for example. However, a jurisdiction may choose to hold one public hearing on needs, a second on the draft consolidated plan, and a third on the draft performance report.

One advocate wanted the regulation to require the hearing on needs to be expanded to permit citizens the opportunity to respond to proposals and questions. The rule has been revised to reflect the CDBG statutory language requiring response to proposals and questions.

The low-income and disability community advocates stated that the development of needs in the consolidated plan must be based on determination of housing needs made after public hearings. Several disability community advocates commented that the timeframes for citizen participation through the public hearing process do not require citizen participation in the earliest stages of the consolidated planning process, when "worst case" housing needs can be identified. They argued that timeframes permitted by the regulation significantly reduce the likelihood that meaningful housing needs information or housing strategies will be sought from persons with disabilities, advocates, or service providers as the consolidated plan is developed. The rule does require that the hearing on needs be conducted before the proposed consolidated plan is published.

One nonprofit and several low-income advocates stated that HUD must assure that meeting places and times are convenient to the persons most affected by these programs, by providing guidance in the rule. The rule requires the citizen participation plan to provide that hearings be held at times and locations convenient to potential and actual beneficiaries.

A local government interest group commended HUD for not prescribing how the needs of non-English speaking residents will be met. The rule does require that the citizen participation plan specify how the jurisdiction will meet these needs.

Clarification was requested by jurisdictions on whether flexibility is also permitted to meet the needs of disabled persons. Disability advocates stated that the physical accessibility of meeting or hearing sites should be ensured. Since accommodation for persons with disabilities is required by the CDBG statute (42 U.S.C. 5304(a)(3)(D)), by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and by the Americans with Disabilities Act (42 U.S.C. 12101-12213) and implementing regulations, it does not seem necessary for the rule to spell out exactly what is required for accommodation in this rule.

i. Comments and Complaints

Local governments and local government interest groups believe that the requirement to attach a summary of public comments or views and set forth the reasons for not accepting comments should be eliminated because it is not statutory, is too burdensome, and creates additional paperwork. One low income advocate wanted the regulation

to require detailed summaries of comments indicating the number of comments for each constituency type and responding appropriately to each comment that was not incorporated into the final version of the consolidated plan.

Section 107(c) of the CHAS statute, 42 U.S.C. 12707(c), requires the jurisdiction to consider comments and views and to attach a summary. Although the statute does not require a discussion of the consideration of the views/comments, the Department believes that such a provision strengthens the citizen participation process.

Low-income advocates suggested that the regulation include a time period from close of the comment period to submission of the consolidated plan to ensure that the jurisdiction has adequate time to consider the comments. The Department is reluctant to specify additional time periods that must be honored, but citizens can certainly seek addition of this element to a local government's citizen participation plan.

One large city and one local government interest group commented that the regulation should not require "substantive responses" to every citizen complaint within 15 days because it is not practicable in its city to respond to every comment individually within 15 days. HUD should delete the reference to 15 days in the rule and allow local control over public response time. The CDBG statute and the consolidated plan regulation specify the 15 day period, "where practicable."

Several low-income advocates stated that the regulatory requirement for a timely substantive written response to written complaints is not sufficient to provide resolution of the complaints. Advocates also wanted the regulation to set forth an appeals process to HUD on complaints and on comments on the consolidated plan.

The CDBG statute (section 104)(a)(3)(E)) requires a "written answer," while the CHAS statute (section 107(d)) requires a jurisdiction to follow HUD-established "procedures appropriate and practicable for providing a fair hearing and timely resolution of citizen complaints." The rule requires each jurisdiction to specify in its citizen participation plan the procedures it has determined are "appropriate and practicable" to resolve complaints. A system involving an appeal to HUD would not be possible, given the limited staff available.

One state agency commented that it is unclear whether each commenter on the consolidated plan is required to be sent an individual response, separately from