struggling to keep income balance in their community, whose citizens are more willing to see CDBG funds devoted to income groups that appear to be more inclusive of average families.

The Department believes that the consolidated plan must use uniform definitions of income categories for all programs covered by the plan. The terms chosen in the proposed rule (as in the CHAS) were drawn from the Cranston-Gonzalez National Affordable Housing Act, which created the Comprehensive Housing Affordability Strategy (that is applicable to all the CPD formula grant programs) and the HOME program. However, we believe that the comments have merit. Therefore, this final rule returns to the Housing and Community Development Act of 1974 terms: "low-income" not exceed 50 percent of median income) and "moderate-income" (does not exceed 80 percent of median income). This rule adds a new term "middle income" to encompass the group described as "moderate income" in the proposed rule, to fulfill the responsibility under the CHAS statute to consider affordable housing needs for this category of families and to include impact on them in the performance report.

The "extremely low-income" category of 0–30 percent of median income was praised by low-income advocacy groups and some States, while local jurisdictions and some States took issue with its addition to the evaluation of needs and performance reports as not statutorily required and too burdensome.

The purpose of including this income category is to assure that jurisdictions consider the needs of the households that have the least ability to improve their access to affordable housing on their own. It is a category that was addressed in the CHAS tables and there was much support from low-income advocates for its use in the consolidated plan.

The data for the needs assessment is census data provided by HUD that has been used under the CHAS rule. The data for the performance report is similarly available. To accommodate the concern about data availability, the language has been changed to require reporting on the number of extremely-low, low-, moderate-income, and middle-income persons served by each activity only where information on income by family size is required to determine the eligibility of the activity.

b. Definitions of Terms That Were in the CHAS

Two local jurisdictions stated that the rule should contain definitions for terms that are used in § 91.205(b) of the rulemoderate income, elderly, large family, cost burden, and severe cost burdenand which were defined in the CHAS rule. An advocate for low-income households stated that the rule needs definitions for additional terms: assisted family, disabled family, federal preference, and overcrowding. These definitions are needed to define "worst case" housing needs, which another low-income advocacy group wanted included in the defined terms. ("Worst case needs" was a term defined only in the CHAS guidelines; it was not a term found in the CHAS rule.)

The terms mentioned above that are essential to the consolidated plan rule are being added in the final rule. Those terms are "moderate income," "elderly person," "person with disability," "large family," "cost burden," "severe cost burden," and "overcrowding." The last three terms are derived from the census, and the definitions used in the rule are, therefore, those of the census. The other definitions being added follow the definitions provided for those terms in the CHAS rule.

One disability group advocate urged HUD to adopt the definition of "persons with disabilities" used in the Americans with Disabilities Act. The definition used in the CHAS rule is consistent with the one required for use in the assisted housing programs. The Department sees no reason to abandon this definition.

The terms "assisted family," "federal preference," and "worst case" are not being used in the rule, and therefore no definitions for them are needed.

c. Homeless

Legal service agencies, homeless and low-income advocates, and various disability and public interest organizations were concerned that the rule's definition of "homeless" was not identical to the definition of that term in the Stewart B. McKinney Homeless Assistance Act. The definition requires the individual or family to both lack "a fixed, regular, and adequate nighttime residence; and [have] a primary nighttime residence that is [a supervised emergency shelter]; * * * an institution that provides a temporary residence for individuals intended to be institutionalized; or a * * * place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings." The commenters argued that the McKinney Act defines a

homeless individual as either one who lacks a fixed, regular, and adequate nighttime residence or one whose primary nighttime residence is one of the three described types. Their point seems to be that families that are overcrowded, because more than one original family unit resides in a housing unit intended for one, should be considered "homeless."

The Department agrees that the definition used in this rule should be essentially the same as the definition in the McKinney Act. This change does not, however, signal that the Department is altering its position that the definition must read within the context of the findings and purpose section of the McKinney Act. It is clear to the Department that the McKinney Act was enacted in 1987 to assist the rapidly growing numbers of persons living on the streets and in shelters. It was not enacted for the purpose of assisting the substantially larger number of persons who unfortunately live in substandard housing or with others in so-called doubled-up arrangements because of the problem of a lack of affordable housing. The latter problems have been the subject of legislation since 1934, and the Department administers many programs designed to address these problems. Persons living in substandard housing or in doubledup arrangements are not homeless, although they may be at high risk of becoming homeless. Although the Department is not changing the core definition of homelessness in the McKinney Act, it should be noted that the prevention of homelessness is an essential part of a larger homeless program and the homeless plan includes actions to help low-income families avoid becoming homeless. This would include persons who are precariously housed.

The Department does believe that the wording of the definition for "homeless family" in the proposed rule was confusing. Therefore, the definition has been renamed "homeless family with children," and the language has been clarified.

d. Other Definitions

A local jurisdiction pointed out that the definition of "consolidated plan" indicates that it is a document submitted annually. Only parts of it are submitted annually—the action plan and the certifications. The Department agrees that the definition of consolidated plan needs to be clarified so that it does not appear that every element must be submitted annually. A modification of the proposed language