for timely undertaking of previously budgeted activities. Second, in undertaking a float-funded activity that exceeds a certain size or duration, grantees are apparently relying on additional CDBG funds being received in future years to enable them to continue funding previously budgeted activities until the float-funded activity generates program income.

The paragraph of the action plan dealing with CDBG program-specific requirements now deals with floatfunded activities, requiring a jurisdiction to show the stream of income from repayment of float-funded activities. This provision is designed to address: (1) the problems identified by the Department's Inspector General in managing such activities and (2) the need for citizens to have sufficient information for them to know the extent to which they are likely to be affected by these activities, particularly the consequences of their default, so that they may have an opportunity to object to such a use of the funds.

The action plan section also requires that jurisdictions receiving CDBG entitlement funds may generally budget no more than 10 percent of the total available CDBG funds described for the contingency of cost overruns. The Department has had a longstanding requirement that the amount so budgeted must be reasonable in relation to the grant. This is based largely on the statutory requirement under section 104(a) of the HCD Act that, as a prerequisite to receive its annual grant, a community must submit a statement describing how it intends to use the funds. When the grantee's statement contains a set-aside of funds for contingencies in an amount that goes beyond the amount that reasonably may be expected to be needed for cost overruns of activities specifically identified in the statement, the net effect is that the grantee is simply deferring making a decision as to the use of the funds. The Department believes that this is not allowable under the statute. The Department provided guidance in the form of a notice (dated September 18, 1992) that it would not question the "reasonableness" of a set-aside of up to 10 percent of the amount of CDBG funds described in the final statement (now part of the action plan) for cost overruns. The regulatory language contained in this rule now reflects this threshold. This would not, however, prohibit a jurisdiction from setting an amount higher than 10 percent if the jurisdiction has data available, drawing on its prior experience, to show that actual cost overruns are likely to require a higher contingency amount.

d. Public Housing

A provision has been added to the housing market analysis section, to the institutional structure paragraph of the strategic plan section, and, most importantly, to the "other actions" paragraph of the action plan section, to require a jurisdiction to state any actions it is taking to assist a public housing agency that has been designated as "troubled" by HUD to overcome its problems.

Section 91.225 Certifications

One commenter pointed out that the paragraph on consultation "by States" is inapplicable to local governments, who are covered by this provision. Another commenter recommended that the certification currently found in the CDBG program that a jurisdiction's notification, inspection, testing and abatement procedures concerning lead-based paint will comply with the provisions of § 570.608 should be included here. We agree with both of these comments, and the rule has been revised accordingly.

One low-income advocate suggested that jurisdictions should be required to certify, in connection with the CDBG program, that they have satisfied their obligations under the regulation interpreting section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309), which is found at 24 CFR 570.602. It requires a jurisdiction that has discriminated in the administration of the CDBG program or activity, or where there is sufficient evidence to conclude that there was discrimination, on the basis of race, color, national origin, or sex, to take remedial affirmative action to overcome the effects of the discrimination.

There are two provisions of the certifications section that have a bearing on anti-discrimination laws. The first mirrors the current requirements for the CDBG program to require specific certification of compliance with two civil rights laws: Title VI of the 1964 Act and the Fair Housing Act. Although the Department agrees that section 109 is applicable to the CDBG program, it is encompassed within the second certification, which requires certification that the jurisdiction/State will comply with all applicable laws. We note that the underlying CDBG regulation requiring compliance with section 109 remains in effect.

Section 91.235 Abbreviated Plan

One State pointed out that paragraph (a) appears to make use of the abbreviated plan permissive, but paragraph (b)(1) appears to make it

required—if a jurisdiction is permitted to use it. The commenter also complained about the lack of any requirement for the jurisdiction to consult with the State.

The Department agrees that the provision needs clarification, so it is now clear that a jurisdiction eligible to submit an abbreviated plan instead of a full consolidated plan may do so, but is not required to do so. Consultation with the State has been added.

Section 91.305 Housing and Homeless Needs Analysis

Two States complained that the requirement for a State seeking HOPWA funding to collect data about the size and characteristics of the population with HIV/AIDS and their families was too burdensome and costly for States. The language for this provision and its local government counterpart have been revised to require estimation, "to the extent practicable," of the number of persons in various categories of special need, including persons with HIV/AIDS and their families.

Section 91.310 Housing Market Analysis

A few low-income advocates recommended requiring States to describe substate markets, including those that have higher poverty areas. The rule requires analysis of the State's "housing markets." This implies that there is more than one housing market within the State.

One State commented that paragraphs (b) (Low income tax credit use), (e) (Institutional structure), and (f) (Governmental coordination) relate not to market analysis but to strategy. It recommended moving them to § 91.315. The Department agrees and has revised the rule accordingly.

Several low-income advocates recommended that the paragraph on barriers to affordable housing should require that all jurisdictions do their ''fair share'' to provide housing opportunities to low-income persons. They also stated that States should look at cross-jurisdictional barriers. The Department is constrained by the statutory limit that prevents disapproval of a plan that does not provide for removal of barriers to affordable housing. Therefore, it cannot require such a "fair share" proposal. Analysis of cross-jurisdictional barriers would be beneficial, but the Department does not want to add to the burden of requirements imposed by this rule.