



“Why Not In Our Community?”

Removing Barriers to Affordable Housing

An Update to the Report
of the Advisory Commission
on Regulatory Barriers
to Affordable Housing



U.S. Department of Housing and Urban Development

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U.S. Department of Housing and Urban Development
Office of Policy Development and Research



Foreword

The mission of the U.S. Department of Housing and Urban Development is to increase homeownership, promote community development, and expand access to decent affordable housing without discrimination. Increasingly, we find that many of the constraints to providing affordable housing and to developing communities lie within the communities and their regions in the form of regulatory barriers.

Regulatory barriers were exposed as a problem 13 years ago, when the Advisory Commission on Regulatory Barriers to Affordable Housing submitted its report, *“Not In My Back Yard”: Removing Barriers to Affordable Housing*. Despite some areas of progress, the Advisory Commission’s finding that exclusionary, discriminatory, or unnecessary regulations reduce the availability of affordable housing remains true today.

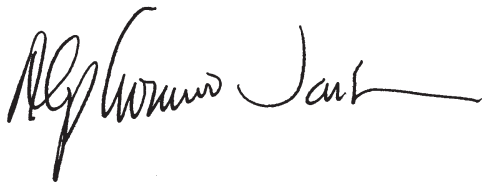
At the direction of President Bush, I am therefore pleased to publish this update to the 1991 Advisory Commission’s report. Besides illustrating the Administration’s and Department’s commitment to affordable housing, it demonstrates an ability to innovate and reach beyond narrow views of the federal government as funder and regulator. HUD has grasped this opportunity to establish policies that lead and enable state and local partners to address the issues we all deal with on a daily basis.

In June 2003, HUD launched a department-wide initiative among senior staff entitled *America’s Affordable Communities Initiative: Bringing Homes Within Reach Through Regulatory Reform*. The Initiative reinforces HUD’s commitment to work with states and communities to break down the regulatory barriers that needlessly drive up housing costs and reduce the nation’s stock of affordable housing. The first fruits of this effort are abundantly evident in this document.

The update describes recent trends in regulatory barriers to affordable housing, reviews recent efforts by states and local communities to reduce regulatory barriers, and details actions being implemented by the Department to reduce regulatory barriers.

HUD is addressing these issues in a number of ways through this Initiative. The Department is leading by example—streamlining program regulations and ensuring that program applicants have appropriately addressed regulatory barriers. We developed our Regulatory Barriers Clearinghouse website (www.regbarriers.org) to share barrier reduction information and best practices with communities across the nation.

My hope is that this update will increase awareness of regulatory barriers and stimulate additional national dialogue on this important issue.



Alphonso Jackson
Secretary



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Background

Thirteen years ago, the Advisory Commission on Regulatory Barriers to Affordable Housing submitted its report, *“Not In My Back Yard”: Removing Barriers to Affordable Housing* (the 1991 Report). Its basic finding remains true today: exclusionary, discriminatory, or unnecessary regulations constitute formidable barriers to affordable housing. Understanding that government should help, not hinder, the creation and rehabilitation of affordable housing, then-Secretary of Housing and Urban Development Mel Martinez resolved that regulatory barriers to affordable housing must become an issue of national concern and action. Today, Secretary Alphonso Jackson is equally committed to knocking down barriers to affordable housing, as he makes clear in the following statement:

As a long-time advocate for increased affordable housing, I know that regulatory barriers have an enormous impact on the cost and availability of housing for hard-working American families. For the past three years, we at HUD have been working with states and local communities to break down these barriers. I am committed to assuring that this important work continues.

No clear “bright line” definition can delineate when a state or local policy is a regulatory barrier—each policy or rule must be assessed on its own merits. Many policies and regulations that restrict housing are implemented or promulgated with other worthy goals. A policy, rule, process, or procedure is considered a barrier when it prohibits, discourages, or excessively increases the cost of new or rehabilitated affordable housing without sound compensating public benefits.

Although Recommendation 6-16 of the 1991 Report suggested creating an Office of Regulatory Reform to develop ways to reduce regulatory barriers at the state and local levels, former

Secretary Martinez and then-Deputy Secretary Jackson realized that creating a separate office would only create more bureaucracy, add expense, and take a considerable amount of time. Seeking a daily focus on this issue, they ordered senior staff immediately to undertake a department wide initiative entitled *America’s Affordable Communities Initiative: Bringing Homes Within Reach Through Regulatory Reform* (the Initiative).

The Initiative seeks to help state and local governments identify regulatory barriers to affordable housing. It also assists community and interest groups and the general public in understanding that well-designed, attractive affordable housing can be an economic and social asset to a community.

Housing is affordable if a low- or moderate-income family can afford to rent or buy a decent quality dwelling without spending more than 30 percent of its income on shelter. Some describe affordable housing for moderate-income families as America’s workforce housing. The increased availability of such housing would enable hard-working and dedicated people—including public servants such as police officers, firefighters, schoolteachers, and nurses—to live in the communities they serve. The social and economic benefits of having these hard-working citizens live in the communities in which they work is self-evident. Removing affordable housing barriers could reduce development costs by up to 35 percent; then, millions of hard-working American families would be able to buy or rent suitable housing that they otherwise could not afford.

For lower-income families and individuals, subsidies can be essential tools for helping them gain stability and self-sufficiency. People who have built or tried to build affordable housing, however, recognize the constraints imposed by unnecessary

or excessive barriers. Barrier removal will not only make it easier to find and obtain approval for affordable housing sites; it also will enable available funds to go further in meeting vital housing needs.

The Initiative has made reducing regulatory barriers to affordable housing a top departmental priority receiving high-level attention on a daily basis. HUD hopes that this effort will change the outdated thinking of citizens and public officials from “not in my back yard” to “why not in our community?”

Some progress has been made in responding to the concerns raised by the Advisory Commission, but the problem of regulatory barriers persists. This update does not aim to recreate the 1991 Report, but seeks to examine the trends in the regulatory environment affecting housing development in the past 13 years. In addition, this update charts a workable and innovative strategy for HUD to help states and local communities reduce regulatory barriers. It also includes a plan for decreasing barriers to affordable housing production at the federal level.

The update is organized into the following sections:

Section I describes recent trends and demonstrates that the problem of regulatory barriers to affordable housing still remains.

Section II reviews recent efforts by states and local communities to reduce regulatory barriers.

Section III identifies some of the major actions being implemented by the Department to reduce regulatory barriers.

The Appendix is a reprint of the first part of the 1991 Report’s executive summary. This document summarizes the problem of regulatory barriers to affordable housing. Readers unfamiliar with the general nature of regulatory barriers to the development of rental and affordable housing may find it helpful to review the Appendix before reading Sections I through III.



Section I. Regulatory Barriers to Affordable Housing Persist

Although a number of studies and commissions, since as early as 1967, have addressed the issue of regulatory barriers, the 1991 Report for the first time identified regulatory reform as a necessary component of any overall national housing policy. The 1991 Report found that various regulatory barriers—public processes and requirements that significantly impede the development of affordable housing without commensurate health or safety benefits—directly raise development costs in some communities by as much as 35 percent. These regulatory barriers have other significant negative impacts on the country’s ability to meet national housing needs. By constraining overall supply and the market’s ability to respond to demand, housing prices and rents in many markets are inflated. Regulations that restrict market rate and affordable housing options, such as higher density housing, multifamily rental housing, accessory units, and manufactured homes, further exacerbate the problem by limiting or excluding many affordable housing options.

The 1991 Report identified a number of causes—including infrastructure costs, local building practices, bureaucratic inertia, and property taxes—for this extensive network of regulatory barriers to affordable housing development. The 1991 Report, however, concluded that one powerful motive lay behind many of these regulatory barriers: opposition by residents and public officials alike to various types of affordable housing in their communities. This opposition, which the 1991 Report called “not in my back yard” (NIMBY), was found to be a pervasive practice motivating local political officials to intentionally limit growth in general and affordable housing in particular. Notwithstanding the achievement of some reforms, “NIMBYism” continues to prompt the implementation of regulatory barriers that pose major obstacles to rental housing, high-density development, and other types of affordable housing.



EVIDENCE THAT REGULATORY BARRIERS INCREASE HOUSING COSTS

Recent research has confirmed that regulatory barriers pose a major obstacle to the development of affordable housing. Consider the following examples:

- One study found that excessive regulation drove up the cost of a new home in New Jersey by as much as 35 percent.
- Another study determined that the price of newly built homes in New York City would decline by as much as 25 percent if the city reduced regulatory barriers.

The results of these and other recent studies are summarized in Table 1.

While regulatory barriers are not the only factors responsible for increasing housing costs, they are major factors. Their significant role in driving up housing costs poses a crucial obstacle to achieving the national goal of increased homeownership. Regulatory barriers also have a negative impact on costs for all types of housing, whether single-family or multifamily, manufactured or site-built.

Regulatory barriers also affect the location of housing. To the extent that regulatory barriers prevent development in the suburbs and other areas of high job growth, they can force lower income households to live far from job opportunities. This home-to-work distance can make it more difficult for the unemployed to find work; for the employed, it lengthens the commute, which lowers the quality of life.

STUDY	FINDING
Sundig and Swoboda (2004)	Various forms of housing regulation decreased the total amount of housing built and increased prices by as much as \$40,000.
Ben-Joseph (2003)	Regulatory system has gotten more complex over the last two decades and constitutes the single greatest problem in getting housing built.
Glaeser and Gyourko (2002)	Government regulation is responsible for high housing costs where high costs exist. Measures of zoning strictness are highly correlated with high prices.
Dewey (2001)	The typical new Alachua County, Florida, household pays more than its actual share of infrastructure costs by \$3,114, demonstrating how ill-conceived fees can undermine affordable housing.
Baden and Coursey (2000)	In suburban Chicago, municipal fees increase new housing costs by 70% to 210% of the actual fee imposed, which ranges from \$2,224 to \$8,942 for an average four-bedroom home in the study.
Green and Malpezzi (2000)	Moving from a light regulatory environment to a heavy regulatory environment raises rents by 17%, increases house values by 51%, and lowers homeownership rates by 10 percentage points.
Luger and Temkin (2000)	Excessive regulation can raise the final new home price by \$40,000 to \$80,000, or approximately 35%. In New Jersey, this amount prices approximately 430,000 households out of the market.
Mayer and Somerville (2000)	A metropolitan area with a 4.5-month delay in approval and two different types of growth control restrictions would experience 45% (estimated) less construction than a metropolitan area with a 1.5-month approval delay and no growth-management policy.
Phillips and Goodstein (2000)	Portland's Urban Growth Boundary law has increased median house prices in the Portland metropolitan area.
Green (1999)	In Waukesha County, Wisconsin, banning manufactured homes increased home prices by 7.1% to 8.5%. Increasing required minimum frontage by 10 feet drove up prices by 6.1% to 7.8%.
Levine (1999)	A study of 490 California cities and towns found that growth control measures that remove land from development or require less intense development reduced rental and ownership housing. Impacts on rental housing were particularly severe.
Salama, Schill, and Stark (1999)	In New York City, the price of newly built homes could decline by 25% if the city implemented a comprehensive barrier removal strategy.
National Association of Home Builders (1998)	In 42 metropolitan areas, eliminating unnecessary government regulations, fees, and delays could reduce housing costs by 10%. Results varied significantly by area.



TRENDS IN THE REGULATORY ENVIRONMENT AFFECTING HOUSING DEVELOPMENT

Since 1991, regulatory barriers to development of market rate, rental, and affordable housing have become more widespread in suburban regions and some rural areas as communities seek to limit population growth. Generally, regulatory tools that were barriers then remain barriers today. Regulatory mechanisms, such as restrictive zoning, excessive impact fees, growth controls, inefficient and outdated building and rehabilitation codes, multifamily housing restrictions, and excessive subdivision controls have been in use for decades. These controls have become more sophisticated and prevalent. The current regulatory framework makes building a range of housing types increasingly difficult, if not altogether impossible, in many areas. Although some recent market research appears to indicate a greater willingness by the general population to accept affordable housing for moderate or middle income families in their communities, no evidence exists that such abstract acceptance has translated into large-scale action at the local level to undertake significant regulatory reform.

The following trends stand out:

- *Increased complexity of environmental regulation.* Over the past decade, environmental protection regulation has increased in complexity, resulting in lengthy review and approval processes, additional mitigation requirements, and new requirements for consultants. Although environmental protection is an important national objective, inefficient implementation of environmental regulations results in higher development costs and restricted development opportunities.
- *Misuse of smart growth.* A major change in the development climate over the past decade is the rapid emergence of the smart growth movement. Some smart growth principles, such as higher density development, can facilitate the development of affordable housing. A number of communities, however, have used

smart growth rhetoric to justify restricting growth and limiting developable land supply, which lead to housing cost increases.

- *Still NIMBY in the suburbs.* Many suburban communities continue to enact affordable housing restrictions, use exclusionary zoning practices, impose excessive subdivision controls, and establish delaying tactics for project approvals. These development barriers can effectively exclude rental and affordable housing development in a community.
- *Impact fee expansion.* Impact fees are an accepted and growing mechanism to finance the infrastructure and public services associated with new development. Although some impact fees reflect actual front-end infrastructure development costs, others are disproportionate to communities' actual costs, reflect an unnecessarily high level of infrastructure investment, or are assessed in a regressive manner.
- *Urban barriers—building codes, rehabilitation, and infill development.* Slow and burdensome permitting and approval systems, obsolete building and rehabilitation codes, and infill development difficulties remain serious impediments to affordable housing development in cities. Obsolete building and rehabilitation codes are one of the most widespread urban regulatory obstacles, requiring old-fashioned and expensive materials, outdated construction methods, and excessive rehabilitation requirements that make construction and rehabilitation more expensive in certain regions.

Each trend is described in detail below.

Increased Complexity of Environmental Regulation

Environmental protection regulation is essential to building healthy and sustainable communities. Environmental protection and affordable housing development need not be competing objectives. How these regulations are implemented, however,

often has the unintended consequence of preventing development of much-needed affordable housing. Good planning considers, integrates, and balances a host of public objectives: a clean environment, adequate public infrastructure, schools, quality of life, and fiscal concerns, as well as housing needs and future growth accommodation. Unfortunately, in practice, developmental and environmental reviews are often two distinct processes with often-conflicting standards and approval procedures. Such inefficiencies result in conflicting environmental requirements, prolonged review processes, lack of justification for environmental decisions, and regulations that extend beyond the scope of the desired goals—all combining to reduce the supply of developable land and increase the cost of development.

A number of trends indicate that since 1991 poorly designed environmental procedures and regulatory processes have become more significant barriers to the development of affordable housing. Major trends include the proliferation of national mandates, the increasing complexity of urban environmental regulations, layering of additional local environmental laws, and the misuse of environmental regulations by those opposed to affordable housing.

Major National Mandates. National mandates such as environmental impact assessments, clean water, safe drinking water, wetlands protection, endangered species protection, and clean air remain in force and have become more complex. As clean water quality and wetlands protection became higher priorities in the 1990s, regulations for these mandates were broadened to encompass storm water management and were made more stringent. In particular, the federal government made the general nationwide wetlands permit—the most common type of development permit issued—increasingly difficult to obtain. Greater uncertainty, delays, reduced land availability, and increased housing construction costs have resulted. Many of the problems result from administrative procedures that are vague, not time-sensitive, or poorly integrated into the overall planning and

developmental review process. The lack of clarity and certainty regarding wetlands determinations is an example of such a problem.

As the federal government delegated greater responsibility to the states to implement environmental mandates, the states added their own requirements, increasing the layers of regulatory reviews that proposed developments must undergo.

Environmental Regulations in Cities. A notable exception to the growing complexity of environmental reviews has been in “brownfields,” urban properties or facilities whose development or redevelopment may be complicated by the potential presence of site contamination. Federal, state, and local governments have worked together to streamline and simplify brownfield clean-up requirements to promote urban revitalization.

This cooperation and partnership could serve as a model for other areas of environmental regulation.

Local Environmental Regulations. In addition to the barriers driven by national environmental regulation, the 1990s saw the emergence of purely local environmental regulations. In many cases, local regulations duplicate federal and state environmental regulation and are not integrated into pre-existing local planning processes, creating new procedures, reviews, and requirements. For example, a number of communities now require their own environmental impact statements. Such requirements are often superfluous, as they are over and above existing local requirements for environmental reviews required as part of the comprehensive planning and development approval process. In many cases, they become one more tool to stop development.

Misuse of Smart Growth

Smart growth refers to an amalgam of ideas, planning concepts, and goals intended to improve urban/suburban livability and reduce sprawl. This term is increasingly used in public regulatory and policy debates regarding planning, land use, and density. Many smart growth principles appear

consistent with the goal of promoting affordable housing. In practice, however, a number of communities, especially in the suburbs, have used the smart growth rhetoric only to justify growth controls that act as substantial regulatory barriers to affordable housing.

Although no clear consensus exists on what constitutes smart growth, some elements such as expanding housing choices, increasing density, and enhancing the fairness and predictability of development decisions would, if actually implemented, be valuable tools for expanding housing affordability, especially in the suburbs. Many national organizations that support smart growth understand the importance of housing affordability and support reforms that would eliminate many regulatory barriers. There have been some examples which have demonstrated that NIMBY resistance can be overcome and high-density developments built because of the adoption of local smart growth policies.

More generally, however, these components of the smart growth agenda are far less likely to be adopted in most suburban jurisdictions than those limiting growth. Under the rubric of smart growth, citizens and community groups that have long objected to affordable housing now have an intellectual justification to limit growth and exclude affordable housing. The result is that affordable housing advocates, the local business community, builders, and landowners find it ever more difficult to resist policies that restrict overall housing supply. Downzoning, higher impact fees, mandated amenities, and building moratoriums represent the types of barriers and regulations that a growing number of communities have begun to implement to slow or stop growth. If only such selected parts of the smart growth agenda (open space, growth limits, moratoria) are enacted, smart growth will endanger, rather than encourage, housing affordability.

Still NIMBY in the Suburbs

Many suburban communities continue to pass affordable housing restrictions, make the approval processes increasingly complicated, use exclusionary zoning practices, impose excessive subdivision controls, and put in place tactics to delay project approvals. These barriers can exclude rental and affordable housing developments in a community.

Affordable Housing Restrictions. Limited empirical data exists that tracks how many suburban communities ban or discourage affordable housing options. However, most experts agree that problems have not improved substantially over the past 13 years. Regulatory conditions often make affordable housing the most difficult to build. Too few communities provide a diversity of development options, such as multifamily housing, duplexes, or manufactured housing. NIMBY sentiment plays a key role in the exclusion of these types of housing.

Although research strongly argues to the contrary, advocates of restrictions on multifamily housing development often argue that such development will reduce property values and increase the demand for public services. As a result, many suburban communities do not permit multifamily housing development anywhere in the jurisdiction. Also prevalent are restrictions on other economical forms of housing, such as accessory apartments, duplexes, and manufactured housing. In other communities, zoning rules may permit the construction of affordable housing options, but NIMBY sentiments derail efforts to actually develop such options.

Growing Complexity of Approvals. Administrative processes for developmental approvals continue to become more complex with ever-lengthening reviews and requirements for multiple, duplicative approvals. Each time a community adds substantive requirements, the review process becomes more complicated and burdensome. Rarely are pre-existing regulations reviewed to determine whether they are still needed or conflict with new regulations. Too many communities see little

public benefit in streamlining the processes, even though each day of unnecessary delay eventually raises development costs with subsequent increases to housing prices and rents. In some cases, an unnecessarily complex approval system may be consciously used by communities and opponents of affordable housing as a growth management tool, a way to extract greater concessions from the developer, or a method for keeping out affordable housing.

Excessive Subdivision Controls. Subdivision ordinances, which regulate the land development, infrastructure, and site design characteristics of new housing, are a primary tool communities use to plan and regulate residential development. Some of these controls unnecessarily raise the cost of housing. Such excessive controls, often referred to as “gold-plated” standards, may mandate excessively wide streets or require, for example, at least 4.5 parking spaces per dwelling unit, even for multifamily development. Many communities require excessively rigorous standards to reduce long-term maintenance costs on the infrastructure they will eventually inherit from developers or to preclude lower cost developments. The new homebuyer, however, is the one who eventually pays the price in higher initial costs for a home.

Inefficient Permitting and Approval Systems. The land development review process also has become more complicated and contentious. Among other issues, the increased use of discretionary approvals, planned unit developments (PUDs), and layered approval systems have added to the burden and complexity of the approval process. More and more, approvals require a complex negotiating process between the developer and the community. Some communities have eliminated zoning “as of right” and treat all new development as a PUD for review and approval. Time is critical in housing development, because financing and profitability depend on keeping to the schedule. It is no longer unusual, however, for it to take developments 5 years or more to gain all the necessary permits and approvals.

Impact Fee Expansion

A dramatic change in the regulatory environment since the release of the 1991 Report has been the widespread adoption of impact fees. Using local power to regulate land use, communities are asking developers to bear a larger share of the front-end burden of supplying new infrastructure and added services as a means of paying for continued growth. Although not new, impact fees are becoming a prevalent financing strategy for new development almost everywhere across the United States—and they are often a significant impediment to the development of affordable housing. The higher costs of building homes due to impact fees are passed on to the homebuyers. In many communities, these fees exceed \$10,000 per unit; a number of communities in California now report fees of \$45,000 per unit and higher.

While all impact fees increase the cost of new housing, some are more reasonable than others. Localities are often constrained in setting property tax levels by state taxation limits and have little choice but to impose impact fees to help pay for rapid growth. Other communities are unwilling to raise property taxes to provide schools or more services. Impact fees have increased in popularity because they provide a politically attractive mechanism for raising revenue. When they are set at a fair, reasonable, and predictable level, they can be an efficient means of paying for growth-related infrastructure costs.

Impact fees pose the greatest barrier to affordable housing when they are regressive or disproportionate to actual development costs. Unlike property taxes, which are based on home value, impact fees can be regressive if they are assessed on a per-unit basis. In such cases, a home built for \$80,000 is subject to the same fees as a \$300,000 home. Regressive impact fees can pose an insurmountable barrier to affordable housing development. In 2001, for example, the Waukesha, Wisconsin, chapter of Habitat for Humanity sat idle because it could not afford to build affordable units as a result of skyrocketing impact fees.

Far too often, impact fees are used to pay costs unrelated to the development. This forces developers to pay not just for the marginal costs of the housing they produce (that is, the costs associated directly with the new housing), but also for public goods for the entire community.

Urban Barriers—Building Codes, Rehabilitation, and Infill Development

Despite some progress in reducing regulatory barriers in a number of cities, urban centers generally continue to rely on an assortment of obsolete building regulations that impede infill development. These barriers continue to exist, despite the demand for new and rehabilitated residential units. Regulatory barriers to urban development include a diverse and often archaic and complex mixture of building codes, labor ordinances, and local tax provisions. In cities particularly, the development approval process tends toward a multilayered approach requiring coordination among various dissimilar agencies. Maneuvering through such processes typically adds significant additional time and cost constraints to projects already hampered by the challenges of site assembly, obtaining clear title, and the unique challenges of urban sites.

Despite a growing need for housing rehabilitation, many cities continue to use building codes that emphasize criteria more suitable for new construction to the detriment of rehabilitation activities. In a 1998 survey of building code authorities, respondents cited regulatory requirements as frequent impediments to increased rehabilitation. Of 223 officials surveyed, more than 80 percent reported building requirements requiring a review by two or more city agencies that often failed to communicate during the approval process.

Infill development, the method by which housing is generally built in older cities, involves a complicated and time-consuming process of land acquisition and regulatory approvals. Difficulties in acquiring a sufficient number of parcels for infill development continue to prevent many builders from using the economies of scale that they rely on when developing affordable housing in the suburbs. Such acquisitions are complicated by the tedious, antiquated procedures many cities employ for delinquent tax foreclosures or condemnations. In concert with the additional difficulties builders encounter when attempting to obtain clear title to various unrelated parcels, these complexities continue to bog down time-sensitive projects to the point of infeasibility.



Section II. Efforts to Solve Barrier Problems at the State and Local Level

The growing complexity of the regulatory environment poses a serious obstacle to the development of affordable homeownership and rental housing. However, this impediment is not insurmountable. A number of states and localities have made progress in reducing regulatory barriers to affordable housing. HUD's online Regulatory Barriers Clearinghouse (www.regbarriers.org) provides a database of state and local strategies and success stories about removing regulatory barriers.



STATE EFFORTS TO REDUCE REGULATORY BARRIERS

States play an important role in reducing regulatory barriers to affordable housing. State-level enabling legislation sets the ground rules for local land use controls, which can encourage or discourage affordable housing development. Most states have devolved land use control to localities and employ a hands-off approach to land use planning. However, a number of states have recently taken action to reform the regulatory barriers within their local communities. Consider the following examples:

Idaho enacted legislation requiring municipalities to permit manufactured home sittings in residential areas. The increased availability of such housing will increase many families' affordable housing options.

Florida created a statewide one-stop permitting system to make state reviews more user-friendly without diminishing environmental, public health, or safety standards. Florida also adopted an expedited system to process state permits for affordable housing projects and is actively studying how to streamline building code provisions to facilitate the rehabilitation of existing structures.

Minnesota created a new property tax classification that encourages property owners to preserve and create affordable housing. The legislation enables qualifying property owners to take a deduction of up to 50 percent from their property taxes. From its inception to 2001, 107,000 units have qualified for this property tax break; approximately 40 percent of these were formerly market-rate units.

New Jersey adopted a new housing rehabilitation code that has decreased rehab costs by 25 percent and increased rehab activity by approximately 25 percent.

Table 2 provides additional examples of state actions taken since the 1991 Report to reduce regulatory barriers to affordable housing.

STATE	ACTION
California (1991)	California amended its Health and Safety Code to require a housing strategy to provide for a coordinated system of housing planning and to help communities meet their fair share of regional housing needs. 1991, S.B. No. 913, P. 8171.
Connecticut (1991)	Municipalities are authorized to implement inclusionary zoning to promote the development of affordable housing for long-term retention by use of deed restrictions, density bonuses, and requiring payments into a housing trust fund. 1991, H.B. No. 7118, P. 987.
Illinois (1992)	Illinois requires an analysis of the impact on affordable housing of every bill that potentially increases or decreases the cost of constructing, purchasing, owning, or selling a single-family residence. 1992, H.B. No. 3803, P. 5033.
Idaho (1993)	Idaho amended its statute defining “single-family dwelling” to include homes in which eight or fewer unrelated elderly persons reside. Local governments may not require special permits or variances for the operation of such residences. 1993, S.B. 1021, P. 83.
Washington (1993)	The Affordable Housing Advisory Board and the State Department of Community Development prepare a plan including identification of regulatory barriers to affordable housing and recommendations for meeting affordable housing needs; local governments must incorporate these recommendations concerning development and placement of accessory apartments. The State Department of Community Development is to provide technical assistance to local governments to help remove such barriers. 1993, S.B. No. 5584, P. 3387.
California (1994)	Certain proposals for developing affordable housing are exempt from most requirements relating to environmental impact statements. 1994, S.B. No. 749, P. 8909.
Georgia (1994)	The legislature established the Barriers to Affordable Housing Committee to study possible elimination of the barriers to affordable housing. The Committee is charged with looking at building codes, property taxes, tax incentives, zoning and other land-use issues, and housing appropriations at all levels. 1994, S.R. 406, P. 3333.
Oregon (1995)	Oregon enacted provisions to require certain municipalities to inventory the supply of housing and buildable land in their urban growth areas to determine density and growth rates and to analyze housing needs. If necessary, the municipality must amend its urban growth boundary to include sufficient buildable land to accommodate housing needs. 1995, H.B. 2709.
Florida (1999)	Florida created a functional statewide, one-stop permitting system to make permitting in the state more user-friendly without diminishing environmental, public health, or safety standards. The legislation also is intended to encourage local governments to expedite and streamline permitting, to adopt best management practices, and to integrate the local permitting process with the statewide one-stop permitting process. Counties can obtain grants to coordinate their permitting process with the state system. 1999, S.B. 662.

(chart continues on following page)

STATE	ACTION
Idaho (2001)	Municipalities are required to permit siting of manufactured homes in residential areas. A municipality may require that a manufactured home have a garage or carport constructed of like materials only if the same requirement applies to other newly constructed traditional homes. 2001, H.B. 154.
Florida (2002)	The legislature directed the Florida Building Commission to develop building code provisions to facilitate rehabilitation of existing structures and identify legislative changes required to implement code provisions. 2002, H.B. 1307. Florida amended its statutes relating to affordable housing. Among the changes is a requirement that the processing of permits for affordable housing be expedited to a greater degree than other projects. 2002, H.B. 547.
Illinois (2002)	The Illinois Local Planning Technical Assistance Act defines a comprehensive plan, which must include a housing element, whose “purpose... is to document the present and future needs for housing within the jurisdiction of the local government, including affordable housing and special needs housing; take into account the housing needs of a larger region; identify barriers to the production of housing, including affordable housing; access [sic] the condition of the local housing stock; and develop strategies, programs, and other actions to address the needs for a range of housing options” (emphasis added). 2002, H.B. 4023/Public Act 92-0768.



LOCAL EFFORTS TO REDUCE REGULATORY BARRIERS

Some localities also have taken actions to reduce regulatory barriers to affordable housing. For example, New York City recently announced a comprehensive barriers removal strategy that involves overhauling the city’s outdated building code, rezoning commercial and industrial areas for residential use, developing city-owned property for affordable housing that the city has usually sold at auction, and streamlining the approval process. The barrier removal strategy is crucial to meet the goals of Mayor Michael Bloomberg’s \$3 billion housing plan to rehabilitate and preserve 38,000 units of existing housing and build 27,000 new units. Other examples include the following:

Tucson, Arizona, allows streamlined processing of requests to create small subdivisions. If the proposed subdivision meets certain criteria, only a final plan approval process is undertaken.

Berkeley, California, operates a one-stop permit center that has reduced the time required to review development projects, thus removing a major problem faced by developers.

Cincinnati, Ohio, guarantees that plans for small projects (up to 20 units) will receive approval or disapproval of plans with explanation within 8 to 10 days after submission.

Cambridge, Massachusetts, offers an expedited review process for townhouse development.

Significant improvements also have been made in streamlining environmental regulation in cities, most notably for brownfields. These changes have helped make well-positioned land available for affordable infill housing development on sites with pre-existing infrastructure and have returned land to the property tax rolls. Some cities have combined these efforts with funding to redevelop brownfields and restore the land to productive use. For example, through its City of Chicago Corporate Funds, Chicago has spent more

than \$4 million of general city resources on brownfields remediation for housing development.

A recent and encouraging development has been the emergence of public/private partnerships at the local level that include regulatory reform and barrier removal as part of their overall housing strategy. For example, the Silicon Valley Manufacturing Group, a partnership of leading businesses, local governments, and public officials in the Silicon Valley, supports barrier removal and affordable housing production to tackle the lack of affordable housing in the area. A current priority of the organization addresses streamlining California's environmental review process for

infill development. Another local effort, the Long Island Campaign for Affordable Rental Housing, a network of business, public, civic, and nonprofit organization leaders, works with officials of Long Island, New York, municipalities to identify and promote affordable housing through zoning reform, public land re-use, tax abatement, and other incentives. In the Boston area, the Commonwealth Housing Task Force, a broad coalition of public and private leaders, including the Greater Boston Chamber of Commerce, recently called on communities and the state to enact new zoning rules to allow more apartments and single-family homes on smaller lots.



Section III. HUD's Commitment to Barrier Removal Efforts

The ultimate actions needed to reduce regulatory barriers to the production and development of affordable housing are principally within the control of state and local governments. HUD is not in a position to reduce these barriers. HUD can ensure, however, that the Department's own rules do not constitute barriers to affordability. It can also take a leadership role in working with states and local communities to identify strategies to reduce regulatory barriers or mitigate their impact.

HUD has addressed these issues by implementing an ongoing effort to remove the Department's own regulatory barriers; establishing barrier removal as a significant departmental policy priority; disseminating information on best practices to state and local governments; building coalitions of groups interested in reducing barriers; and continuing to conduct much-needed research into the subject of regulatory barrier issues. By placing the problems and issues related to regulatory barriers on the national agenda, HUD hopes to be a catalyst for reform.

HUD has taken a number of important steps to implement these strategies, some of which are described below.



CREATING THE AMERICA'S AFFORDABLE COMMUNITIES INITIATIVE

Early in 2003, the Department underscored the importance of addressing regulatory barriers by establishing the America's Affordable Communities Initiative. HUD created a department-wide Initiative Team responsible for coordinating all regulatory reform efforts. Established in the summer of 2003, the Initiative Team, consisting of highly experienced senior personnel, meets regularly and undertakes multiple responsibilities, including ensuring that the federal government, and HUD in particular, removes or reduces

federal barriers to housing affordability. The team coordinates a major research effort to better understand the impact of regulatory barriers on affordability and develops tools and strategies aimed at reducing these barriers.

The Initiative provides technical assistance to governments, local housing groups, associations, and housing advocates on strategies for reducing regulatory barriers, including model regulatory approaches and systems. It encourages a public/private partnership with state and local coalitions that addresses regulatory reform at state and local levels. Finally, the Initiative provides a prominent public voice for the issue of regulatory reform and, through speeches, conferences, and other venues, assures that this issue remains highly visible in the public policy arena. For more information on the Initiative, visit www.hud.gov/affordablecommunities.



LEADING BY EXAMPLE


HUD believes that it must review and, if necessary, remove or modify its own regulations that affect housing affordability, if the Department is to be a meaningful advocate for state and local reform. Since the Initiative was created, the Department has taken a number of major steps in this regard.

On November 25, 2003, the Department published a *Federal Register* notice seeking the assistance of current and former program participants, including state and local governments, public housing agencies, state finance agencies, nonprofit organizations, and other interested members of the public, in identifying HUD regulations that present barriers to affordable housing. HUD received 31 comments, many of them extensive, with a broad range of suggestions as to how the Department, through

administrative, regulatory, or statutory change, could address its own barriers to housing affordability. The affected offices within the Department are required to respond to each comment and recommend regulatory or administrative changes, or, if no action is to be taken, explain why suggested changes cannot be implemented. The Initiative Team reviews all Office responses to the *Federal Register* call for recommendations for reform. The Department's final response to these comments will also be published in the *Federal Register*.

The Secretary has also launched Operation Regnet, a department-wide effort in which all offices are directed to review their existing rules, major handbooks, notices of funding availability (NOFAs), and other notices to determine whether they constitute barriers to housing affordability. An example of such reform is the 2003 elimination of policies and procedures that the Department long had in place to approve planned unit developments (PUDs). Given the strong role state and local governments play in reviewing and approving PUDs, a HUD review was unnecessary. Elimination of this requirement reduces costs to both lender and developers and, ultimately, the homebuyer.

In addition, the Secretary has directed all offices, on a continuing basis, to review all pending rules, major handbooks, NOFAs, and other notices to ensure that the Department is not introducing new regulatory barriers to housing affordability. The Secretary has also asked the Initiative Team to review all these pending rules to assess independently whether they may be or may create regulatory barriers. HUD rules published in the *Federal Register* that address the production or rehabilitation of affordable housing will refer to this review procedure and include a finding as to whether such new rule or regulation is consistent with the objectives of regulatory reform.



REGULATORY BARRIER REFORM AS A DEPARTMENTAL POLICY PRIORITY

The Department traditionally includes in its NOFAs various policy priorities for which higher rating points are available to applicants that effectively address the departmental priority. To stress the importance of regulatory reform, on March 22, 2004, the Department published a *Federal Register* notice stating that it intended to include in most of its fiscal year 2004 NOFAs, including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. The Notice included a detailed list of questions on the local regulatory environment to be asked of states, localities, and other applicants located in these jurisdictions. As a policy priority (and like the other policy priorities), higher rating points are available to applicants that choose to address these questions and are able to demonstrate successful efforts at regulatory reform within their jurisdiction. This policy priority is now included in almost all departmental NOFAs.



SECRETARIAL AWARDS

The Secretary has announced an Affordable Communities Awards program that will provide much-needed national recognition to states, cities, towns, counties, and other jurisdictions that have made significant changes in their procedures, processes, fees, and regulations to reduce regulatory barriers to the production of housing affordable to lower- and moderate-income families. This new awards program, showcasing successful efforts at barrier removal, is expected to make clear to other local governments that these efforts are important, possible, and worthy of national recognition. Nominations for the awards will come from individuals, states and localities, builders, associations, nonprofits, and others committed to regulatory reform.



COALITION-BUILDING AND EDUCATION

For regulatory barriers to be addressed effectively by the thousands of local jurisdictions that regulate development, attitudes and perceptions about affordable housing must change. Local governments, local constituencies, and the general public need to know that affordable housing is a community asset, not a burden. They must better understand the impact of excessive or duplicative regulations on housing supply and cost. HUD has committed itself to assuming a leadership role in this area by working with organizations interested in developing solutions to the problem and encouraging their implementation. HUD is working cooperatively with public interest organizations, industry groups, and state and local governments to build a public consensus for regulatory reform. The Department is convening a series of conferences in every region of the country to discuss regulatory barriers and to obtain recommendations on how the Initiative can better meet its goals.

As an important first step in this effort, in March 2004 the Department distributed a new brochure, *“America’s Affordable Communities Initiative: Bringing Homes within Reach Through Regulatory Reform,”* to more than 25,000 mayors, county executives, and city managers across the nation. This brochure describes the Initiative, identifies common regulatory barriers, suggests possible solutions, and includes a letter from Secretary Jackson encouraging elected officials to conduct local public forums or establish local commissions to discuss regulatory barriers and their impact on the local supply of affordable housing.

Although extensive research has shown that an adequate supply of affordable housing is essential to the economic health and vitality of a region, many communities continue to view affordability as a liability rather than an asset. The Department continues to develop tools that may help overcome these misconceptions. Working together with organizations that include the American Institute of Architects, the Enterprise Foundation, the

Federal Home Loan Bank of Boston, and the Local Initiatives Support Corporation, HUD developed the Affordable Housing Design Advisor (www.designadvisor.org), a web-based tool to educate communities and affordable housing providers on the importance of good design, particularly in gaining broad-based community acceptance. A recent exhibit at the National Building Museum, *Affordable Housing: Designing an American Asset*, largely funded by the Department, presented the very best in affordable housing design. This exhibit will travel across the nation to educate communities that attractive, well-designed affordable housing can be a valuable community asset.



REGULATORY BARRIERS CLEARINGHOUSE

Collection and widespread dissemination of useful information on regulatory barriers and successful efforts that communities have taken to address these problems are essential components of any long-term barrier removal effort. HUD’s Regulatory Barriers Clearinghouse (www.regbarriers.org) provides a database of state and local strategies used to address barriers and success stories involving their removal, an extensive publications list of studies and guidance materials, and an electronic newsletter that highlights success stories. This website also enables interested parties to subscribe to an email list to stay informed on the latest research and efforts that support regulatory solutions. The Clearinghouse was created to support state and local governments, nonprofit organizations, homebuilders, and others seeking information about barrier removal strategies, and laws, regulations, and policies affecting the development, maintenance, improvement, availability, and cost of affordable housing.



REGULATORY BARRIERS RESEARCH

The 1991 Report recommended that HUD expand its research efforts to better understand the impact of regulatory barriers on housing supply and costs and to develop model statutes and ordinances for state and local governments to use in reforming their own regulatory systems. Since the release of the 1991 Report, the Department has continuously supported research efforts to implement many of the Advisory Commission's recommendations, including extensive financial support for a 5-year research effort that developed model state planning and zoning enabling legislation. The Department, using landmark research in New Jersey, also developed new model rehabilitation code language that, when enacted at the state or local level, will provide the needed flexibility to accomplish cost-effective rehabilitation. These so-called "smart codes" have been enacted in New Jersey and Maryland with dramatic results in reducing costs and stimulating much-needed rehabilitation. A number of other local communities have already enacted or are considering similar smart codes.

Since the Initiative was created, HUD has significantly expanded its regulatory barriers research efforts. In April 2004, the Department convened a national conference on the status of regulatory barriers research with the goal of developing a long-term research agenda. Led by renowned academics in the field, participants also included representatives of local governments, housing practitioners, regulators, and affordable housing advocates. This conference was the first

comprehensive academic and policy review of regulatory barriers. For fiscal year 2004, HUD's Office of Policy Development and Research is spending approximately \$1.5 million on regulatory research, including research on land development standards, impact fees, and the development of a methodology for conducting housing impact analysis. Under the latter effort, HUD is developing an analytical tool that other federal agencies, as well as state and local governments, can use to conduct impact analysis of proposed rules and regulations to ensure that costs and consequences of regulations that affect affordability will be properly balanced against other important public purposes.

The Department has proposed more than \$1 million for regulatory barriers research for fiscal year 2005. This research effort will enable HUD to undertake new efforts to learn more about the nature and extent of the problem and develop promising strategies and tools for local governments to use to address barriers.

The Secretary and the Initiative Team are committed to a sustained effort to change not just regulations but, more importantly, the way that many communities view affordable housing. Access to adequate affordable housing is not simply a matter of equity. Increasing the supply of affordable housing will create jobs, stimulate economic growth, and sustain the long-term economic health of our cities and metropolitan areas. Regulatory barriers will fall only when Americans do not dismiss the term "affordable housing" with "not in my back yard" but respond with an affirmative "why not in our community?"



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Appendix

1991 Executive Summary of *“Not In My Back Yard”*: *Removing Barriers to Affordable Housing—The Report of the Advisory Commission on Regulatory Barriers to Affordable Housing*

Millions of Americans are being priced out of buying or renting the kind of housing they otherwise could afford were it not for a web of government regulations. For them, America—the land of opportunity—has become the land of a frustrating and often unrewarded search for an affordable home:

Middle-income workers, such as police officers, firefighters, teachers, nurses, and other vital workers, often live many miles from the communities they serve, because they cannot find affordable housing there.

Workers who are forced to live far from their jobs commute long distances by car, which clogs roads and highways, contributes to air pollution, and results in significant losses in productivity.

Low-income and minority persons have an especially hard time finding suitable housing.

Elderly persons cannot find small apartments to live in near their children; young married couples cannot find housing in the communities where they grew up.

These people are caught in the affordability squeeze. Contributing to that squeeze is a maze of Federal, State, and local codes, processes, and controls. These are the regulatory barriers that—often but not always intending to do so—delay and drive up the cost of new construction and rehabilitation. These regulatory barriers may even prohibit outright such seemingly innocuous matters as a household converting spare rooms into an accessory apartment.

Government action is essential to any strategy to assist low- and moderate-income families in

meeting their household needs. But government action is also a major contributing factor in denying housing opportunities, raising costs, and restricting supply. Exclusionary, discriminatory, and unnecessary government regulations at all levels substantially restrict the ability of the private housing market to meet the demand for affordable housing, and also limit the efficacy of government housing assistance and subsidy programs.

In community after community across the country, local governments employ zoning and subdivision ordinances, building codes, and permitting procedures to prevent development of affordable housing. “Not In My Back Yard”—the NIMBY syndrome—has become the rallying cry for current residents of these communities. They fear that affordable housing will result in lower land values, more congested streets, and a rising need for new infrastructure such as schools.

What does it mean if there is not enough “affordable housing”? Most urgently, it means that a low- or moderate-income family cannot afford to rent or buy a decent-quality dwelling without spending more than 30 percent of its income on shelter, so much that it cannot afford other necessities of life. With respect to renters, the Commission is particularly concerned about those with incomes below 50 percent of the area median income. In other cases, it also means that a moderate-income family cannot afford to buy a modest home of its own because it cannot come up with the downpayment, or make monthly mortgage payments, without spending more than 30 percent of its income on housing.

Concern about the effect of regulations on housing affordability is not new. Other commissions over the past two decades have examined the causes, framed the issues, and recommended solutions concerning the impact of regulation on housing prices. The fact that the problem remains today should not deter continued efforts to resolve it. This Commission has therefore considered both what should be done and how to make sure that it is done.

Many forces in addition to regulatory barriers affect the problem of affordability of housing. Certainly some aspects of both the housing finance system and the tax structure seem to inhibit the availability of affordable housing. For very low-income households, the root problem is poverty. But even for very low-income households, regulatory barriers make matters worse.

Those other forces are beyond the purview of this Commission's study. What is within its purview is the effect of regulatory barriers on the cost of housing, and that is substantial. The Commission has seen evidence that an increase of 20 to 35 percent in housing prices attributable to excessive regulation is not uncommon in the areas of the country that are most severely affected.



THE BASIC PROBLEM

Whether the search for housing takes place in rapidly growing suburban areas or older central cities, the basic problem is the same: because of excessive and unnecessary government regulation, housing costs are too often higher than they should and could be. Yet the specific government regulations that add to costs in suburban and high-growth areas tend to differ from those adding to costs in central cities.

Regulatory Barriers in the Suburbs

In the nation's suburbs, the landscape of the affordability problem reveals a variety of topical features. Exclusionary zoning, reflecting the pervasive NIMBY syndrome, is one of the most

prominent. Some suburban areas, intent on preserving their aesthetic and socioeconomic exclusivity, erect impediments such as zoning for very large lots to discourage all but the few privileged households who can afford them. Some exclude, or minimally provide for, multifamily housing, commonly acknowledged to be the most affordable form of housing.

In theory a way of separating "incompatible" land uses to protect health and safety, zoning has become a device for screening new development to ensure that it does not depress community property values. As a result, some suburban communities, consisting mainly of single-family homes on lots of one acre or more, end up as homogeneous enclaves where households such as schoolteachers, firefighters, young families, and the elderly on fixed incomes are all regulated out.

Suburban gatekeepers also invoke gold-plated subdivision controls to make sure that the physical and design characteristics of their communities meet very demanding standards. Many of these communities are requiring that developers provide offsite amenities such as parks, libraries, or recreational facilities that can add substantially to the housing costs of new homebuyers.

Communities are increasingly charging large fees to developers who seek the privilege of building housing in them. These fees may bear little resemblance to the actual cost of providing services and facilities that new subdivisions require. Although fee schedules are often driven by fiscal concerns, they have a regressive effect. Fees are generally fixed regardless of how much they affect the cost of a new home. Thus, households that can only afford less expensive houses end up paying a higher proportion of the sales price to cover the cost of fees.

Slow and overly burdensome permitting is another regulatory obstacle. The original rationale for establishing permitting and approval processes is unassailable: to ensure that construction meets established standards related to health, safety, and other important public concerns. But, in many jurisdictions, the process involves multiple, time-

consuming steps that add unnecessarily to housing costs. Delays of 2 to 3 years are not uncommon. The affordability landscape comes most sharply into focus in areas that are experiencing rapid growth. These are the places that attract households seeking opportunities, and the places where growth-controlling regulations can add considerably to the cost of housing. Local residents—concerned about road congestion, overburdened sewer and water systems, overcrowded schools, and strained city budgets—have many ways to limit growth. Households that do not want to forgo the job opportunities in growing areas must often travel far afield to find affordable housing.

A look at some cost data can be very sobering. Land developers in Central Florida, a boom area under intense development pressure, must add a \$15,000 surcharge to the price of a \$55,000 house to cover the cost of excessive regulation. As a result, a \$55,000 house becomes a \$70,000 house. In Southern California, the cost of fees alone has contributed \$20,000 to the price of many new homes, and fees of \$30,000 or more are not rare. In New Jersey, developers report that excessive regulation is adding 25 to 35 percent to the cost of a new house. It is clear that the costs of regulation in suburban and high-growth areas are causing large numbers of households to forgo their dreams of homeownership or to make difficult tradeoffs involving very long commutes.

Regulatory Barriers in Cities

Any government regulation that adds to the cost of urban housing is especially significant because of the concentration of low-income households in central cities. Unlike suburban areas where large-scale new subdivision development is taking place, the regulatory problems in cities involve either the rehabilitation of older properties or new infill construction to provide affordable housing for families of limited means. Central-city reinvestment has been further compounded by restrictive and racially discriminatory lending practices.

Chief among the urban regulatory barriers are building codes geared to new construction rather than to the rehabilitation of existing buildings. The codes often require state-of-the-art materials and methods that are inconsistent with those originally used. For example, introducing newer technologies sometimes requires the wholesale replacement of plumbing and electrical systems that are still quite serviceable.

Excessively expensive requirements have also made new infill units in some urban jurisdictions more than 25 percent more expensive than identical units constructed in adjacent suburban localities that allow less costly materials and methods. Despite the pressing need to provide shelter for low-income households, city building codes seldom provide for the construction of “no-frills” affordable housing such as the new single-room-occupancy (SRO) hotels that have recently proven so successful in San Diego. Waivers on code requirements in that city cut the cost of some SRO living units by as much as 60 percent.

Other regulations that affect the availability of housing, such as rent control, also seem to ignore the plight of the poor. In the long run, the primary beneficiaries of rent control are frequently upper and middle-income groups rather than lower income households who need assistance in obtaining decent homes in safe neighborhoods. By limiting annual rent increases and thus providing incentives for higher income tenants to remain in older but pleasant neighborhoods, rent control hinders upward mobility of low-income families to better housing opportunities.

Urban neighborhoods could benefit substantially from such affordability-enhancing options as manufactured housing, the use of modular units in construction, and the legalization of accessory apartments. But, too often, regulatory barriers completely block or seriously impede the introduction of these options. Manufactured housing is still frequently relegated to rural areas by local zoning ordinances. State highway regulations and local building codes sometimes mandate modifications to modular units that offset the savings these prefabricated units can provide

for infill construction. Finally, local zoning regulations often prohibit accessory apartments, which could be a significant source of affordable housing: as many as 3.8 million units could be added to the nation’s rental housing supply through this means alone.

Environmental Protection and Affordable Housing

Exerting considerable influence on both urban and suburban landscapes, otherwise valuable environmental protection regulations seriously restrict the amount of buildable land that is available for development. This effect raises the cost of what land remains open for homebuilding.

Regulations that mandate environmental impact studies increase developers’ costs by prolonging the permitting process and thus increasing the carrying charges that they must pay to finance business operations. Costs are also raised by the assessment of special fees and exactions for wilderness and wildlife conservation. In some instances, developers are required to set aside land for preserves, pay mitigation fees, or undertake mitigation projects (such as creating a new wetland) in exchange for the use of property designated as a wetland. Increases in development costs associated with environmental protection are passed along to the consumer and thus have a direct effect on housing affordability.

Regulations for the protection of wetlands have hindered residential development in many areas. Over the past several years, the Federal definition of a wetland has become more expansive. Protection has recently been extended to some areas where the soil is only temporarily saturated with water for short periods each year. Considerable duplication exists between Federal and State regulations, rendering the permitting process for wetlands development unnecessarily lengthy and complicated and therefore unnecessarily expensive. At the Federal level, the jurisdictions of the Environment Protection Agency (EPA) and the Army Corps of Engineers overlap considerably, at times introducing conflicting expectations and requirements into the permit approval process.

The Endangered Species Act (ESA) also affects housing affordability. Designed to help ensure the survival and well-being of existing species of plants and animals, the ESA allows the Fish and Wildlife Service (FWS) to ban or severely restrict development in thousands of acres for years at a time, if such land is the habitat of a species judged to be “endangered” or “threatened.” The ESA does not take into account the socioeconomic impact of these restrictions on human activity. Construction is allowed after the FWS approves a Habitat Conservation Plan, which usually involves the permanent establishment of preserves for the endangered animal.

These preserves increasingly involve the purchase of private, prime development land. Recently, in Riverside County, California, the initial phases of creating a 30-square-mile system of preserves for the Stevens Kangaroo Rat cost some \$100 million. Estimates of the entire protection effort run more than twice that amount. A special impact fee of \$1,950 is now levied on each acre of Riverside County that is developed, with new homebuyers bearing the cost. Housing affordability is becoming an inadvertent casualty of environmental protection.



ROOT CAUSES AND NEW DIRECTIONS

There can be little disagreement that government land-use and development regulations are often barriers to affordable housing. Why is this so, and what should be done about it?

Root Causes

Part of the problem involves a classic conflict among competing public policy objectives. Numerous Federal, State, and local regulations that are intended to achieve specific, admirable goals turn out to have negative consequences for affordable housing. The impact on housing costs may not have been considered when the regulations were promulgated.

Another major part of the problem is the fragmented structure of government land-use and development regulation. Not only do many local jurisdictions control land uses and development within each metropolitan area, but multiple levels of government, and a multiplicity of agencies at each level, also have responsibility for one aspect or another of this process. Duplication, uneven standards, and other cost-producing consequences result from this regulatory system. Hence, the cumulative impact goes well beyond the intent of sound and reasonable government oversight responsibilities.

Perhaps the most potent and, to date, intractable cause of regulatory barriers to affordable housing is NIMBY sentiment at the individual, neighborhood, and community levels. Residents who say “Not In My Back Yard” may be expressing opposition to specific types of housing, to changes in the character of the community, to certain levels of growth, to any and all development, or to economic, racial, or ethnic heterogeneity. In any case, the intention is to exclude, resist change, or inhibit growth.

The personal basis of NIMBY involves fear of change in either the physical environment or composition of a community. It can variously reflect concern about property values, service levels, fiscal impacts, community ambience, the environment, or public health and safety. Its more perverse manifestations reflect racial or ethnic prejudice masquerading under the guise of these other concerns.

NIMBY sentiment—frequently widespread and deeply ingrained—is so powerful because it is easily translatable into government action, given the existing system for regulating land use and development. Current residents and organized neighborhood groups can exert great influence over local electoral and land-development processes, to the exclusion of nonresidents, prospective residents, or, for that matter, all outsiders. Restrictions on affordable housing are the result.

New Directions

The root causes of regulatory barriers to affordable housing have been in place for many years, and the evidence is overwhelming that these barriers are unlikely to disappear, absent significant incentives and effort. All levels of government need to work at removing barriers in conjunction with private interests.

Certainly, the Federal Government needs first to put its own house in order. It should remove or reform existing Federal rules and regulations that have an adverse effect on housing affordability, and initiate procedures to minimize adverse effects in future regulations. Simply stated, Federal agencies promulgating major rules must account for the impacts of those rules on affordable housing.

Because States delegate authority to local governments to regulate land use and development, States should take the lead in removing regulatory barriers to affordable housing. What each State should do depends on its own circumstances and situation, but there is no question that State leadership is the only path likely to bring about desired change.

A few States have been substantially involved in attempting to promote affordable housing through the removal of regulatory barriers. Their efforts include recognizing affordable housing as a formal State goal, creating procedures for reconciling local regulations with State goals, eliminating redundant regulations, developing procedures for resolving disputes, setting statewide standards in support of affordable housing, eliminating discrimination against certain types of affordable housing, and providing State financial incentives for affordable housing and local regulatory reform. Clearly, however, more effort on the part of more States is called for.

Despite the appropriateness and desirability of State action, States are unlikely to play a strong role in the absence of Federal incentives to do so. Therefore, the Federal Government must take appropriate actions to engage the States. Such actions include conditioning Federal housing assistance on the establishment of State

and local barrier-removal strategies, relaxing Federal requirements in response to reform efforts, and providing planning grants to assist in barrier removal.

Finally, concerted educational and group actions are needed at the local level to expose the negative consequences of certain government regulations, build coalitions for pursuing regulatory reform, and stimulate local barrier-removal efforts. Such actions are intended to complement and reinforce proposed State and Federal actions. In this way, affordable housing can become a reality for those deprived of it by government regulation.

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