



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6187-N-01]

### **White House Council on Eliminating Regulatory Barriers to Affordable Housing; Request for Information**

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research (PD&R), Department of Housing and Urban Development (HUD).

**ACTION:** Request for Information.

**SUMMARY:** Consistent with President Trump's Executive Order 13878, "Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing," dated June 25, 2019, this document informs the public that HUD requests public comment on Federal, State, local, and Tribal laws, regulations, land use requirements, and administrative practices that artificially raise the costs of affordable housing development and contribute to shortages in housing supply.

**DATES:** Comment Due Date: **[Insert date 60 days after date of publication in the FEDERAL REGISTER].**

**ADDRESSES:** Interested persons are invited to submit comments responsive to this request for information (RFI) to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

**1. Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

**2. Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD

strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, responses must be submitted through one of the two methods specified above. It is not acceptable to submit comments by facsimile (fax) or electronic mail. Again, all submissions must refer to the docket number and title of the notice.

**Public Inspection of Public Comments.** All properly submitted comments and communications submitted to HUD will be available for public inspection and downloading at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Contact Pamela Blumenthal, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8138, Washington DC 20410-0500; telephone number 202-402-7012 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. *Context: Why the White House Council on Eliminating Regulatory Barriers to Affordable Housing (Council) was established.***

President Donald J. Trump established a White House Council on Eliminating Regulatory Barriers to Affordable Housing<sup>1</sup> because for many American citizens, the supply of available housing has not kept pace with the demand for housing by prospective renters and homebuyers. Rising housing costs are forcing families to dedicate larger shares of their monthly incomes to housing. In 2017, approximately 37 million renter and owner households spent more than 30 percent of their incomes on housing, with more than 18 million spending more than half of their incomes on housing. Between 2001 and 2017, the number of renter households allocating more than half of their incomes toward rent increased by nearly 45 percent.<sup>2</sup>

Driving the rise in housing costs is a lack of housing supply to meet rising demand. Research has provided evidence that a major driver of high-cost housing is compliance with overly prescriptive construction and development requirements or regulations.<sup>3</sup> Regulations are often necessary to protect the health and safety of American citizens, such as clean air, water or disaster mitigation practices. However, outdated and overly burdensome, time-consuming, and costly regulatory requirements and restrictions prolong the completion of new housing supply and those costs are shifted to the consumer, particularly in tight markets.

As the Executive Order states, “Increasing the supply of housing by removing overly burdensome regulatory barriers will reduce housing costs, boost economic growth, and provide more Americans with opportunities for economic mobility. In addition, it will strengthen

---

<sup>1</sup> Executive Order 13878 of June 25, 2019. “Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing,” 84 FR 30853. June 28, 2019. [www.federalregister.gov/d/2019-14016](http://www.federalregister.gov/d/2019-14016).

<sup>2</sup> Joint Center for Housing Studies (2019). *State of the Nation’s Housing 2019*. <https://www.jchs.harvard.edu/state-nations-housing-2019>

<sup>3</sup> Joseph Gyourko and Raven Molloy, “Regulation and Housing Supply,” (working paper No. 20536, National Bureau of Economic Research, Cambridge, MA, October 2014), 1.

American communities and the quality of services offered in them by allowing hardworking Americans to live in or near the communities they serve.”

As referenced in the Executive Order, common examples of regulatory barriers include: overly restrictive zoning and growth management controls; rent controls; cumbersome building and rehabilitation codes; excessive energy and water efficiency mandates; unreasonable maximum-density allowances; historic preservation requirements; overly burdensome wetland or environmental regulations; outdated manufactured-housing regulations and restrictions; undue parking requirements; cumbersome and time-consuming permitting and review procedures; tax policies that discourage investment or reinvestment; overly complex labor requirements; and inordinate impact or developer fees. These regulatory barriers increase the costs associated with development, and, as a result, restrict the supply of housing, particularly unsubsidized middle market housing affordable to working families.

Many of the markets with the most severe shortages in affordable housing contend with the most restrictive regulatory barriers to housing development.

## ***II. Overview of the White House Council on Eliminating Regulatory Barriers to Affordable Housing***

The Executive Order directs the Secretary of HUD, or his designee, to chair the Council, in tandem with the Assistant to the President for Domestic Policy and the Assistant to the President for Economic Policy, or their designees, as Vice Chairs. In addition to the Chair and Vice Chairs, the Council consists of the following officials, or their designees: the Secretaries of the Treasury, Interior, Agriculture, Labor, Transportation, Energy; the Administrator of the Environmental Protection Agency; the Director of the Office of Management and Budget; the Chairman of the Council of Economic Advisors; the Deputy Assistant to the President and Director of Intergovernmental Affairs; and the heads of such other executive departments and agencies

(agencies) and offices as the President, Chair, or Vice Chairs may, from time to time, designate or invite, as appropriate.

The Executive Order directs the Council to:

- (a) Solicit feedback from State, local, and Tribal government officials, as well as relevant private-sector stakeholders, developers, homebuilders, creditors, real estate professionals, manufacturers, academic researchers, renters, advocates, and homeowners, to:
  - i. Identify Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of housing development and contribute to shortages in housing supply, and
  - ii. Identify practices and strategies that most successfully reduce and remove burdensome Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of housing development, while highlighting actors that successfully implement such practices and strategies;
- (b) Evaluate and quantify the effect that various Federal, State, local, and Tribal regulatory barriers have on affordable-housing development, and the economy in general, and identify ways to improve the data available to the public and private researchers who evaluate such effects, without violating privacy laws or creating unnecessary burdens;
- (c) Identify and assess the actions each agency can take under existing authorities to minimize Federal regulatory barriers that unnecessarily raise the costs of housing development;
- (d) Assess the actions each agency can take under existing authorities to align, support, and encourage State, local, and Tribal efforts to reduce regulatory barriers that unnecessarily raise the costs of housing development; and

- (e) Recommend Federal, State, local, and Tribal actions and policies that would:
  - i. Reduce and streamline statutory, regulatory, and administrative burdens at all levels of government that inhibit the development of affordable housing; and
  - ii. Encourage state and local governments to reduce regulatory barriers to the development of affordable housing.

### ***III. Purpose of this Request for Information***

The purpose of this Request for Information (RFI) is to solicit feedback that will assist the Council in identifying Federal, State, local, and Tribal laws, regulations, and administrative practices that artificially raise the costs of affordable-housing development and contribute to shortages in housing supply. It also seeks data, other information, analyses, and recommendations on methods for reducing these regulatory barriers.

The Council encourages participation from Federal, State, local, and Tribal government officials, as well as relevant stakeholders, including developers, homebuilders, real estate professionals, affordable housing advocates, manufacturers, architects, engineers, fair housing professionals, urban planners, economists, academic researchers, renters, homeowners, creditors, multifamily-housing owners, and public-housing agencies.

### ***IV. Specific Information Requested***

While HUD welcomes comments on all aspects of developing a plan for reducing barriers to affordable housing development, HUD is particularly interested in receiving information, data, analyses, and recommendations on the following:

**(1) Federal Barriers to Affordable Housing Development.** HUD requests comments that identify *specific* HUD regulations, statutes, programs and practices that directly or indirectly restrict the supply of housing or increase the cost of housing. In thinking about the impact that the

laws, regulations, statutes, programs and policies of HUD programs may have on the housing construction and development industry, please consider:

- a. Federal laws, regulations, and administrative practices of HUD programs that directly or indirectly artificially raise the costs of housing development and contribute to shortages in housing supply, in HUD's program implementation itself, or because of their impact on State, local, and Tribal government policymaking. Do these laws, regulations, or administrative practices produce any benefits to the resident, homeowner, state, or locality that would be eliminated if the requirement were reduced or eliminated?
- b. Recommendations, strategies, solutions or best practice models that have been established to streamline, reduce or eliminate overly restrictive construction and development regulations, requirements or administrative practices identified above.
- c. What are the policy interventions, solutions or strategies available to federal decision makers for incentivizing state and local governments to review their regulatory environment? To aid them in streamlining, reducing or eliminating the negative impact of state and local laws, regulations, and administrative practices identified in the questions below?
- d. What is the potential impact, positive or negative, of streamlining, reducing, or eliminating the identified regulations, requirements or administrative practices?

**(2) State Barriers to Affordable Housing Development.** Since the 1920s States have given ultimate zoning authority to their local government units. Additionally, States have left it to the local jurisdictions to create their own governing structure and to delegate further authority across local government silos, often leading to fragmented, overlapping or duplicative review processes of construction projects. Finally, States almost always impose a bifurcated review process for

larger scale infrastructure projects that require environmental review. However, States, by their regional nature, are more attuned with how local policies have larger economic consequences to regional economies. In thinking about the role of the state in the building construction industry, consider the following questions:

- a. In what ways do State-level laws, practices, and programs contribute to delays in the construction industry? Are there particular laws, practices and programs that could be reviewed for potential barriers?
- b. What are the policy interventions, solutions or strategies available to State decision makers for incentivizing local governments to review their regulatory environment? To aid them in streamlining, reducing or eliminating the negative impact of local and State laws, regulations, and administrative practices identified in the question above?

**(3) Local Barriers to Affordable Housing Development.** While a traditional characterization for the adoption and maintenance of some barriers to affordable housing development is that they reflect a “Not in My Back Yard” (“NIMBY”) disposition, their widespread and long-term prevalence suggests some substantive bases for their existence. For the purposes of this RFI, we define “local” to include all local government units that have constitutional authority given by the State to make decisions on land use planning and growth management, including cities, towns, parishes, designated places, counties, and rural communities, as well as regional entities that have decision-making authority on these land-use issues under State statutes. When identifying regulatory barriers and understanding the impacts on housing costs, there are several issues to consider:

- a. What are the common motivations or factors that underlie the adoption of laws, regulations, and practices that demonstrably raise the cost of housing development?

Do these considerations vary geographically?



- b. How do local decision makers determine whether laws, regulations, or practices artificially or unnecessarily contribute to this problem? Do decision makers undertake cost-benefit analyses, and if so, how do they use them?
- c. What are the policy interventions, solutions or strategies available to local decision makers for streamlining, reducing or eliminating the negative impact of these laws, regulations, and administrative practices identified in the question above?

**(4) Basis for Reducing Barriers to Affordable Housing Development.** In thinking about streamlining, reducing or eliminating barriers to affordable housing development, please consider the following:

- a. What are the economic and social benefits to American families and individuals, the local community, the State or Tribe, and the nation that would be realized by reducing regulatory barriers to affordable housing development?
  - i. To what extent is there agreement that specific regulations and administrative practices result in higher cost or reduced availability of affordable market rate housing for potential homeowners and renters?
  - ii. Assuming agreement that specific regulations and administrative practices create impediments to affordable housing development by increasing the costs of either construction of housing or preservation of housing supply, are these costs of such regulation and practices quantifiable? What evidence is there to support this finding?
- b. Are there regulations that may delay the process of building affordable housing but are necessary to ensure a certain level of quality is achieved in the construction?
- c. How should one evaluate the cost of burdensome regulations on the local housing market? How should one determine the benefits of reducing those costs?

- i. If you have knowledge of jurisdictions that have successfully implemented creative solutions to reduce regulatory barriers, please describe specific land use requirements that were demonstrated to have raised the cost of housing.
- ii. In responding to item (i) above, please discuss how these jurisdictions offered incentives, sanctions or implemented policies that effectively reduced or eliminated overly restrictive, outdated, or otherwise burdensome land use regulations.
- iii. For jurisdictions that considered reducing the barriers but ultimately did not take action to do so, what was the basis for that inaction?

**(5) Plan Development and Implementation.** In general, HUD is interested in what actions it should recommend or implement to assist States, Tribes, and local governments in reducing or eliminating barriers to affordable housing development.

- a. Regarding HUD's rules, regulations, and statutes, what actions can the Department take to significantly reduce (or eliminate) barriers to affordable housing development while remaining committed to its mission to expand affordable housing options and support decent, safe and sanitary housing for all Americans? Please provide detailed examples, if possible.
- b. Regarding the recommendations provided to HUD above, what actions could the Department implement to create incentives for States, Tribes, or local jurisdictions to encourage regulatory review and reform? For communities that have achieved regulatory reform, how might the Department learn from successful policies that were adopted at the State, Tribal, or local level? How might the Department create guidance for other jurisdictions looking to achieve reform?

**(6) Research Questions**

- a. What peer-reviewed research and/or representative surveys provide quantitative analyses on the impact of regulations on cost of affordable housing development? Do these analyses demonstrate evidence on the degree or severity of impact? How strongly supported are the conclusions of the research? Provide citations for research referenced.
- b. What performance measures, quantitative and/or qualitative, should the Council consider in assessing the reduction of barriers nationally or regionally? What are the advantages and disadvantages of each measure? Among the measures recommended above, how should they be prioritized? Such measures could include, but would not be limited to, the following:
  - i. The rate of housing production, considering a range of cofactors, including domestic and international migration patterns and rates of family formation;
  - ii. The number of housing construction permits, construction starts, and completions;
  - iii. The number of burden-reducing legislative or regulatory actions, considering suitable baselines;
  - iv. A list of best practice models based on recommendations from stakeholders and the public and reviewed by subject matter experts;
  - v. Housing development processing times and costs, considering a range of cofactors;
  - vi. Whether jurisdictions' barrier reduction was temporary (e.g., a project- or grant/program-specific waiver) or permanent;
  - vii. Whether there are fair housing barriers to the development of affordable housing;and

viii. Whether the permitting process poses a greater, comparable, or smaller barrier to building housing than do the regulations, such as regarding timeliness and consistency of permitting decisions.

c. HUD's Regulatory Barriers Clearinghouse (RBC)<sup>4</sup> was created to document the prevalence of regulatory barriers that influence the cost of affordable housing and offer best practice solutions for their removal. The clearinghouse is an easily searchable electronic database that contains more than 4,800 barriers and solutions and catalogs information that spans all 50 states and more than 460 cities and counties. Best practices have been previously highlighted in a HUD publication called *Breakthroughs*, which was a bi-monthly e-newsletter accessible where community actors could share their stories about reform strategies that work. Representatives from the housing industry, the National League of Cities, the National Association of Counties, the National Association of Mayors and many other private, public and advocacy groups have contributed to these efforts. HUD's Office of Policy Development & Research continues to manage the RBC database and staff are developing ideas for how the research community could use the information to conduct regulatory barriers research. For the purpose of this RFI, we ask for recommendations on how best to utilize this important source of information for States, local governments, researchers and policy analysts who are tracking reform activity across the country.

#### ***IV. Request for Information Response Guidelines***

If you submit comments by mail, your response should be no longer than 50 pages. Please provide the following information at the start of your response to this RFI: Company/institution name (if applicable); contact information, including address, phone number, and email address. Do

---

<sup>4</sup> <https://www.huduser.gov/portal/rbc/home.html>

not submit Confidential Business Information (CBI) in your response to this RFI. Responses identified as containing CBI will not be reviewed and will be discarded.

Please identify each answer by responding to a specific question or topic if applicable. You may answer as many or as few questions as you wish. HUD will not respond to individual submissions or publish publicly a compendium of responses.

To help you prepare your comments, please see the How Do I Prepare Effective Comments segment of the Commenting on HUD Rules Web page, [https://www.hud.gov/program\\_offices/general\\_counsel/Commenting-On-HUD-Rules#1](https://www.hud.gov/program_offices/general_counsel/Commenting-On-HUD-Rules#1). While that Web page is written for commenting on regulatory proposals, these tips are generally applicable to this RFI.

Dated: November 14, 2019.

---

Seth Appleton,  
Assistant Secretary for Policy  
Development and Research.

**Billing Code 4210-67**

[FR Doc. 2019-25388 Filed: 11/21/2019 8:45 am; Publication Date: 11/22/2019]