



Creating a Task Force on Regulatory Barriers to Affordable Housing

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Acknowledgments

This guide was originally written in 1992 by Gary Hanes, who at that time was the Regional Affordable Housing Specialist, Office of Community Planning and Development, San Francisco Regional Office, U.S. Department of Housing and Urban Development (HUD); it was titled, “Creating a Local Advisory Commission on Regulatory Barriers to Affordable Housing.” The guide has been substantially rewritten by the following HUD staff: David Engel, Director of Affordable Housing Research and Technology, Office of Policy Development and Research; A. Bryant Applegate, Director of America’s Affordable Communities Initiative; and Krista Mills, Director, Louisville Field Office. Unfortunately, the tenacity of regulatory barriers has required that this publication be updated and redistributed. Over the years, HUD has continued to provide information and guide books to localities and housing advocates interested in local regulatory reform; America’s Affordable Communities Initiative is the Department’s most directed and focused effort ever to work with localities to address these persistent barriers and, consequently, to expand housing affordability.

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Introduction

It has been well established by study after study, as well as by practical application, that regulatory barriers can increase housing costs anywhere from 10 to 35 percent and, in many cases, can even prevent its construction. A regulatory barrier to affordable housing is defined as a public or regulatory requirement, payment, or process that significantly impedes the development or availability of affordable housing without providing a commensurate health and/or safety benefit.

In response to this growing problem, the U.S. Department of Housing and Urban Development (HUD) created the America's Affordable Communities Initiative (AACI) in June 2003 to help state and local governments address regulatory reform to increase the availability of affordable housing for America's workforce. The AACI 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.

As the AACI developed, a few but important principles became the foundation for the overall objectives. First and foremost, it is well understood that local problems need local solutions. It is not the Department's goal to dictate to states and local communities how to change their regulatory environments. Second, if the Department is asking states and local communities to commit to reform and to be creative, then HUD needs to make that commitment as well. Leading by example since 2003, the Department has undertaken numerous projects, including the following:

- Sought public input to identify HUD regulations that may unnecessarily increase the cost of housing. The Department also published a response in the *Federal Register* to each comment received.
- Established an additional step in HUD's regulatory clearance process to ensure that future HUD-proposed regulations are reviewed to determine if they would form a barrier, thus creating an "affordable housing firewall" for all new regulations.
- Enabled priority points to be awarded to grant applicants if they demonstrated positive state or local efforts to reduce regulatory barriers.
- Created the Robert L. Woodson Awards program recognizing outstanding state and local efforts that successfully reduced barriers.
- Conducted several national and regional events and roundtables for elected officials, planners, and advocacy and faith-based groups.
- Distributed two brochures over a 3-year period to more than 25,000 jurisdictions.
- Initiated several studies to better understand the nature of regulatory barriers and to identify potential solutions.
- Promoted the use of the Regulatory Barriers Clearinghouse website to provide state and local governments a forum and a valuable research tool.
- Created the National Call to Action for Affordable Housing Through Regulatory Reform network in which states, local communities, and advocacy groups are encouraged to create task forces (and other creative methods) to address regulatory reform.

Of course, regulatory reform is just one piece of the puzzle. Yet, there is no doubt that communities that develop solutions on the regulatory front not only produce more affordable housing but also are more likely to develop other innovative solutions to address the lack of affordable housing. The AACI recognizes the diversity of American communities and acknowledges that local problems need local solutions. Therefore, in an effort to help states and communities create their task forces and their local solutions, the Department has prepared this advisory guidebook.

What Is Affordable Housing?

More than 15 years ago, the Kemp Commission report, *Not in My BackYard: Removing Barriers to Affordable Housing*, identified regulatory barriers as a major impediment to providing affordable housing. Regrettably, its basic finding remains true today: exclusionary, discriminatory, or unnecessary regulations constitute formidable barriers to affordable housing. These barriers affect a broad spectrum of America's population—from low-income individuals and families that require direct and indirect subsidy assistance to moderate-income individuals and families that do not qualify for subsidies. They are the bulwark of America's workforce and, regrettably, too many of them have difficulty buying or renting good-quality housing in proximity to where they work without spending more than 30 percent of their income on shelter. In too many communities, police, firefighters, teachers, healthcare workers, returning veterans, and factory workers experience difficulty buying or renting housing—workforce housing—that is affordable.

What Are Regulatory Barriers?

All communities must have regulations that govern housing development, rehabilitation, and occupancy. Zoning and planning laws guide how our communities develop. Building codes define when construction is safe. As a result, no “bright line” can clearly establish a state or local policy as a regulatory barrier. Each policy or rule must be assessed on its own merit because many policies and regulations are enacted or promulgated with worthy goals. The best guidance that can be given to local governments, housing providers, and others is that a policy or regulation becomes a barrier when it is either a deliberate or de facto action that prohibits or discourages the construction of affordable housing without sound reasons directly related to public health and safety—that is, a federal, state, or local statute, ordinance, policy, custom, practice, or procedure that excessively increases the cost of new or rehabilitated housing, either by improperly restricting the location of housing or by imposing unjustifiable restrictions on housing development with little or no demonstrated compensating public benefit. (Appendix A provides suggested indicators that states and localities can use to assess their regulatory environment.)

The Lack of Affordable Housing Can Result in Many Problems for Localities

Large numbers of potential first-time homebuyers have been priced out of the market. Local housing prices or rents may be higher than those in comparable jurisdictions. Employers report difficulty in finding and keeping qualified personnel partly because of high housing costs.

- Companies indicate they intend to relocate or plan their expansions outside the community due to the cost of housing.
- Local economic development may be stunted by corporate concern over high housing costs.
- The jobs that are created in a community do not pay salaries that enable employees to afford housing stock in the community.
- Many public employees—police, firefighters, nurses, teachers—may not live in or close to the community they serve because housing costs are too high.
- Families find their children, who are now young adults, are unable to live in the communities in which they were raised or must continue living in their parents' homes because housing costs are extreme. Some must live in overcrowded situations.
- Local social service organizations report increased difficulty in finding housing for people of low and moderate income.
- Low vacancy rates for rental housing are common.

Common Signs That Local Regulations Are Contributing to the Housing Affordability Problem

- City council and planning commission dockets are backlogged with development applications.
- Developers and municipal staff report increasingly long processing times for zoning, subdivision, and other applications.
- Residentially zoned land is in short supply.
- Developers indicate that, even though the land may be appropriately zoned, the process is unpredictable.
- Localities may require fewer units, larger units, or more amenities rather than letting the market dictate the design.
- Development applications under consideration will not produce the number of housing units needed to meet demand.
- Proposed developments tend to address the needs of only the higher income households; large homes on large lots predominate on the landscape.
- Builders are unable to produce enough affordable housing for middle-income families.
- Communities lack a variety of housing types—townhouses, multifamily structures, single-family detached houses—with a broad range of affordability. Developers claim this is a result of public policy, not the market.
- Realtors and developers report a shortage of buildable land served by water, sewers, and roads.
- Local building codes are not based on updated, nationally recognized model codes; or, the codes are known to have costly, restrictive provisions.

Why A Task Force?

A local task force can bring together disparate interests and perspectives to (1) identify regulatory barriers and (2) to forge a consensus for reducing regulatory barriers to affordable housing without forfeiting the trust of the community. A task force permits a local governing body the opportunity to mobilize a dedicated group of citizens to examine the complex issue of

regulatory barriers. Few industries have more potential for creating broad-based coalitions than the housing industry. Homebuilding links an immense number of businesses and organizations that have an interest in the economic well-being of our communities. Despite this potentially widespread support, successful coalition building still depends on the ability to (1) define the issue and its impact on the community, (2) identify potential supporters, and (3) communicate ideas clearly and persuasively. Community participation in a regulatory reform task force can galvanize a community's efforts to tackle regulatory barriers.

Establishing the Task Force

After a community decides to establish a task force on regulatory barriers to affordable housing, it must take the following action:

- Define the mission, scope, and goals of the task force and pass a resolution to establish the task force.
- Establish a timeframe for the task force to conduct and complete its work. Depending on the complexity of the issues, 6 to 12 months is a reasonable timeframe. A year or less should be adequate for larger jurisdictions with complex development regulations.
- Determine the number of members and the kinds of perspectives to be represented. Usually the size will range from 7 to 12 members, but it could be larger. Larger efforts, however, can become unmanageable. Consider the size of the community and the number and complexity of issues that the task force may cover.
- Decide how members are to be selected. Sometimes selections can be made from a list of nominees prepared by city staff or a nominating committee. Stakeholder groups can submit lists of nominees. Self-nominations may be another source. Select experts, knowledgeable leaders, consensus builders, and good decisionmakers who are representative of and respected in the community. Make sure they can devote the necessary time to the work of the task force.
- Designate a chairperson and a vice chairperson.
- Assign staff to support the task force that will have the responsibility for writing the task force report. If possible, enlist the support of a local university or research community.
- Commit to examining and implementing, as appropriate, the recommendations of the task force.
- Insist on results.

Getting Started

After the task force has been established, it is important to do the following:

- Emphasize the openness and fairness of the process and the members' roles as fact finders.
- Ensure that the task force functions only in an advisory capacity.

The task force should begin by identifying key topics; some of the following issues are common to many localities (see also Appendix A).

- Growth controls.
- Land use.
- Zoning.
- Subdivision ordinances.

- Infrastructure.
 - Development standards.
 - Building codes.
 - Restrictions on manufactured housing, single-room occupancy, second units, etc.
 - Fire protection and sprinkler requirements.
 - Administrative procedures.
 - Processing times.
 - Fees and exactions.
 - Inspection procedures.
- Review the HUD Consolidated Plan or the “housing element” of the local General Plan, if the locality has one. Pay particular attention to the sections on relevant public policies and constraints.
 - Decide how and when to take public testimony.
 - Identify stakeholder groups and solicit their testimony, which can include the following:
 - Builders (both for-profit and nonprofit).
 - Affordable housing advocates.
 - Landowners.
 - Engineers.
 - Architects.
 - Lenders.
 - Housing manufacturers.
 - Housing managers.
 - Government officials.
 - Public safety officers.
 - Building, zoning, and public works officials.
 - Elected officials.
 - Employers.
 - Trade unions.
 - Legal aid and other public-interest law firms.
 - Planners (public and private).
 - Realtors.
 - Neighborhood organizations.
 - Environmental groups.
 - Faith based organizations.
- Insist that witnesses and written testimony be as specific as possible. They should specifically identify the barrier, its impact (delay, cost, etc.), how it should (or should not) be changed, and why.
 - Decide if working groups or subcommittees should be assigned specific tasks or subjects.
 - Decide when additional members are needed, especially as new issues are identified.
 - Obtain the assistance, if possible, of local universities in studying the local community; include schools of real estate, planning, and law.
 - Obtain as much objective “hard” data as possible to support both conclusions and recommendations
 - Develop a report on regulatory barriers that is as thorough as possible and that

- recommends appropriate changes.
- Support the task force’s report and recommended changes.

The Task Force Report

The task force’s report will represent months of work by the members and support staff. The report to the local governing body should be an agenda for action. It will help if the report identifies (1) specific codes, standards, ordinances, administrative procedures, etc., and how they should be changed; (2) their effect and the desired result of the change; (3) the level of priority each recommendation should receive; and, if possible, (4) the city departments that would be responsible for administering the proposed changes.

The next step is to act on the task force’s recommendations. The state or locality must (1) assign responsibility; (2) establish target dates for action; and (3) develop, amend, and adopt appropriate ordinances, policies, or procedures. Task force members can help by supporting proposed changes throughout the process.

After the report is released, the locality should immediately follow through with a public education program. Those who object to elimination of regulatory barriers to affordable housing and oppose growth in their communities often have a narrow perspective or are misinformed about the impacts of these barriers. For example, many people mistakenly believe that affordable housing has detrimental effects on property values. Others fail to consider the adverse effects overregulation can have on economic growth. These beliefs need to be reexamined in light of available evidence.

Successful affordable housing projects can be showcased. Educational efforts can be focused by determining the specific fears of particular segments of the population through surveys and public meetings. Task force members should be counted on to assist in this effort.

IMPORTANT: Although the above guidance suggests that a task force can be a complicated and expensive process, a local task force should be tailored to a community’s needs and resources and, hence, ought to be scaled to what is appropriate for its particular community. It must also be emphasized that experience has shown that many regulatory reforms will not be expensive to implement.

Conclusion

A community should continually work to ensure that it is responding appropriately to its affordable housing needs. Who will check to see if the changes are working? Who will be responsible for noticing if things slip back into “business as usual”? What other changes should be made? What is the affordable housing tempo of our community?

Perhaps it is best to view regulatory change as an ongoing process and not a single event. A jurisdiction can reconvene the task force or other group annually to review the status of policies

and regulations affecting housing. Regulatory barriers, identified by the advisory commission, should also be pinpointed in the municipality's Consolidated Plan or the "housing element" of the General Plan. But, most importantly, a community should be active in evaluating and removing barriers to affordable housing and preventing the imposition of new ones.

Appendix A. Regulatory Barriers Checklist

Although there is no standard or generally accepted template or questionnaire by which a community can determine if it has a regulatory barrier problem, HUD has developed a concise checklist, which many communities have found useful. It can address a variety of local conditions and circumstances. Areas of slow economic growth have entirely different needs and regulatory demands than high-growth communities. Some communities may have good land use controls yet have high impact fees or slow administrative review processes. Other communities may have already initiated administrative reforms but are burdened by obsolete state planning laws or building codes. HUD originally developed the checklist for use by communities applying for competitive HUD grants that are part of HUD's "Super Notice of Funding Availability" application process.

Local Governments

1. Does your jurisdiction's comprehensive plan include a "housing element"? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water.
2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low-, moderate-, and middle-income families, for at least the next 5 years?
3. Does your zoning ordinance and map, development and subdivision regulations, or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing (a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes, and other similar elements); and (b) sufficient land zoned or mapped "as of right" in these categories, which can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and that are specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.) If the jurisdiction has chosen not to have either zoning or other development controls that have varying standards based on districts or zones, the answer is "yes."
4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based on explicit health standards?
5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? Alternatively, if your jurisdiction does not have impact fees, the answer is also "yes."

6. If the answer to question #5 is “yes,” does the statute provide criteria that set standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus) and a method for fee calculation?
7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?
8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through graduated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see the HUD publication, “Smart Codes in Your Community: A Guide to Building Rehabilitation Codes” at www.huduser.org/publications/destech/smartcodes.html.
9. Does your jurisdiction use a recent version (that is, published within the past 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes; that is, the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA) without significant technical amendment or modification? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability?
10. Does your jurisdiction’s zoning ordinance or land use regulations permit manufactured (HUD-Code) housing “as of right” in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?
11. Within the past 5 years, has a jurisdiction official (that is, chief executive, mayor, county chairman, city manager, or administrator), the local legislative body, or planning commission directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?
12. Within the past 5 years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction’s HUD Consolidated Plan?
13. Within the past 5 years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (for example, water, sewer, street width) to significantly reduce the cost of housing?

14. Does your jurisdiction give “as-of-right” density bonuses sufficient to offset the cost of building below-market units as an incentive for any market-rate residential development that includes a portion of affordable housing? (As applied to density bonuses, “as of right” means a density bonus granted for a fixed percentage or number of additional market-rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market-rate units.)

Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?

16. Does your jurisdiction provide for expedited or “fast-track” permitting and approvals for all affordable housing projects in your community?
17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?
18. Does your jurisdiction allow “accessory apartments” either as (a) a special exception or conditional use in all single-family residential zones, or (b) “as of right” in most residential districts otherwise zoned for single-family housing?
19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?
20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?

For States

1. Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities that regulate development to have a comprehensive plan with a “housing element?”
2. Does your state require that a local jurisdiction’s comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low-, moderate-, and middle-income families, for at least the next 5 years?
3. Does your state’s zoning enabling legislation require that a local jurisdiction’s zoning ordinance have (a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes, and other similar elements) and (b) sufficient land zoned or mapped in these

categories, which can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?

4. Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing?
5. Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact on housing affordability and undertake actions to address these barriers to affordability?
6. Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?
7. Does your state have specific enabling legislation for local impact fees?
8. If the answer to question #7 is “yes,” does the state statute provide criteria that set standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus) and a method for fee calculation?
9. Does your state provide significant financial assistance to local governments for housing, community development, and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?
10. Does your state have a mandatory statewide building code that (a) does not permit local technical amendments and (b) uses a recent version (that is, published within the past 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes; that is, the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA) without significant technical amendment or modification?

Alternatively, if the state has made significant technical amendments to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?

11. Has your state adopted mandatory building code language regarding housing rehabilitation that encourages rehabilitation through graduated regulatory requirements applicable as different levels of work are performed in existing buildings? Such language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information, see the HUD publication, “Smart Codes in Your Community: A Guide to Building Rehabilitation Codes” at www.huduser.org/publications/destech/smartcodes.html.

12. Within the past 5 years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other state-administered permits or programs involving housing development. If yes, briefly list these changes.
13. Within the past 5 years, has your state (that is, governor, legislature, planning department) directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?
14. Within the past 5 years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the state's Consolidated Plan submitted to HUD? If "yes," briefly list these major regulatory reforms.
15. Has the state undertaken any other actions regarding local jurisdictions' regulation of housing development, including permitting, land use, building or subdivision regulations, or other related administrative procedures?

Appendix B. Additional Resources

HUD's National Call to Action is a campaign designed to enlist states, local communities, and affordable housing advocacy groups across the nation to commit to producing affordable housing through public participation in a national network for regulatory reform.

To Create a national network of states, communities, and affordable housing advocacy groups that have made the pledge to actively engage in regulatory reform, thereby strengthening the national commitment to providing affordable housing for America's workforce.

To Assist states and communities in their efforts to initiate regulatory reform and increasing the supply of affordable housing by encouraging the creation of state and local affordable housing task forces.

To Educate affordable housing advocacy groups on the issues of regulatory barriers to affordable housing, and by doing so, empower these organizations to work with their respective jurisdictions in addressing regulatory reform.

To Promote awareness of the Department's America's Affordable Communities Initiative (AACI) and Regulatory Barriers Clearinghouse (RBC), and encourage states, communities, and affordable housing advocacy groups across the nation to address the need for regulatory reform that increases the supply of affordable housing.

On the National Call to Action pages, you'll find content specific to the formation and work products of a task force, including:

- » [The City of Bend, Oregon's Affordable Housing Task Force Report to the Community](#)
- » [City of Bowling Green, Kentucky: Mayor's Task Force on Regulatory Reform](#)
- » [Final Report of the Orange County \[Florida\] Workforce Housing Task Force](#)
- » [Homes within Reach Toolkit: Centre County, Pennsylvania](#)

These resources can serve as a basis for the efforts you may wish to undertake in your own community, in that they provide viable examples of the accomplishments of similar groups working in other areas of the country.