

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**[Docket No. FR-4882-N-01]****America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Proposals for Incentive Criteria on Barrier Removal in HUD's Funding Allocations****AGENCY:** Office of the General Counsel, HUD.**ACTION:** Notice.

SUMMARY: In June 2003, HUD announced America's Affordable Communities Initiative, a new Departmentwide initiative that will focus on breaking down regulatory barriers that impede the production of affordable housing. As part of this effort, HUD will, among other things, analyze federal, state, and local regulations and procedures that are duplicative, contradictory, or burdensome, and work within the federal government and with HUD's state and local partners to break down these barriers. HUD will undertake activities designed to promote barrier removal by state and local governments and, where feasible, provide incentives to state and local governments to remove regulatory barriers to affordable housing.

The purpose of this notice is to solicit comment from prospective applicants on proposals to provide incentives to barrier removal in HUD's funding allocations and on an initial proposal for providing incentive to barrier removal in HUD's Fiscal Year (FY) 2004 competitive funding process.

As an initial incentive action, HUD proposes to establish in the majority of its FY2004 Notices of Funding Availability (NOFAs), including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. This new policy priority will be added to the list of policy priorities that HUD traditionally includes in its NOFAs. As a policy priority (and like the other policy priorities), higher rating points will be available to governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and to nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers.

This notice describes how HUD proposes to award these policy points in its NOFAs. HUD welcomes comments on this proposal, including the process described to obtain these points. While this notice describes one initial proposal

for providing incentives to HUD grantees to undertake and support the removal of barriers to affordable housing, HUD is considering other proposals and welcomes comments from the public on other ideas for ways HUD can provide incentives in its funding processes or other mechanisms to encourage localities to remove barriers and increase the supply of affordable housing.

DATES: *Comment Due Date:* December 29, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 8 a.m. to 5 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Room 10282, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 708-1793 (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 Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**I. Background: Policies Restricting Affordable Housing**

Increasing opportunities for affordable rental and homeownership housing is one of the highest priorities of the Department. Over the last 15 years, there has been increased recognition that unnecessary, duplicative, excessive or discriminatory public processes often significantly increase the cost of housing development and rehabilitation. Often referred to as "regulatory barriers to affordable housing," many public statutes, ordinances, regulatory requirements, or processes and procedures significantly impede the development or availability of affordable housing without providing a commensurate or demonstrable health or safety benefit. "Affordable housing" is decent quality housing that low-, moderate-, and middle-income families can afford to buy or rent without spending more than thirty percent of their income. Spending more than thirty

percent of income on shelter may require families to sacrifice other necessities of life.

Addressing these barriers to housing affordability is a necessary component of any overall national housing policy. However, addressing such barriers must be viewed as a complement, not a substitute for other efforts to meet affordable housing needs. For many families, federal, state and local subsidies are fundamental tools for meeting these affordable housing needs. In many instances, however, other sometimes well-intentioned public policies work at cross-purposes with subsidy programs by imposing significant constraints. From exclusionary zoning that keeps out affordable housing, especially multifamily housing, to other regulations and requirements that unnecessarily raise the costs of construction, the need to address this issue is clear. For example, affordable rehabilitation is often constrained by outmoded building codes that require excessive renovation. Barrier removal will not only make it easier to find and get approval for affordable housing sites but it will also allow available subsidies to go further in meeting these needs. For housing for moderate-income families often referred to as "work force" housing, barrier removal can be the most essential component of meeting housing needs.

The Advisory Commission on Regulatory Barriers to Affordable Housing in its 1991 report "Not in My Backyard: Removing Barriers to Affordable Housing", <http://www.huduser.org/bibliodb/Bibliography.asp?id=5806>, estimated that these policies and procedures directly increase construction or rehabilitation costs by up to 35 percent. Over the past twelve years, numerous academic studies have confirmed this finding. In addition to direct cost impacts, many policies and processes further exacerbate the problem by constraining overall housing supply with a general deleterious impact upon overall housing affordability. A 35 percent reduction in development costs would allow millions of American families to buy or rent housing that they currently cannot afford.

In 1990, in the Cranston-Gonzales National Affordable Housing Act, Congress, for the first time, recognized the importance of public policies and processes to the supply of affordable housing. Section 105(b)(4) requires state and local governments to explain as part of their Comprehensive Housing Affordability Strategy (CHAS)—now included in HUD's Consolidated Plan—