

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4882-N-03]

## America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations; Technical Correction and Supplemental Information

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Notice.

**SUMMARY:** In this notice, HUD advises of one correction to its notice published on March 22, 2004, which announced HUD's intention to proceed to establish in the majority of its Fiscal Year (FY) 2004 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 to affordable housing. In this notice, HUD also responds to additional questions that were raised following publication of the March 22, 2004, notice.

### 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

On November 25, 2003 (68 FR 66294), HUD published in the **Federal Register** a notice that announced its proposal to provide incentives to regulatory barrier removal in HUD's funding allocations, commencing with the FY2004 competitive funding process. HUD proposed in the November 2003 notice to establish in the majority of its FY2004 NOFAs, including HUD's SuperNOFA, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers (referred to, for brevity purposes, as the "Removal of Regulatory Barriers" policy priority). As a policy priority in HUD's NOFAs (and like other policy priorities in HUD NOFAs), higher rating points would be available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing, and (2)

nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. The proposal advised that for the higher rating points to be obtained applicants had to respond to a series of evaluative questions that HUD determined were significantly important and have broad-based applicability to measure state, local, and tribal government efforts at regulatory reform and which serve as good "markers" for effective regulatory reform.

HUD solicited public comment from prospective applicants of HUD funding as well as other interested members of the public. The November 25, 2003, notice originally called for a public comment deadline of December 29, 2003, but HUD extended the deadline to January 12, 2004. HUD received 37 public comments in response to the November 2003 notice.

On March 22, 2004 (69 FR 13450), HUD published its final notice announcing its intention to proceed to establish the Removal of Regulatory Barriers policy priority in the majority of its FY2004 NOFAs. HUD took into consideration the public comments received on the November 2003 notice and made several changes to the questionnaire that was part of the November 2003 notice. Specifically, PART A of the questionnaire was revised to cover 20 questions in contrast to the 13 questions presented in the November 2003 notice. PART B of the questionnaire was revised to cover 15 questions in contrast to the 6 questions presented in the November 2003 notice. It was determined that the greater number of questions would permit more jurisdictions and applicants to reach the applicable threshold for receiving one or two points available for this policy priority.

This notice published in today's **Federal Register** advises of one correction to a question in PART A.

In the November 2003 notice, one of the questions in PART A provided that if a community was without impact fees, the community could check the "yes" column and receive credit toward the receipt of points. The March 2004 notice inadvertently omitted that option. Therefore, HUD has revised Question 5 in PART A to provide that an applicant may check the "yes" column if an applicant's jurisdiction is without impact fees. This approach is similar to the approach taken in Question 3, which addresses zoning. Although Question 7 addresses impact fees, it also addresses "other significant fees" and it was therefore determined that a revision to Question 7 was not necessary.

This notice also responds to a few questions that have arisen since publication of the March 22, 2004, notice. Several members of the public asked whether prospective HUD applicants should begin completing the questionnaire in the March 2004 notice and submit it to HUD. Applicants should not complete the questionnaire in this notice published in today's **Federal Register** or in the earlier March 22, 2004, notice. Applicants must wait for the publication of HUD's FY2004 SuperNOFA, which is expected to publish soon, or publication of individual HUD NOFAs to which the Removal of Regulatory Barriers policy priority will apply. HUD's SuperNOFA (or an individually published NOFA) will contain the questionnaire to be completed, and that questionnaire will be submitted as part of the applicant's application for the HUD program funds for which the applicant is applying. The questionnaire was published in the March 2004 notice, and again in this notice, to provide prospective applicants with the opportunity to become familiar with the questionnaire and facilitate completion of the questionnaire when the SuperNOFA is published.

Another commenter asked whether the applicant's jurisdiction must complete and sign the questionnaire. That is not necessary. The questionnaire was developed with the objective that an applicant should be able to complete the questionnaire with information about the applicant's jurisdiction that is readily available to the public. Applicants are welcome to have their jurisdictions complete the questionnaire but that is not a requirement.

Another commenter asked whether each project listed in an associated homeless Continuum of Care (CoC) application has to submit a questionnaire for each project, or would one questionnaire for the whole continuum be sufficient. The commenter also asked that if one questionnaire would be sufficient would the applicant submit a questionnaire for the local jurisdiction where the CoC applicant provides the majority of its services.

The CoC NOFA, when published as part of HUD's SuperNOFA, will provide that only one questionnaire needs to be submitted to obtain the up to 2 points available for the Removal of Regulatory Barriers policy priority. Therefore, the CoC applicant should submit a questionnaire for the local jurisdiction where the majority of its CoC assistance will be provided. Although a CoC applicant identifies several projects for funding in its application, the score

provided to a CoC application is for the entire list of projects and not for any one individual project. Therefore, the up to 2 points available for the Removal of Regulatory Barriers policy priority will be available for the entire application, not the individual projects identified in the application. This issue will also be addressed in the CoC NOFA.

For the convenience of the reader, the questionnaire, with the revised Question 5 in PART A, is repeated in its entirety. Applicants wishing to receive points for the Removal of Regulatory Barriers policy priority must wait for the publication of HUD's NOFAs to submit their response as part of their application for funding assistance.

HUD's NOFAs will contain form HUD 27300, Questionnaire for HUD's Initiative on Removal of Regulatory Barriers.

Again, HUD anticipates that its FY2004 SuperNOFA as well as other individual FY2004 NOFAs will be published soon.

**PART A.—LOCAL JURISDICTIONS, COUNTIES EXERCISING LAND USE AND BUILDING REGULATORY AUTHORITY AND OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN SUCH JURISDICTIONS OR COUNTIES**

[Collectively, Jurisdiction]

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 1.    | 2.    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|
| 1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing 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. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question #4.                                                                                                                                                                                                                                                                           | No__  | Yes__ |
| 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 five years?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | No__  | Yes__ |
| 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, that 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 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 upon districts or zones, the applicant may also enter yes.. | No__  | 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 upon explicit health standards?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Yes__ | No__  |
| 5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes..                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | No__  | Yes__ |
| 6. If yes to question #5, 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | No__  | Yes__ |
| 7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | No__  | Yes__ |
| 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 HUD publication: "Smart Codes in Your Community: A Guide to Building Rehabilitation Codes" ( <a href="http://www.huduser.org/publications/destech/smartcodes.html">www.huduser.org/publications/destech/smartcodes.html</a> ).                                                                                                                                                                                                                                    | No__  | Yes__ |
| 9. Does your jurisdiction use a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. 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? In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes?                                                                                                                                     | No__  | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No__  | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | No__  | Yes__ |
| 11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), 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?                                                                                                                                                                                                                                                                                                                                                                                           | No__  | Yes__ |
| 12. Within the past five 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?" If yes, attach a brief list of these major regulatory reforms.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | No__  | Yes__ |
| 13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (e.g. water, sewer, street width) to significantly reduce the cost of housing?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | No__  | Yes__ |

**PART A.—LOCAL JURISDICTIONS, COUNTIES EXERCISING LAND USE AND BUILDING REGULATORY AUTHORITY AND OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN SUCH JURISDICTIONS OR COUNTIES—Continued**

[Collectively, Jurisdiction]

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|
| 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.). | No__  | Yes__ |
| 15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits?                                                                                                                                                                                                                                                                                                                                                                                      | No__  | Yes__ |
| Alternatively, does your jurisdiction conduct concurrent not sequential, reviews for all required permits and approvals?                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No__  | Yes__ |
| 16. Does your jurisdiction provide for expedited or “fast track” permitting and approvals for all affordable housing projects in your community?                                                                                                                                                                                                                                                                                                                                                                                                                                      | No__  | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                     | No__  | Yes__ |
| 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 a majority of residential districts otherwise zoned for single-family housing?                                                                                                                                                                                                                                                                                                                          | No__  | Yes__ |
| 19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?                                                                                                                                                                                                                                                                                                                                                                                                                                      | No__  | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                             | Yes__ | No__  |
| Total Points: .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | _____ | _____ |

**PART B.—STATE AGENCIES AND DEPARTMENTS OR OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN UNINCORPORATED AREAS OR AREAS OTHERWISE NOT COVERED IN PART A**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 1.   | 2.    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-------|
| 1. Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a “housing element?” If no, skip to question #4.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | No__ | Yes__ |
| 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 five years?                                                                                                                                                                                                                                                                                                                                                                                                                                | No__ | Yes__ |
| 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, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?                                                                                                                                                                                                                                                                                                                         | No__ | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | No__ | Yes__ |
| 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 upon housing affordability and undertake actions to address these barriers to affordability?                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | No__ | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | No__ | Yes__ |
| 7. Does your state have specific enabling legislation for local impact fees? If no, skip to question #9 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No__ | Yes__ |
| 8. If yes to question #7, 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | No__ | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | No__ | Yes__ |
| 10. Does your state have a mandatory state-wide building code that (a) does not permit local technical amendments and (b) uses a recent version ( <i>i.e.</i> , published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes ( <i>i.e.</i> , 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?                                               | No__ | Yes__ |
| 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?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | No__ | Yes__ |
| 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 HUD publication: “Smart Codes in Your Community: A Guide to Building Rehabilitation Codes” ( <a href="http://www.huduser.org/publications/destech/smartcodes.html">www.huduser.org/publications/destech/smartcodes.html</a> ). | No__ | Yes__ |
| 12. Within the past five 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.                                                                                                                                                                                                                                                                                                                                                                                       | No__ | Yes__ |

**PART B.—STATE AGENCIES AND DEPARTMENTS OR OTHER APPLICANTS APPLYING FOR PROJECTS LOCATED IN UNINCORPORATED AREAS OR AREAS OTHERWISE NOT COVERED IN PART A—Continued**

|                                                                                                                                                                                                                                                                                                                                                                                                 | 1.    | 2.    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|
| 13. Within the past five years, has your state ( <i>i.e.</i> , 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? | No__  | Yes__ |
| 14. Within the past five 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.                                                                                              | No__  | Yes__ |
| 15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.                                                                                                                            | No__  | Yes__ |
| Total Points: .....                                                                                                                                                                                                                                                                                                                                                                             | _____ | _____ |

As noted in the earlier notices published on this subject, to assist NOFA applicants in reviewing their state and local regulatory environments so they can effectively address the questions above that are to be incorporated in all FY2004 NOFAs, the Department recommends visiting HUD's Regulatory Barriers Clearinghouse (RBC) at [www.huduser.org/rbc/](http://www.huduser.org/rbc/). This Web site was created to support state, local, and

tribal governments and other organizations seeking information about laws, regulations, and policies affecting the development, maintenance, improvement, availability and cost of affordable housing. To encourage better understanding of the impact of regulatory issues on housing affordability, the Web site includes an extensive bibliography of major studies and guidance materials to assist state,

local and tribal governments in fashioning solutions and approaches to expanding housing affordability through regulatory reform at [www.huduser.org/rbc/relevant\\_publications.html](http://www.huduser.org/rbc/relevant_publications.html).

Dated: April 14, 2004.

**A. Bryant Applegate,**  
*Senior Counsel and Director of America's Affordable Communities Initiative.*

[FR Doc. 04-8978 Filed 4-20-04; 8:45 am]

**BILLING CODE 4210-67-P**