

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4882-N-04]

America's Affordable Communities Initiative; HUD's Initiative on Removal of Regulatory Barriers: Incentive Criteria on Barrier Removal in HUD's Competitive Funding Allocations; Solicitation of Comments on Effectiveness of Criteria

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: In this notice, HUD solicits comment on the effectiveness of increasing efforts to reduce regulatory barriers to affordable housing by establishing, in HUD's competitive funding allocations, a policy priority for increasing the supply of affordable housing through the removal of regulatory barriers. A description of this policy priority, along with the Department's other policy priorities for competitive funding allocations, can be found each year in the Department's annual publication of its General Section to HUD's Super Notice of Funding Availability (SuperNOFA). Policy priorities provide applicants with the opportunity to obtain higher rating points if the applicants can demonstrate they are undertaking activities that promote the policy priorities.

The publication of the General Section of HUD's FY2007 SuperNOFA on January 18, 2007, marks the fourth year that HUD has included the removal of regulatory barriers as part of its policy priorities. In 2007, HUD is implementing the renewal process, as required by the Paperwork Reduction Act, for the questionnaire that must be completed to obtain the higher rating points for the regulatory barriers policy priority (if an applicant chooses to seek points for this priority). As part of this renewal process, HUD is seeking additional input on the effectiveness of the questionnaire in contributing to or promoting efforts to reduce regulatory barriers, and whether HUD should either (1) continue to implement this incentive criteria through the questionnaire or (2) consider any alternative and more effective means of providing incentive criteria for higher rating points in HUD NOFAs for removal of regulatory barriers. HUD will take this input into consideration in the development of HUD's FY2008 SuperNOFA.

DATES: *Comment Due Date:* March 23, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0001. Communications should refer to the above docket number and title.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site 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.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10282, 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, HUD announced through a **Federal Register** notice (68 FR 66294) a proposal to provide an incentive to applicants for HUD funds distributed competitively to engage in efforts to remove regulatory barriers in their jurisdictions. HUD proposed that such incentive criteria would commence with HUD's FY2004 competitive funding process, and the 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) would be added to HUD's list of already established policy priorities. As a policy priority in HUD's NOFAs (and like other policy priorities in HUD NOFAs), higher rating points are made available to applicants.

For the Removal of Regulatory Barriers policy priority higher rating points would be made 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. HUD received 37 public comments in response to the November 2003 notice. The majority of the commenters supported the proposal. By **Federal Register** notice published on March 22, 2004 (69 FR 13450), HUD announced that it would proceed to establish the Removal of Regulatory Barriers policy priority in the majority of its FY2004 NOFAs. In announcing this final determination, HUD also advised that it took into consideration the public comments received on the November 2003 notice and made several changes to the questionnaire. The questionnaire was subject to one technical correction, which HUD advised the public by **Federal Register** notice published on April 21, 2004 (69 FR 21664).

The Removal of Regulatory Barriers policy priority was part of HUD's

FY2004 SuperNOFA published on May 14, 2004 (69 FR 26942), and has continued to be included as a policy priority in each year's SuperNOFA since that date. A description of the Removal of Regulatory Barriers policy priority can be found in the General Section to HUD's FY2007 SuperNOFA published on January 18, 2007 (72 FR 2396).

As noted in the "Summary" introduction to this notice, HUD is in the process of renewing, under the Paperwork Reduction Act (PRA), the Office of Management and Budget approval number for the Regulatory Barriers questionnaire that is used to implement the policy priority. This renewal process requires the publication of two **Federal Register** notices and the solicitation of public comments. The first PRA notice solicits public comments for a period of 60 days and the second PRA notice solicits public comments for a period of 30 days.

The "60-day" notice was published in the **Federal Register** on October 12, 2006 (71 FR 60161), and no comments

were received in response to this notice. The "30-day" notice published on January 29, 2007 (72 FR 4015).

Through this notice, HUD seeks comments, apart from the comments solicited by the PRA notices, on the effectiveness of the questionnaire in obtaining information about successful efforts from applicants to remove regulatory barriers in their jurisdictions or to be associated with jurisdictions, which have undertaken successful efforts to remove regulatory barriers. The removal of regulatory barriers remains a high policy priority of HUD. In awarding applicants higher points for undertaking activities related to this policy priority, HUD seeks to ensure that the information requested through the questionnaire is reasonable and meaningful, and the award of higher points is fair. Since the policy priority has now been in effect for a period of four years, which includes the FY2007 SuperNOFA, HUD determined that the passage of this period of time may offer

sufficient information and experience to assess the effectiveness of the questionnaire. Therefore, HUD solicits input from all applicants eligible for HUD competitive funding allocations.

All comments received in response to this solicitation will be taken into consideration as HUD undertakes the development of the FY2008 SuperNOFA. Should a more favorable alternative or proposal be suggested by the commenters, HUD will notify applicants and solicit public comments on any new proposal regarding the Removal of Regulatory Barriers policy priority.

HUD also encourages interested members of the public to respond to the "30-day" PRA notice that was published on January 29, 2007.

Dated: January 31, 2007.

A. Bryant Applegate,

Senior Counsel and Director of America's Affordable Communities Initiative.

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