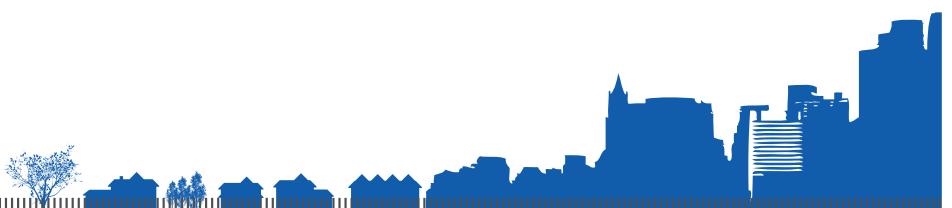


Eliminating Regulatory Barriers to Affordable Housing:

Section 6: Supporting State, Local, And Tribal Activities

January 2021



SECTION 6. SUPPORTING STATE, LOCAL, AND TRIBAL ACTIVITIES

For many American families, entry-level housing options, including starter homes, condominiums, and manufactured housing, serve as important stepping stones to achieving their ultimate dream of purchasing a single-family home in which to raise their children and build wealth for the long term. The Federal Government plays a critical role in helping creditworthy first-time and low- and moderate-income borrowers achieve their goals, for example, through FHA's insurance of entry-level housing, from which borrowers can successfully graduate to non-government-supported loans for future homes, and USDA's insurance of housing in rural areas. While the Federal Government directly assists households in obtaining safe and affordable housing, it also can play an important role in supporting state, local, and tribal governments through education, outreach, and research.

Education and outreach

The Federal Government can support jurisdictions seeking to reduce local regulatory barriers and increase housing supply by sharing solutions, helping jurisdictions that want to make improvements, and supporting innovation in areas such as regulation, construction, and community engagement.

Technical assistance

Many federal agencies provide technical assistance (TA) to improve the capability of state, local, and tribal governments and other program participants to successfully use and comply with federal programs. TA provides skills and knowledge by introducing new materials and techniques, offering innovative approaches, and demonstrating ways to improve services to citizens.²⁴³ TA can take many forms, including direct TA and capacity building, development of tools and products, and in-person and online trainings. The wide range of activities include one-on-one targeted support, running a helpdesk, creating toolkits, and offering training, policy academies, and peer-to-peer assistance exchanges for customers with similar local market contexts, challenges, opportunities, and community needs. The array of activities covered under TA provides opportunities for the Federal Government to assist officials in jurisdictions working that want to reduce barriers to housing supply and better meet the need for housing across income ranges.

Housing strategies. Many local governments want to take steps to address housing affordability issues to respond to residents' needs, but struggle to understand how to best do so. Stakeholders identified key obstacles that include: (1) lack of staff capacity to comprehensively assess available policy options and determine which ones are best to pursue; (2) fragmentation within local government that inhibits collaboration across the many government agencies that affect housing affordability; (3) inadequate understanding of the need, and potential, for local action to make a substantial difference; (4) lack of

²⁴³ United States General Accounting Office, "State and Local Governments' Views on Technical Assistance," (July 12, 1978), <https://www.gao.gov/assets/80/79116.pdf>.

awareness of similar jurisdictions that are pursuing initiatives to use local policy levers to increase housing supply and improve housing affordability; (5) disagreements among local stakeholders on how best to proceed that complicate efforts to adopt new legislation; and (6) state policy barriers. Technical assistance could help fill some of this knowledge gap.

To address these challenges, a broad array of technical assistance is needed, including:

- tools and products to help local government leaders better understand their housing challenges and the options available to address them;
- direct technical assistance to local governments individually and through cohort learning to help them conduct and interpret needs assessments, develop comprehensive local housing strategies, build political support for change, and build bridges across agency silos; and
- guidance for states on how to provide maximum support for local housing strategies through supportive legislation as well as state-led technical assistance.

To avoid reinventing the wheel, it would be most effective for these efforts to supplement and extend the reach of existing TA efforts.

In addition to the standard technical assistance activities, jurisdictions may benefit from increased awareness of the importance of local governments proactively developing comprehensive local housing. The longer in the housing cycle cities and counties with growing housing costs wait, the more difficult and expensive it will be to act. Because role models are often lacking, or at least lagging, cities and counties may not fully understand their challenges and strategies to address them. Many also do not fully understand the importance of coordinating efforts across multiple local government agencies. TA may be particularly important for places with smaller populations (under 50,000), including rural counties and Tribes, that have limited capacity for planning.

HUD's ability to educate jurisdictions before their housing market becomes constrained, offer models appropriate to a jurisdiction, support peer to peer learning, and encourage local regulatory relief actions can provide a beneficial resource to places where housing supply is not responsive to demand. However, HUD recognizes the need to support jurisdictions where regulations are not the barrier to the affordable housing supply, but the local market is not attracting the development and financing needed to safely and affordably house residents. HUD will be considering how to best design a toolbox that can help with the range of challenges jurisdictions face in supplying housing to their residents across the income spectrum.

Consolidated Plans. Local communities spend a lot of time preparing their Consolidated Plans, a requirement to receive HUD funds that is designed to help states and local jurisdictions assess their affordable housing and community development needs and market conditions, and make data-driven, place-based investment decisions. In many communities, these efforts are focused on complying with HUD requirements and planning the use of CDBG, HOME, and ESG funds, rather than on the broader task of developing a comprehensive local housing strategy that uses the full array of available policy

options, including regulatory barriers relief. Local stakeholders may want to make Consolidated Planning more useful to their jurisdiction; technical assistance could help them accomplish that goal.

Discussions with stakeholders could address whether it would help to give jurisdictions greater flexibility to count locally-developed housing planning processes toward their Consolidated Planning requirements if they meet certain minimum requirements and what type of guidance or training would be useful to help support Consolidated Planning that is of maximal value to local jurisdictions and helps them develop more comprehensive local housing strategies that leverage HUD block grant funding with other local resources and barrier reduction efforts to increase the overall impact. In this connection, HUD requires the Consolidated Plan to explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, including the jurisdiction's tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.²⁴⁴

Regulatory barriers. HUD is well-positioned to offer TA related to land use regulations, building on its previous work on eliminating regulatory barriers dating back to 1991 and continued through today's Regulatory Barriers Clearinghouse, as discussed in more detail below. Other agencies offering technical assistance could assess their programs to identify opportunities to help state, local, and tribal governments review their regulatory environments and remove unnecessary regulatory barriers.

For example, a report on rural housing identifies opportunities for the USDA to provide TA to support the preservation of rural multifamily housing, such as providing easy-to-use public data to increase transparency with improved accuracy of public data; helping stakeholders learn more about the possible preservation uses of USDA's Community Facilities programs and the Business and Industry guarantee program; supporting an exchange through which stakeholders can share information; and building on the helpful preservation technical assistance program.²⁴⁵

Lenders are another group identified by stakeholders that could benefit from technical assistance, particularly for lending on tribal trust land, lending for small balance multifamily properties, and financing innovative construction strategies and technologies. Financing continues to be a barrier to affordable housing, and while it was beyond the scope of this work, these recommendations may inform housing finance activities.

EPA provides a variety of technical assistance programs through its Office of Community Revitalization to help states and communities develop in environmentally and economically sound ways.²⁴⁶ Technical

²⁴⁴ See Housing Market Analysis, 24 CFR §91.210(e), <https://www.law.cornell.edu/cfr/text/24/91.210>.

²⁴⁵ Housing Assistance Council, "Rental Housing for a 21st Century Rural America: A Platform for Preservation" (September 2018), https://www.novoco.com/sites/default/files/atoms/files/hac_report_a_platform_for_preservation_090618.pdf.

²⁴⁶ United States Environmental Protection Agency, "Smart Growth Technical Assistance Programs," <https://www.epa.gov/smartgrowth/smart-growth-technical-assistance-programs>

assistance includes training programs, tools, resources such as case studies and community workbooks, and individualized assistance. These tools provide opportunities for jurisdictions to tackle regulatory and process barriers that, among other things, can inhibit housing supply. Programs include:

- Building Blocks for Sustainable Communities to give communities tools to implement smart growth development approaches. Eligible applicants are tribal, county, and local governments, and nonprofit organizations that have the support of the local government on whose behalf they are applying.
- Recreation Economy for Rural Communities to help communities develop strategies and an action plan to revitalize their Main Street through outdoor recreation. Eligible applicants include local governments, Indian tribes, and nonprofit institutions and organizations.
- Smart Growth Implementation Assistance to work with public-sector entities that want to incorporate smart growth techniques into their development. EPA's regional staff identifies and selects communities to assist.

Building and energy codes. Stakeholders mentioned the challenges posed by inconsistent code interpretations and inspections that do not follow standardized procedures. In the past, HUD, in partnership with the National Association of Home Builders, provided a hotline to address questions from builders and inspectors, similar to the help desk DOE administers to assist individuals with questions about energy codes. Stakeholders recommended that technical assistance, such as on-line tutorials and “quick guides,” be provided to raise awareness and educate builders and contractors on building inspection processes and the roles of state and local entities in code adoption and enforcement. One noted that efforts to speed permitting should be coupled with resources and training for building and fire officials to ensure community safety is adequately protected.²⁴⁷

DOE provides technical assistance related to building energy codes, ranging from technical analysis used in development of the standards through state implementation and builder training. It provides states with resources, including the formation of adoption and compliance plans, economic analysis, cost impacts and analysis, and field research. These activities enable states to determine the investments and benefits of adopting a code update. Through its Building Energy Codes Program, DOE also delivers training for code officials and builders to help them stay up to date on code changes. Increasing education and training would be helpful in improving compliance while reducing builders’ costs and delays as they adjust to new rules and supporting consistent code enforcement. Linking the training programs with existing state licensure requirements may increase uptake.

DOE offers a range of other TA resources. For example, it supports a Better Buildings Residential Network bringing together jurisdictions, organizations, and individuals implementing energy efficiency programs to increase the number of energy efficient homes. In addition to toolkits and publications, DOE hosts peer exchange calls for network members to discuss needs and challenges and collectively

²⁴⁷ AEC Science & Technology, LLC, and others, *Joint Comment Letter in Response to HUD Affordable Housing RFI*, <https://www.regulations.gov/document?D=HUD-2019-0092-0290>.

identify effective strategies and useful resources.²⁴⁸ Its Building America Solution Center provides expert information for building professionals on hundreds of high-performance construction topics.²⁴⁹ DOE's efforts extend beyond design and construction to address financing and homeowner acceptance.

Environmental reviews. The Department of Transportation provides a range of training resources to grantees. Some examples follow:

- The Federal Highway Administration (FHWA) provides training on the National Environmental Policy Act (NEPA) implementation, Section 4(f), Environmental Justice, Public Involvement, and other training relevant to FAST-41 projects. FHWA has also provided training on topics such as the application of the One Federal Decision process and the collaboration process between agencies during conferences, quarterly environmental webinars, and workshops.
- The Federal Railroad Administration (FRA) is developing training for environmental reviews related to California's high-speed rail project. In July 2019, FRA and California entered into a Memorandum of Understanding by which the California High-Speed Rail Authority was assigned FRA's responsibilities as lead agency under NEPA. FRA is developing training to ensure that the Authority is equipped to assume environmental review responsibilities under NEPA and other federal environmental laws.
- The Federal Transit Administration (FTA) disseminates useful resources (e.g., environmental standard operating procedures, guidance documents, Q&As, rules) and delivers its Managing the Environmental Review Process seminar, in conjunction with the National Transit Institute, for project sponsors and other stakeholders. In FY2019, FTA established a Regional Environmental Training Program for FTA staff to ensure consistent implementation of best practices.

Transit oriented development. FTA launched the Transit-Oriented Development Technical Assistance Initiative in 2015 to provide technical assistance activities leading to improved access to public transportation, new economic opportunities, pathways to employment, and support for transit-oriented development (TOD) within transportation corridors and around public transportation stations, with a focus on economic development through innovative financing.²⁵⁰ The Initiative brings together resources and provides training on public transit, TOD, land use, innovative finance strategies, urban planning, affordable housing, and economic development. The Initiative advances TOD through on-site technical assistance, a peer network to exchange best practices and communications, outreach, and research. Smart Growth America administers the initiative, providing the technical assistance to selected jurisdictions, tracking progress, and improving the components of the TA through case studies and integrating lessons learned.

²⁴⁸ Office of Energy Efficiency and Renewable Energy, *Peer Exchange Call Summaries*, <https://www.energy.gov/eere/better-buildings-residential-network/peer-exchange-call-summaries>.

²⁴⁹ Office of Energy Efficiency and Renewable Energy, "Building America Solution Center," <https://basc.pnnl.gov/>

²⁵⁰ Federal Transit Administration, *Transit-Oriented Development Technical Assistance: Second Summary Report*, <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/117641/fta0124-research-report-summary.pdf>.

Innovation. The need for greater innovation was identified across a number of fields, including design, construction, and stormwater management. While industry may drive innovation, the Federal Government can play a role in disseminating lessons learned.

As an example, HUD formed the Joint Venture for Affordable Housing in 1982, a public-private partnership to combat the problem of high housing costs from outdated and unnecessary building and land use regulations.²⁵¹ Through conferences, workshops, demonstrations, and other activities, the organizations worked to identify ways to reduce construction costs. Builders worked with local officials to modify or interpret local building codes and development regulations to enable more cost-effective construction. Demonstrations were conducted in numerous locations throughout the country, including Tulsa, OK, Portland, OR, Phoenix, AZ, Elkhart County, IN, Everett, WA, Knox County, TN, Sioux Falls, SD, and Valdosta, GA. The findings were disseminated to encourage wider adoption of these approaches.²⁵²

Stormwater management, an expensive component of development, seems an area where innovation has been stymied but could be extremely beneficial, both by using better technology and improving processes. EPA could support innovation by developing a mechanism for identifying acceptable practices to enable state and local jurisdictions to accept those innovations without fear of penalties, encouraging pilots, and continuing its work to stand up its Clean Water Technology Center to support these efforts.

The DOE Building America Program has been a source of innovation in residential building energy performance, durability, quality, affordability, and comfort for more than 20 years. This research program partners with industry, including many of the country's top home builders, to bring cutting-edge innovations and resources to market. In January 2019, the program announced up to \$11.5 million in Building America Industry Partnerships for High Performance Housing Innovation to drive innovation and early-stage research and development that will improve the energy performance of building envelopes and heating, ventilation, and air conditioning (HVAC) systems in American homes.²⁵³ Projects will also address key challenges impacting building industry design and construction practices.

To ensure federal agencies can use their technical assistance funding to support regulatory reform, some changes to current TA programs may be needed. For example, jurisdictions that do not receive funding directly from a federal agency may need assistance, requiring clarification that such entities are authorized to receive TA. Additional funding would be required to develop and provide the necessary technical assistance to state, local, and tribal jurisdictions dedicated to regulatory reform efforts.

²⁵¹ HUD's partners were: American Planning Association, Council of State Community Affairs Agencies, International City Management Association, National Association of Counties, National Conference of State Legislatures, National Governors' Association, Urban Land Institute, and National Association of Home Builders.

²⁵² HUD User, "Affordable Housing Demonstration Briefing Book," August 1, 1984, <https://www.huduser.gov/portal/Publications/pdf/HUD%20-%203781.pdf>.

²⁵³ Office of Energy Efficiency and Renewable Energy, "Department of Energy Invests \$11.5 Million in Building America Industry Partnerships for High Performance Housing Innovation," <https://www.energy.gov/eere/buildings/articles/department-energy-invests-115-million-building-america-industry-partnerships>.

Regulatory Barriers Clearinghouse

As directed by the American Homeownership and Economic Opportunity Act of 2000, HUD established the Regulatory Barriers Clearinghouse (Clearinghouse) to collect, process, assemble, and disseminate information on state and local regulations and policies affecting the creation and maintenance of affordable housing.²⁵⁴ The Clearinghouse provides a natural home for resources for state, local, and tribal governments on strategies to reduce regulatory barriers.

Maintaining a clearinghouse poses several challenges. First, its value depends on obtaining useful materials from the parties involved in regulatory change. While access to a city's housing policy plan or a state's legislative language can be informative, information needs to be in a useful form for the party seeking it. Second, no single answer is appropriate for all jurisdictions; capturing the context is as important as describing the strategy. A successful practice in Austin, TX may not be what is needed in Norman, OK. Users need to be able to match potential strategies with the challenges they face. Third, an innovative approach is not necessarily a best practice. It takes time to see if a zoning change will be successful or whether a shot clock produces the desirable outcome. Yet, a county council can still benefit from connecting with peers who have tackled a similar regulatory barrier and learning the policies and procedures they considered and challenges they faced.

While the Clearinghouse was recently redesigned to make it easier to find materials, it could be further restructured to be more useful and reach a broader audience. The most important change is to obtain resources from the parties engaged in regulatory relief and housing production to learn more about the process and outcome than can be captured from reading a report. But finding time to report on activities in one's jurisdiction can be difficult. Several possibilities are under consideration. The Clearinghouse could be restructured to operate more like a "wiki" with a simple entry format that includes context to make it quick and easy to submit information and enable others to revise it, add lessons learned, or identify challenges. One of the benefits of a wiki-like entry process would be to enable the resources to better serve a wider range of potential users – mayors, city council and county commission members, developers, housing advocates, and others in the housing development ecosystem; any of them could create, edit, or supplement an entry.

Establishment of an awards program could encourage jurisdictions to submit information on their strategies and highlight their accomplishments by rewarding some that have moved the needle in creating additional housing supply. The Robert L. Woodson, Jr. Award was implemented as part of the America's Affordable Communities Initiative launched in 2003 to recognize local governments that worked to reduce regulatory barriers to affordable housing. The Woodson awards, although they did not provide monetary compensation, highlighted innovation around the U.S. HUD is considering how to develop regional monetary awards in partnership with corporations and local educational institutions

²⁵⁴ HUD User, Office of Policy Development and Research, "Regulatory Barriers Clearinghouse," <https://www.huduser.gov/portal/rbc/home.html>.

that would serve as a mechanism for receiving information and building regional relationships to solve supply challenges, particularly involving land use regulations and processes. The University of Utah’s Ivory Prize for Housing Affordability, initiated in 2018 to identify innovative ideas in construction and design, finance, and regulatory and policy reform, may serve as a model.²⁵⁵

In addition to capturing the activities and experiences occurring in state, local, and tribal jurisdictions, the Clearinghouse will continue to be a source of research and data. For example, many jurisdictions continue to exclude manufactured housing from single-family-zoned districts. Better knowledge of the many advances made in manufactured housing design and construction may help jurisdictions reconsider their zoning choices.²⁵⁶ To support innovative construction strategies and technologies, the Clearinghouse could feature multifamily properties that have used off-site construction and identify cost savings and efficiencies achieved, including FHA-insured properties. HUD also could publish guidance on leveraging off-site construction to boost housing affordability, encouraging the use of these approaches when suitable.

Research

Data needs

Several stakeholders expressed the need for better collection or publication of data to enable policymakers to make more informed, accurate decisions. As a roundtable participant noted, “We have a complete lack of data. To evaluate what works, we need data to see the effect of rules.” This need is particularly acute as the country responds to the economic challenges posed by the coronavirus pandemic. The following are some of the areas stakeholders identified as needing enhanced data.

Building permit data. Census Bureau publishes information on the number of new residential construction permits, along with building starts and completions. Much less information is available on permits for home improvements, demolition, conversions, etc. In some local areas, demolitions and changes to existing stock are substantial shares of the overall construction universe. HUD’s Components of Inventory Change (CINCH) report provides estimates at high geographic aggregation and with substantial time lag. HUD and Census could collaborate to provide more descriptive information on permits.

Capital expenditures on multifamily properties. Expenditures or outcomes on improvements and renovations in multifamily buildings provide useful information on how responsive local housing markets are to changes in demand. Cities that are experiencing lots of improvements or renovations in multifamily housing but building few new apartments are generally places with supply constraints. This is also a signal of how much existing “naturally occurring” affordable housing (i.e., housing that is

²⁵⁵ Ivory Innovations, “The Ivory Prize: Finding Excellence,” <https://ivory-innovations.org/theivoryprize>.

²⁵⁶ Effects of Market Forces on the Adoption of Factory-Built Housing. *Evidence Matters* (Winter/Spring 2020), <https://www.huduser.gov/portal/periodicals/em/WinterSpring20/highlight2.html#title>

affordable without a subsidy) is being lost. Expenditures are reported in the NCREIF (National Council of Real Estate Investment Fiduciaries) database, which is limited to institutional investors, but that is also very closely held data.

Construction and land development loan terms. Data on construction and land development (CLD) loans are not readily available, particularly concerning the covenants of CLD loans. For example, a construction loan disperses in tranches once specific benchmarks have been reached in the development project, i.e., a percentage of completed or pre-sold units for a development of single-family homes. Knowing how those covenants change over time will provide insights on when banks start to tighten access to credit.

Data needs should be prioritized since pursuing any of these activities will require additional funding. Better data will be important to help jurisdictions identify and implement regulatory change and support research efforts.

Research needs

Research will be needed to design TA materials and support innovation. Specific areas identified by stakeholders include:

- Case studies of local efforts to develop comprehensive housing strategies and innovative approaches in a variety of markets could contribute directly to technical assistance efforts.
- Rigorous evaluation of a range of local housing policies (including but not limited to barrier reductions efforts) to better understand their outcomes and how different decisions made during implementation can affect their final results.
- Exploration of the serious capacity issues many communities face in terms of not having enough developers capable of producing non-luxury housing at scale. This is a problem particularly in rural areas, but also in some urban and suburban areas.
- Research could help clarify opportunities for improving coordination between state and local housing and transportation agencies, including the extent to which existing coordination efforts like the provisions for rewarding jurisdictions with affordable housing strategies in the federal New Starts process are effective or could be improved.²⁵⁷
- Innovation in construction techniques has the potential to reduce costs and address labor force constraints. Better coordination and dissemination of the research conducted through DOE's Advanced Building Construction Initiative and other programs, HUD's Affordable Housing Research and Technology Division, and the National Institute of Building Sciences, a non-profit non-governmental organization, may improve construction productivity.

²⁵⁷ U.S. Department of Transportation, "Final Interim Policy Guidance: Federal Transit Administration Capital Investment Grant Program," June 2016, https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FAST_Updated_Interim_Policy_Guidance_June%202016.pdf.

- Analyses of different mechanisms for producing affordable housing, identifying a “return on investment,” could inform which federal programs enable the Federal Government to get the most out of its funds.²⁵⁸ Different programs may be more successful in certain housing ecosystems.

As agencies develop their Annual Evaluation Plans pursuant to the Evidence Act, research topics related to regulatory barriers are candidates for inclusion.

²⁵⁸ See, for example, Evan Soltas, “The Price of Inclusion: Evidence from Housing Developer Behavior” (2020), https://www.dropbox.com/s/bbjjs465mgavay5/NYC421a_CurrentVersion.pdf?dl=0.