



Removal of Regulatory Barriers to Affordable Housing Act of 1992

Feasibility and
Section 8
Analysis

**Removal of Regulatory
Barriers to Affordable Housing
Act of 1992**

**Legislation and
Section-by-Section Analysis**

May 1992



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

MAY 8 1992

Honorable Dan Quayle
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to submit to the Congress the "Removal of Regulatory Barriers to Affordable Housing Act of 1992," the Administration's legislative proposal to address the problem of excessive, exclusionary, and unnecessary regulations that increase housing costs and restrict the supply of affordable housing.

This legislation would implement major recommendations of the bipartisan Advisory Commission on Regulatory Barriers to Affordable Housing, contained in its report "Not in My Backyard": Removing Barriers to Affordable Housing. The Commission came to the disturbing conclusion that rules, regulations, and red tape at all levels of government constitute formidable barriers to affordable housing, raising costs in some communities by as much as 20 to 35 percent and putting affordable housing beyond the reach of the average American family.

While many rules and regulations are well-intentioned, increasingly they have been carried to extremes without regard to their effects on housing affordability. Today many young families cannot find housing near their places of work, elderly couples cannot afford to live near their children, and teachers and policemen cannot buy homes in the communities which employ them. I want to change that.

This legislation is a call to action -- action first by Congress and then by Federal agencies, State and local governments, and private citizens to lower the barriers to affordable housing. I hope that Congress will join with the Administration to enact this bold initiative, which will help expand housing opportunities for all American families.

A section-by-section explanation and justification accompanies this letter and more fully sets forth the contents of the bill. I request that the bill be referred to the appropriate committee and urge its early enactment.

The effect of this draft bill on the deficit is:

Fiscal Years
(in millions of dollars)

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1992-1997</u>
Receipts	-38	-187	-374	-472	-493	-490	-2054

The Omnibus Budget Reconciliation Act of 1990 (OBRA) requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit; and if it does, it will trigger a sequester if not fully offset. Since the bill would extend the authority for allocation of low-income housing tax credits and issuance of mortgage revenue bonds, which would decrease receipts, it must be offset.

The President's FY 1993 Budget includes several proposals that are subject to the pay-as-you-go requirement. Considered individually, the proposals that increase direct spending or decrease receipts would fail to meet the OBRA requirement. However, the sum of all of the spending and revenue proposals in the President's Budget would reduce the deficit. Therefore, this proposal should be considered in conjunction with the other proposals in the FY 1993 Budget that together meet the OBRA pay-as-you-go requirement.

The Office of Management and Budget has advised that the enactment of this legislation would be in accord with the program of the President.

I am sending a similar letter to the Speaker of the House, Thomas S. Foley.

Very sincerely yours,


Jack Kemp

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A BILL

To encourage State and local governments to further identify and remove regulatory barriers to affordable housing, to strengthen the link between Federal housing assistance and removal of regulatory barriers, to extend and amend certain laws providing Federal tax incentives for affordable housing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE. -- This Act may be cited as the "Removal of Regulatory Barriers to Affordable Housing Act of 1992".

SEC. 2. PURPOSES. -- The purposes of this Act are --

(1) to encourage State and local governments to further identify and remove regulatory barriers to affordable housing (including those barriers that are excessive, unnecessary, duplicative, or exclusionary) that significantly increase housing costs and limit the supply of affordable housing;

(2) to strengthen the link between Federal housing assistance (including the Low-Income Housing Tax Credit and Mortgage Revenue Bond programs) and State and local efforts to identify and eliminate regulatory barriers; and

(3) to extend the State-administered Low-Income Housing Tax Credit and Mortgage Revenue Bond programs.

SEC. 3. DEFINITION. -- As used in this Act, the terms "regulatory barriers to affordable housing" and "regulatory

1 barriers" mean any public policies (including those embodied in
2 statutes, ordinances, regulations, or administrative procedures
3 or processes) required to be identified by a jurisdiction in
4 connection with its strategy under section 105(b)(4) of the
5 Cranston-Gonzalez National Affordable Housing Act.

6 **SEC. 4. GRANTS TO STATES FOR REMOVAL OF REGULATORY**

7 **BARRIERS. -- (a) GRANT PROGRAM. --** The Housing and Community
8 Development Act of 1974 is amended by adding the following new
9 section at the end thereof:

10 ***REMOVAL OF REGULATORY BARRIERS TO AFFORDABLE HOUSING**

11 ***SEC. 122. (a) AUTHORIZATION AND ALLOCATION. --** Of the
12 amount approved in an appropriation Act for grants under
13 this title in any year, the Secretary shall reserve up to
14 \$10,000,000 for each of fiscal years 1993 and 1994 to be
15 allocated to States for grants for further planning and
16 implementation of State strategies for the removal of State
17 and local regulatory barriers to affordable housing. These
18 funds shall be allocated among States that have a
19 Comprehensive Housing Affordability Strategy approved by
20 the Secretary under section 105 of the Cranston-Gonzalez
21 National Affordable Housing Act, based upon measures of need
22 for the whole State, as determined pursuant to section
23 217(b)(1)(B) (excluding adjustments under section
24 217(b)(1)(E)) of such Act, except that the minimum annual
25 grant shall be \$100,000. Any amounts allocated to a State
26 pursuant to this section which are not received by the State

1 for a fiscal year because of failure to obtain approval of
2 its application for a grant under this section, or which
3 otherwise become available, shall be added to amounts
4 available for grants under section 103 in the succeeding
5 fiscal year.

6 **"(b) DEFINITION. --** For purposes of this section, the
7 terms 'regulatory barriers to affordable housing' and
8 'regulatory barriers' mean any public policies (including
9 those embodied in statutes, ordinances, regulations, or
10 administrative procedures or processes) required to be
11 identified by a jurisdiction in connection with its strategy
12 under section 105(b)(4) of the Cranston-Gonzalez National
13 Affordable Housing Act.

14 **"(c) APPLICATIONS. --** States shall apply for grants
15 under this section in a form and manner prescribed by the
16 Secretary. Applications shall describe how grant amounts
17 will assist States to further plan and implement strategies
18 to remove regulatory barriers to affordable housing.

19 **"(d) ELIGIBLE ACTIVITIES. --** States shall use grants
20 under this section for activities that further develop and
21 implement strategies to remove regulatory barriers,
22 including:

23 **"(1) identifying, assessing, and monitoring State**
24 **and local regulatory barriers;**

25 **"(2) identifying State public policies (including**
26 **enabling or other legislation), or the absence of such**

1 policies, that permit or encourage local regulatory
2 barriers;

3 "(3) developing a State legislative reform
4 program (as well as a strategy for adoption of the
5 program) intended to reduce State and local regulatory
6 barriers;

7 "(4) developing model State standards and
8 ordinances to reduce regulatory barriers and assisting
9 in their adoption and use;

10 "(5) carrying out State administrative reform to
11 reduce regulatory barriers through the simplification
12 and consolidation of State administrative procedures
13 and processes, including the issuance of permits; and

14 "(6) providing technical assistance and
15 information to local governments for implementation of
16 legislative and administrative reform programs to
17 reduce regulatory barriers.

18 "(e) **PERFORMANCE REPORTS.** -- States that receive
19 grants under this section shall submit performance reports,
20 in a form and manner prescribed by the Secretary, describing
21 any progress and problems in planning and implementing
22 strategies to remove regulatory barriers to affordable
23 housing."

24 **(b) ALLOCATION OF GRANT AMOUNTS.** -- Section 106(a)(2) of
25 the Housing and Community Development Act of 1974 is amended by
26 striking "section 107" and inserting "sections 107 and 122".

1 **SEC. 5. REGULATORY BARRIERS COMPONENT OF CHAS.** -- (a)
2 **BASIS FOR HUD APPROVAL OR DISAPPROVAL.** -- Section 105(c)(1) of
3 the Cranston-Gonzalez National Affordable Housing Act is amended
4 by striking the third sentence.

5 **(b) JUDICIAL REVIEW.** -- Section 108(c) of such Act is
6 amended by striking the first sentence.

7 **(c) ALLOCATING OR DENYING FUNDS.** -- Section 111 of such Act
8 is hereby repealed.

9 **SEC. 6. LOW-INCOME HOUSING TAX CREDITS AND MORTGAGE REVENUE**
10 **BONDS.** -- (a) **COORDINATE BONDS UNDER CHAS.** -- Section 105(b)(10)
11 of the Cranston-Gonzalez National Affordable Housing Act is
12 amended by inserting before the semicolon the following:

13 ", and describe the strategy to coordinate qualified
14 mortgage bonds with the development of affordable housing".

15 **(b) LOW-INCOME HOUSING TAX CREDIT.** -- (1) **PROHIBIT**
16 **ALLOCATION OF CREDITS BY A STATE IF HUD DISAPPROVES OR STATE**
17 **FAILS TO SUBMIT CHAS.** -- Section 42(h)(3) of the Internal Revenue
18 Code of 1986 is amended by adding the following new subparagraph
19 at the end:

20 "(H) Notwithstanding any other provision of this
21 section, if the Secretary of Housing and Urban Development
22 disapproves a State's Comprehensive Housing Affordability
23 Strategy (including annual updates) under section 105 of the
24 Cranston-Gonzalez National Affordable Housing Act, or a
25 State fails to submit a Strategy, the State shall not
26 allocate any credits until the Secretary approves a Strategy

1 for the State. Any credit authority forfeited under this
2 subparagraph shall be considered unused and shall be
3 reallocated in accordance with this section."

4 **(2) EXTEND CREDIT AUTHORITY.** -- Section 42(o) of the
5 Internal Revenue Code of 1986 is amended --

6 (A) in paragraphs (1)(A) and (B), by striking
7 "June 30, 1992" each place it appears and inserting
8 "December 31, 1993";

9 (B) in paragraphs (2) and (2)(A), by striking "July 1,
10 1992" each place it appears and inserting "January 1, 1994";

11 (C) in paragraph (2)(B), by striking "June 30, 1992"
12 and "June 30, 1994" and inserting "December 31, 1993" and
13 "December 31, 1995 respectively; and

14 (D) in paragraph (2)(C), by striking "July 1, 1994"
15 and inserting "January 1, 1996".

16 **(c) EXTEND MORTGAGE REVENUE BOND AUTHORITY.** -- Section
17 143(a)(1)(B) of the Internal Revenue Code of 1986 is amended by
18 striking "June 30, 1992" each place it appears and inserting
19 "December 31, 1993".

20 **(d) PROHIBIT ISSUANCE OF BONDS BY A STATE IF HUD**
21 **DISAPPROVES OR STATE FAILS TO SUBMIT CHAS.** -- Section 146 of the
22 Internal Revenue Code of 1986 is amended by adding the following
23 new subsection:

24 "(o) Notwithstanding any other provision of this
25 section, if the Secretary of Housing and Urban Development
26 disapproves a State's Comprehensive Housing Affordability

1 Strategy (including annual updates) under section 105 of the
2 Cranston-Gonzalez National Affordable Housing Act, or a
3 State fails to submit a Strategy, the State shall not issue
4 any qualified mortgage bonds until the Secretary approves a
5 Strategy for the State."

6 **SEC. 7. SUBSTANTIALLY EQUIVALENT FEDERAL AND STATE**
7 **REGULATORY BARRIER ASSESSMENT REQUIREMENTS.** -- Section 105(b)(4)
8 of the Cranston-Gonzalez National Affordable Housing Act is
9 amended by adding the following before the semicolon at the end
10 thereof:

11 "; however, if a State requires a unit of general local
12 government to submit a regulatory barrier assessment that is
13 substantially equivalent to that required under this
14 paragraph, as determined by the Secretary, the unit of
15 general local government may submit its State submission to
16 the Secretary to fulfill its submission requirement under
17 this paragraph".

**Section-by-Section
Analysis**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION-BY-SECTION EXPLANATION AND JUSTIFICATION

"REMOVAL OF REGULATORY BARRIERS
TO AFFORDABLE HOUSING ACT OF 1992"

PURPOSES

The "Removal of Regulatory Barriers to Affordable Housing Act" is a major legislative initiative intended to encourage State and local governments to comprehensively identify and remove regulatory barriers to affordable housing. Regulatory barriers include those public policies that are excessive, exclusionary, unnecessary, or duplicative and that significantly increase housing costs and limit the supply of affordable housing.

Section 2 describes the purposes of the bill which are responsive to the findings of the President's Advisory Commission on Regulatory Barriers to Affordable Housing. At the request of the President, Secretary Jack Kemp established the Commission in March 1990 with the charge of identifying regulatory barriers to affordable housing and making recommendations on how these barriers might be removed. The Commission was chaired by former Governor Thomas Kean of New Jersey and co-chaired by Thomas "Lud" Ashley, former Congressman and Chairman of the House Subcommittee on Housing and Community Development. Composed of 21 members representing a diversity of viewpoints and interest groups, the Commission included public policy experts, homebuilders, community activists, mayors, and representatives of State organizations.

The Commission submitted its report, "Not In My Back Yard: Removing Regulatory Barriers to Affordable Housing," to President Bush on July 8, 1991. The Commission came to the unanimous conclusion that unnecessary, duplicative, excessive, or exclusionary Federal, State, and local public policies are a major factor in driving up housing costs, in some areas contributing 20-35 percent to the cost of a home. The Commission also found that, far too often, these regulatory barriers, particularly at the local level, are used by existing residents concerned with maintaining high property values to exclude housing for low- and moderate-income families, thereby limiting full housing choice and opportunity.

The Commission's findings are not new. They reiterate findings of other Commissions and task forces dating back as far as 1968. This bill, therefore, is being proposed to provide a comprehensive legislative response to these findings.

This bill would not upset or question long-established principles of local self-government that have served and continue

to serve our Nation well. The regulation of housing is primarily a local function. However, the Commission recognized, and this bill reflects, a fundamental finding that many local regulatory barriers exist because States have not taken all appropriate steps to assure that the interests of all the citizens of the State are equitably represented. Therefore, local regulation can accommodate local housing preferences, but it must also accommodate the interests of all citizens of the State in affordable housing.

This bill is also responsive to the Commission's finding that there is an appropriate role for the Federal government in stimulating and encouraging States to identify and remove regulatory barriers. This bill presents a carefully tailored series of incentives and other actions that would stimulate these reform efforts within the generally accepted assumptions of Federalism.

Accordingly, this bill would encourage both State and local governments, with primary emphasis on States, to further identify regulatory barriers to affordable housing and to further develop and implement programs of regulatory reform to increase housing affordability. In addition, it would closely link the provision of Federal assistance to State and local governments, including Low-Income Housing Tax Credits and Mortgage Revenue Bonds, to consistency with such jurisdiction's approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the Cranston-Gonzalez National Affordable Housing Act (NAHA), including its regulatory barrier-removal strategy. The bill would not interfere with Federal regulatory requirements to protect public health or the environment.

DEFINITION

Section 3 of this bill would define "regulatory barriers to affordable housing" and "regulatory barriers" to mean any public policies (including those embodied in statutes, ordinances, regulations, or administrative procedures or processes) already required to be identified by a State or unit of general local government in connection with its regulatory barrier-removal strategy under section 105(b)(4) of NAHA, which is an element of its CHAS. Section 105(b)(4) provides an illustrative list of types of regulatory barriers that jurisdictions are expected to address under NAHA.

GRANTS FOR REMOVAL OF REGULATORY BARRIERS

Section 4 of this bill recognizes the significant role States must play in any successful State and local regulatory barrier removal and regulatory reform effort. Section 4 would establish a new program to provide grants to States to further develop and implement its strategy to remove regulatory barriers

already required under the CHAS. States are in a unique position to deal with regulatory barriers to affordable housing. The State has the duty to ensure that local police powers are exercised for the common good for which such delegation is made. Moreover, because States are concerned with impacts that extend beyond the boundaries of a single local jurisdiction, they can establish standards of fairness and equity that may not be considered by a locality.

Except in the areas of environmental control and building codes, only a few States, such as California and Oregon, currently exercise any extensive review of local housing regulation. Grants under this section would stimulate State action and assist in developing State capability for undertaking programs of regulatory reform and barrier-removal. The reform of building codes is an example of the potential of successful State action. Over the past 20 years, States have modernized their building code systems to assure State and regional uniformity and consistency. As a result, building codes are far less of a regulatory barrier than they once were.

The CHAS requires a specific strategy to address regulatory barriers to affordable housing. With the modest start-up funds proposed by this bill, States could more effectively address this requirement through a broad series of activities including, but not limited to: developing the capacity to identify, monitor and evaluate local regulatory barriers; enacting new legislation to establish State standards for zoning, impact fees, building codes and subdivision ordinances; and requiring State comprehensive planning requirements, including housing elements and fair share requirements, for local zoning.

Section 4(a) would establish the new grant program as section 122 of the Housing and Community Development Act of 1974. Subsection (a) of section 122 would authorize the Secretary to reserve up to \$10,000,000 for each of fiscal years 1993 and 1994 of the amount approved in an appropriation Act for grants under title I of the Housing and Community Development Act of 1974 in such fiscal years. Grants would be provided to States for further planning and implementation of State strategies for the removal of State and local regulatory barriers.

These funds would be allocated among States that have an approved CHAS, based on measures of need for the whole State, as determined pursuant to the HOME formula under section 217(b)(1)(B) of NAHA (excluding adjustments between States and units of general local government under section 217(b)(1)(E)). The minimum annual grant would be \$100,000. In addition, any amounts allocated to a State under the program which are not received by the State for a fiscal year because of failure to obtain approval of its application, or which otherwise become

available, would be added to amounts available for section 103 for grants in the following fiscal year.

Subsection (b) of section 122 would define the terms "regulatory barriers to affordable housing" and "regulatory barriers" as such terms are defined in section 3 of this bill.

Subsection (c) would require States to apply for grants under this section in a form and manner prescribed by the Secretary. It also would require a State to describe in its application how the grant would assist the State to further plan and implement its strategies to remove regulatory barriers.

Subsection (d) would require that each State use its grant for activities that further develop and implement its strategy to remove regulatory barriers. States could use grant funds for a broad range of enumerated activities including: identification of regulatory barriers; development of a State legislative reform program; development of model standards; State administrative reform; and technical assistance.

Subsection (e) would require each State that receives a grant under this section to submit a performance report in a form and manner prescribed by the Secretary. The report would describe any progress and problems in planning and implementing its strategy to remove regulatory barriers.

Section 4(b) would amend section 106 of the Housing and Community Development Act of 1974 to revise the order in which amounts are allocated under that section to accommodate the allocation of amounts under this new grant program. Under the existing section 106, the Secretary reserves amounts for Indian tribes, then allocates amounts provided for special purpose grants under section 107, and finally allocates amounts to entitlement grantees and to States for use in nonentitlement areas. This section of the bill would establish that amounts provided for use under this new grant program would be allocated along with special purpose grants under section 107.

REGULATORY BARRIERS COMPONENT OF CHAS

Section 5(a) of this bill would amend section 105(c)(1) of NAHA by deleting the third sentence which prohibits the Secretary from disapproving a jurisdiction's CHAS based on its adoption or continued use of a regulatory barrier identified under section 105(b)(4) of NAHA. Section 5(b) would amend section 108(c) of NAHA by deleting the first sentence which prohibits judicial review of the adequacy of the regulatory barrier information submitted under section 105(b)(4) of NAHA. Section 5(c) would delete section 111 of NAHA which prohibits the Secretary from denying funding to any jurisdiction based on its adoption, continuation, or discontinuation of any regulatory barrier.

These amendments are intended to make the regulatory barriers component of the CHAS under section 105(b)(4) of NAHA equivalent to all other CHAS components with respect to HUD review and judicial review. For example, under current law, a State or locality is required to describe its strategy to remove regulatory barriers in its CHAS. However, HUD cannot consider this requirement as a basis for disapproving the CHAS. To single out and specifically exclude strategies to remove regulatory barriers of a State or locality from Departmental review under the CHAS sends a clear message to States and localities that they can continue to maintain or adopt such public policies without any consequences.

This section would make all elements of the CHAS, including the section 105(b)(4) regulatory barrier-removal element, subject to the existing standard for Departmental review and approval, which calls for consistency with the purposes of NAHA and for the contents of the CHAS to be provided in a substantially complete manner. These amendments would make the regulatory barriers component of the CHAS an essential element of State and local strategies to address affordable housing needs, and would effectively link removal of regulatory barriers with allocation of Federal housing funds.

LOW-INCOME HOUSING TAX CREDITS AND MORTGAGE REVENUE BONDS

In general, section 6 of this bill would amend NAHA and the Internal Revenue Code of 1986 to link the allocation of low-income housing tax credits and the issuance of mortgage revenue bonds to a State's CHAS, including State efforts under the CHAS to identify and eliminate regulatory barriers to affordable housing. It would also extend these important State-run housing programs for 18 months. The States, however, would be asked to take action to bring down the cost of housing so that the credits and bonds could be used effectively and efficiently to serve more people. Accordingly, these programs would be tied more closely to the affordable housing goals enunciated in NAHA.

Section 6(a) would amend section 105(b)(10) of NAHA to add a requirement to the CHAS that each State describe its strategy to coordinate qualified mortgage bonds with the development of affordable housing. Section 105(b)(10) already contains a similar requirement with respect to low-income housing tax credits.

Section 6(b)(1) would amend section 42(h)(3) of the Internal Revenue Code of 1986 to prohibit States from allocating low-income housing tax credits, if HUD disapproves the State's CHAS, or the State fails to submit a CHAS, until the Secretary approves a CHAS for the State. Any amounts forfeited would be considered unused and would be reallocated in accordance with section 42.

Section 6(b)(2) would amend section 42(o) of the Internal Revenue Code of 1986 to extend the authority for allocation of low-income housing tax credits for 18 months. It also makes several conforming amendments with respect to such extension.

Section 6(c) would amend section 143(a)(1)(B) of the Internal Revenue Code of 1986 to extend the authority for issuance of mortgage revenue bonds for 18 months.

Section 6(d) would amend section 146 of the Internal Revenue Code of 1986 to prohibit a State from issuing qualified mortgage bonds, if HUD disapproves the State's CHAS, or the State fails to submit a CHAS, until the Secretary approves a CHAS for the State.

**SUBSTANTIALLY EQUIVALENT FEDERAL AND STATE
REGULATORY BARRIER ASSESSMENT REQUIREMENTS**

Section 7 would amend section 105(b)(4) of NAHA to authorize explicitly a unit of general local government to submit to HUD, to satisfy its CHAS submission requirement, the same regulatory barrier assessment that it is required to submit to the State, if the Secretary determines that the State and CHAS requirements are substantially equivalent.

At least five States currently require localities to submit statements to the State concerning regulatory barriers, and a number of States are considering adding such requirements. This amendment would reduce the paperwork burden of localities with respect to these duplicative requirements, assure that such submissions are more sensitive to State needs and priorities, and encourage greater State involvement in review of regulatory barriers. This is somewhat analogous to the approach used in fair housing enforcement where the Department has a long history of accepting, in lieu of Federal fair housing enforcement, substantially equivalent State and local fair housing laws.