

UPDATE

DEREGULATING THE HOUSING MARKET: WHAT CONGRESS CAN DO

(Updating *Backgrounder* No. 848, "From the Kemp Commission: Sound Advice for Removing Barriers to Affordable Housing," August 26, 1991.)

This year Congress can help make housing more affordable for American families.

The Bush Administration is presenting to Congress a series of budget initiatives that will promote deregulation of an overly regulated housing market, and by this will reduce housing costs. These initiatives are based on the recommendations of the Advisory Commission on Regulatory Barriers to Affordable Housing, known as the Kemp Commission, after Department of Housing and Urban Development (HUD) Secretary Jack Kemp. Last July the bipartisan Commission issued its final report, "*Not In My Back Yard*": *Reducing Barriers to Affordable Housing*.¹ The report's recommendations give Congress and the Bush Administration an opportunity to tackle excessive regulation in the housing market.

The Commission, established at the behest of George Bush and Kemp, was chaired by former New Jersey Republican Governor Thomas Kean.² The Commission heard from expert testimony and pored over numerous studies. It found that the types of state and local regulations most adversely affecting housing affordability were: zoning ordinances that exclude certain forms of reasonably priced housing; growth control ordinances that impose ceilings on new construction; rent control ordinances that reduce the incentive to maintain or build rental properties; and lengthy permit approval procedures, especially those related to environmental protection, that delay new construction by months and often years. The Kemp Commission concluded that the reduction in the supply of housing from this overregulation makes housing less affordable for millions of Americans.

Undercutting Expansion. Commission members noted that while affordability for buyers and renters improved nationwide during the 1980s, it did so largely because of Reagan Administration economic policies. The problem is that excessive regulation worked against this trend, undercutting the expanding supply of houses and apartments. This was especially so in major metropolitan areas in California and the Northeast, where prices and rents, especially of new dwellings, still remain well above those elsewhere.

Like previous federal housing task forces, the Kemp Commission recognizes that the tacit purpose behind much of this regulation is to raise the market values of existing properties. Established residents of a commu-

1 Advisory Commission on Regulatory Barriers to Affordable Housing, "*Not In My Back Yard*": *Reducing Barriers to Affordable Housing* (Washington, D.C.: U.S. Department of Housing and Urban Development, July 1991).

2 Heritage Foundation Director of Domestic Policy Studies Stuart Butler was a Commission member. As such, he has not contributed to or reviewed this study.

nity, once having benefitted at the expense of newcomers, pressure local officials to keep these regulations, and often to make them more stringent.

This exclusionary impulse, more than, say, a laudable desire to protect the environment, is the motive behind such local and state regulations. Often, new construction of any kind causes existing residents to warn developers and local officials alike: "Not in my back yard!" The acronym for this expression—NIMBY—is firmly established in housing policy debate.

AN AGENDA FOR CHANGE: LINKING REGULATORY REFORM TO FEDERAL HOUSING AID

HUD wants to make the granting of federal housing subsidies to state and local governments contingent upon the removal of excessive regulation of land use and housing, especially of new housing. HUD wants to make any state or local government recipient demonstrate beforehand that it is making progress in reducing burdens upon developers who seek approvals of proposals for residential development. This especially would affect HOME, a block grant program created by Congress in 1990 as part of the National Affordable Housing Act. HOME is budgeted at \$1.5 billion in the current fiscal year; the Administration proposes spending \$700 million on the program in fiscal 1993.

Kemp and his colleagues at HUD understand that local government officials, vulnerable to voter hostility toward new development, are not going to remove these barriers voluntarily. They thus need encouragement from Washington. Such incentives are contained in the Bush Administration budget package. The most important of these initiatives requires action by Congress. This would give HUD greater authority to review grants made in accordance with the newly created Comprehensive Housing Affordability Strategy (CHAS).

The National Affordable Housing Act requires every state and local government receiving federal housing assistance to submit a CHAS document to HUD. A CHAS applicant must meet fifteen statutory requirements. The most important is a demonstration by the applicant that it is taking steps to make housing more affordable. The applicant must reveal the extent to which its own regulations and policies drive up the cost of housing, and must present a strategy to remove these barriers to affordability. The Act, however, explicitly made a regulatory barrier-removal plan the one element in a CHAS application that HUD could not use as a basis for disapproving a request for funding.

Wrong Message. HUD officials argue that congressional exclusion of the removal of regulatory barriers requirement from the HUD review process sends the wrong message to state and local governments: They can continue to pursue exclusionary policies with impunity. HUD insists that this criterion for grant submission, like the fourteen others required in a CHAS, should be subject to HUD review.

Kemp and other HUD officials, however, have the unenviable task of trying to convince Congress, generally favoring increased government regulation and subsidies as ways of promoting housing affordability, of this view. For example, despite the repeated failure of rent control, Representative Nancy Pelosi, the California Democrat, opposes any proposal that would deny federal housing assistance to communities with rent-control ordinances, such as San Francisco, which is in her district.³

Those opposed to linking federal housing assistance to removing regulatory barriers erroneously argue that government deregulation is only a minor factor in driving up the cost of housing. John Gilderbloom, Associate Professor at the University of Louisville College of Urban and Public Affairs, for example, claims that charges of overregulation are wildly exaggerated, and that there is no guarantee that builders and landlords would pass on the savings of deregulation to the consumer anyway.⁴ Such researchers also maintain that any

3 Conversation with Carolyn Bartholomew, Legislative Director, Representative Nancy Pelosi, April 2, 1992.

4 See testimony by John Gilderbloom, "The Bush/Kemp Housing Commission: The Good, the Bad, and the Ugly," U.S. House of Representatives, Committee on Banking, Finance and Urban Affairs, Subcommittee on Policy Research and

program of deregulation, whatever burdens it lifts from the shoulders of builders, landlords, and homeowners, must be accompanied by a massive increase in housing subsidies. William C. Apgar, Jr., executive director of the Harvard University Joint Center for Housing Studies, asserts: "Regulatory reform does not negate the need for expanded Federal subsidy programs."⁵

Such arguments are flawed. The Kemp Commission findings demonstrate convincingly that housing overregulation has been a major contributor to rising housing prices and rents since the 1970s. It is not coincidental that areas of the country subject to the heaviest housing regulation, such as the California and Northeast coastal metropolitan regions, have by far the nation's highest housing prices and rents. According to William M. Connolly, Director of the New Jersey Department of Community Affairs, Division of Housing and Development, the percentage of the price of a new home that the Commission attributed to housing and land use overregulation in New Jersey—25 percent to 30 percent—is, if anything, on the low side.⁶

The claim that more federal spending on housing is needed also is without foundation. Under the Reagan Administration HUD spending rose from \$14.9 billion in fiscal 1981 to \$19.7 billion in fiscal 1989. By fiscal 1991 this figure climbed to \$22.8 billion, and is projected to reach \$24.2 billion and \$28.1 billion, respectively, in fiscal 1992 and 1993. Moreover, between 4.4 million and 4.5 million low-income American households currently receive housing subsidies. Apgar's own research at Harvard indicates that subsidized poor renters pay about one-half the rent that unsubsidized poor renters pay, and that even unsubsidized poor renters pay rents less the overall median.⁷

ADDITIONAL DEREGULATORY INITIATIVES

Making future federal housing assistance contingent upon state and local governments removing regulatory barriers is not the only initiative HUD is proposing. HUD already has recommended or established the following measures:

- 1) **Make grants to states for barrier removal and reform efforts.** HUD is proposing \$10 million in fiscal year 1993 Community Development Block Grant (CDBG) funds for states to assist them in removing regulatory barriers to housing markets. The Kemp Commission report emphasizes that the states, more than federal or local government, can exercise the best judgment over the economic impact of government regulations that extend beyond local boundaries. Empowering the states to exercise and act on this judgment while using federal grant money would require congressional legislation.
- 2) **Create a Regulatory Reform for Affordable Housing Information Center.** The Center, established earlier this year, is HUD's clearinghouse for information and ideas to state and local governments, the housing industry, nonprofit housing organizations, and the general public.⁸

Insurance and Subcommittee on Housing and Community Development, *Report by the Advisory Commission on Regulatory Barriers to Affordable Housing*, 102nd Congress, First Session, July 17, 1991 (Washington, D.C.: U.S. Government Printing Office, 1991, pp. 145-178).

⁵ Quoted in *ibid.*, p. 44.

⁶ Statement of William M. Connolly, in *ibid.*, p. 47.

⁷ William C. Apgar, Jr., et al., *The State of the Nation's Housing 1990* (Cambridge, MA: Harvard University Joint Center for Housing Studies, 1990), p. 21. Subsidized poor renters paid (1989 dollars) \$188 in rent; unsubsidized poor renters paid \$360. Further undercutting Apgar's argument is the fact that much of the income of poor households is uncounted by the Census Bureau. See Robert Rector, "How the Poor Really Live: Lessons for Welfare Reform," Heritage Foundation *Background* No. 875, January 31, 1992, p. 3.

⁸ The Center's toll-free number is 1-800-292-3472.

- 3) **Create an Interagency Affordable Housing Regulatory Review Board.** This proposal, which does not require action by Congress, already has been approved by the White House and the Office of Management and Budget. The new Board will waive federal regulations that apply to housing proposals in states and localities demonstrating a commitment to regulatory barrier removal. These regulations cover environmental, transportation, labor and other federal requirements, even on many unsubsidized projects. Currently, states seeking such waivers must go through a cumbersome and time-consuming federal review process. The Board would be composed of sub-Cabinet officials from federal agencies, including HUD, the Veterans Administration, the Department of the Interior, and the Army Corps of Engineers. It would expedite reviews, ensure that the states receive full consideration of their requests, and make recommendations to federal agencies on the granting of waivers.
- 4) **Better coordinate federal efforts to promote affordable housing.** HUD already has appointed its Assistant Secretary for Policy Development and Research, John C. Weicher, to oversee the removal of regulatory barriers to affordable housing. He and his staff will meet with builders, state and local officials, and non-profit and citizens' groups to discuss ways of reducing these barriers.

Taken together, these administrative and legislative measures will remove some of the more onerous forms of housing regulation that needlessly raise housing prices and rents. Where legislative action is required, Congress should act forcefully on behalf of Kemp's initiatives.

CONCLUSION

The HUD anti-regulatory package will help reduce the cost of housing. HUD officials justifiably are telling those state and local governments that receive or wish to receive federal housing aid to cooperate in making housing more affordable for American families. Local governments already have shown a willingness to work with state and federal officials in reducing land use and other housing cost burdens.⁹ Congress can speed up this progress by adopting HUD's anti-regulatory initiatives. The strategy of linking federal aid to state and local governments' removal of regulatory barriers can succeed, especially where HUD provides technical assistance to state and local government and to builders.

The cost of housing has not risen appreciably—in some areas, not at all—since the onset of the recession in mid-1990. Contrary to what big-government housing advocates have been saying for years, there is no crisis either in the cost of the housing itself or in the cost of mortgage money to builders, landlords, and homeowners. There is thus no justification for boosting federal housing subsidies.

But there is much justification for reducing excessive regulation. Much of the cost of America's housing still remains artificially high, at least in several of the largest and most heavily populated metropolitan areas of the country. Jack Kemp and his colleagues at HUD want to give states and localities incentives to remove excessive housing and land use regulations. Congress can realize this objective by requiring that federal housing assistance be granted only upon the eventual elimination of these regulations.

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⁹ In the 1980s, HUD sponsored a nationwide project known as the Joint Venture for Affordable Housing. Local governments, working with HUD and builders, were able to substantially cut per-unit costs in new developments, especially through allowing higher dwelling densities. See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *The Affordable Housing Demonstration: Case Studies* (Washington, D.C.: U.S. Department of Housing and Urban Development, January 1985).