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Folder Title:
Regulatory Reform [2]

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Citation: Section 404 of the Clean Water Act of 1977
40 CFR § 230.10(a)
404(b)(1) Guidelines

Title: Wetlands--Practicable Alternatives Test

Status: The regulations were issued in 1980 and have not been modified or revised substantially since then.

Background: Section 404 of the Clean Water Act (CWA) requires permits for the discharge of dredged or fill material into waters of the United States. The Environmental Protection Agency's (EPA) Section 404(b)(1) Guidelines presume that the discharge of dredged or fill material into special aquatic sites such as wetlands should not be permitted because of the significant environmental impacts such discharges create. To implement this presumption, the Guidelines assume both that alternatives to filling special aquatic sites exist, and that these alternatives are less damaging environmentally. This principle, known as the "practicable alternatives test," is heralded as the single most important standard in the Section 404 program, yet it has not been defined by regulation.

Responses to the criteria set forth in the President's directive to the agencies regarding which regulations should be reviewed:

(a) The costs to society of a vague or undefined regulation outweigh the benefits. Compliance with the Section 404(b)(1) Guidelines requires that an applicant prove there are no available alternatives to a proposed project which would have a lesser impact on a special aquatic site. The regulations state that this includes purchasing non-wetlands areas not even owned by the applicant.

An applicant who wants to overcome the presumption that alternatives are available does not have any guidance on how to conduct an alternatives analysis. Case law established that a permit applicant must evaluate all alternatives at the point he "enters the market," but did not specify when market entry occurs or how far this search must extend. EPA has not amended the regulations in light of this court decision nor provided any guidance. As a result, builders spend thousands of dollars preparing alternatives analyses without ever knowing if this part of the application is adequate, and thus without ever being able to predict whether an application will be approved.

An applicant must guess how far EPA wants him to search for alternatives, ranging from the market region to the city, or perhaps some broader region. When an applicant attempts to show he has considered all the alternatives, he is often forced to resubmit his application several times in response to hypothetical alternatives that EPA wants him to consider. This geographic region needs to be defined through a public rule-making process, especially in light of the requirement to attempt to purchase other non-wetlands sites. Similarly, the agencies need to define the time an applicant enters the market and thus must evaluate his alternatives.

(b) This regulation is not fashioned to maximize net benefits to society. Maximizing net benefits means protecting valuable aquatic resources while keeping regulatory costs to a justifiable level. To accomplish this, the (b)(1) Guidelines should be revised in three ways. First, the unit of analysis for investigating the geographic scope of alternative sites should be defined as the builder's market region. An overly expansive geographic scope, such as an entire city or county, will place too many variables into the equation. An applicant must spend time and money identifying these alternate sites in addition to evaluating several project plans for each site and then demonstrating that the one he chose is the best.

Second, the regulations should define market entry as occurring when an applicant submits his application. If property has been held for years before being developed, it is difficult to evaluate the alternatives that might have existed at the time the property was purchased. Limiting the practicable alternatives test in such fashion allows the applicant to concentrate on developing the least environmentally damaging project plan for the chosen site.

Third, the regulations should recognize that local land use controls render an alternative site impracticable. In recent years, an applicant's problems in complying with the alternatives test were compounded further by policy decisions that limited the degree to which the practicability of possible alternative sites are discounted because of the development project's incompatibility with state or local zoning, subdivision, or other development requirements. This policy requires the applicant to attempt to remove the permitting impediment on the alternative site before the alternative is deemed impracticable. This policy is not only hostile to our nation's tradition of state/local control over land use, it causes permit applicants to waste time and money seeking revisions to local codes on property they may have avoided at the outset because of the incompatibility of their project plans with those very requirements.

(c) The practicable alternative requirements do not rely on performance standards. In fact, no requirements have been articulated, creating confusion and unnecessary burdens on the regulated community.

(d) The practicable alternative requirements do not rely on market mechanisms. In fact, the practicable alternatives test ignores the reality of real estate market principles. It interferes with the facts which the market has assigned to property, such as state and local approvals. Zoning can dictate market prices. State and local regulations can dictate site availability for particular projects.

Currently, no requirements have been articulated. When the requirements do get promulgated, the regulations should defer to the applicant's project purpose in evaluating alternative site plans for the project. When a builder wants to develop a piece of land, he determines what kind of project the market will support. For example, a builder wants to build moderately priced homes because he estimates the area needs housing for middle income families. To make the project economically viable, he will need a certain number of lots. EPA should not, as they have

occasionally in the past, reinterpret a project's purpose as simply "housing" and then review the application.

(e) The regulation does not provide clarity and certainty to the regulated community nor does it avoid needless litigation. Throughout the discussion above, it has been stated that this aspect of the regulation has not been defined. The absence of guidance cannot provide clarity or certainty to the regulated community. Permit applicants find it difficult to anticipate the agencies' response to a specific proposal. The result is a lot of time and money spent on processing paper instead of protecting wetlands. For a greater discussion of the costs to society of this lack of definitive regulations, see Attachment A1 (Letter to the Wetlands Coordination Team dated September 26, 1990.)

Responses to the criteria set forth by EPA regarding which regulations should be reviewed:

(a) These suggested changes are within EPA's statutory authority. EPA articulated the "practicable alternatives" requirement when it promulgated its regulations in 1980 following the 1977 amendments to the CWA. The agency had the authority to define the term at the time and still retains that authority. In fact, EPA defines what alternatives are practical on every permit decision they make. To put this much needed standard definition into regulation, the agency must engage in a notice and comment rule-making.

(b) Significant economic savings would be possible if these changes are made. If the agency promulgated definitive regulations for performing the alternatives test, permit applicants would be able to submit a complete application the first time, removing needless review by the agency of insufficient applications and decreasing the time it takes for an applicant to obtain a final permit decision. In addition, permit applicants could anticipate costs for conducting the analysis. For a greater discussion of the economic effects of these regulations on the building industry, see generally Attachment A2, (Letter to the Office of the Chief of Engineers dated December 5, 1990.)

(c) These proposed changes will not compromise environmental protection goals. The practicable alternatives analysis is currently part of the Section 404 requirements. Defining with certainty what the test involves will not compromise environmental protection goals, but will, in fact, promote them by liberating resources currently wasted by an inefficient system and allowing these resources to be spent on other protection efforts.



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0200 (800) 368-5242

Martin Perlman
1990 President

September 26, 1990

Wetlands Coordination Team
Room 5138 Main Interior Building
1849 C Street, N.W.
Washington, D.C. 20240

Dear Sir or Madam:

On behalf of the 157,000 member firms of the National Association of Home Builders (NAHB), I am pleased to submit our comments on pursuing the national goal of "no net loss" of wetlands. For convenience, I have answered the questions of interest to NAHB in the order they appear in the Federal Register.

What is the proper role of Federal, State and local governments in working toward the goal of "no net loss?"

State and local governments are in the best position to pursue the goal of no net loss. Wetlands protection has become a major theme in the local comprehensive planning process and in state legislatures, where at least 29 states have enacted some type of wetlands protection law. Because wetlands protection is ultimately a land-use issue, state and local governments should be the focal point of wetlands protection efforts and the pursuit of no net loss.

The mechanism for transferring wetlands protection efforts to the state and local level should be formal delegation of the Section 404 program to qualified states. Although the states have been able to assume the Section 404 program since 1977, to date only Michigan has done so. Fortunately, states have increasingly become interested in assuming the Section 404 program and this trend can be expected to continue. However, the federal government could facilitate state assumption of the program by removing several impediments which have limited the state delegation process. Specifically, states cannot obtain Section 404 regulatory authority for all waters and wetlands within their jurisdiction, and the Environmental Protection Agency (EPA) retains the authority to veto any state-issued permits.

In many cases, the non-delegable waters and wetlands comprise the majority of the waters and wetlands within the state. In these cases, states understandably question the value of assuming the federal program. In addition, because EPA retains its permit veto authority in state delegated programs, states are subjected to unnecessary federal oversight. Rather than reviewing individual permit decisions, EPA should evaluate a state's performance on a programmatic level, where EPA evaluates the overall implementation of the Section 404 program.

NAHB believes that state delegation of Section 404 would greatly benefit wetlands protection and would minimize the duplication and inconsistencies created by the current trend of state and

local governments enacting separate, duplicate wetlands regulatory programs. To encourage states to assume the Section 404 program, NAHB urges the Administration to reform the delegation process by recommending Clean Water Act amendments: 1) to allow states to assume permitting responsibilities for all Section 404 jurisdictional waters, but provide the Army Corps of Engineers (Corps) a permit veto in traditionally navigable waters to protect navigational servitude and national security; and 2) to replace EPA's permit veto authority with a yearly programmatic evaluation of the state's performance.

Should the accounting framework to implement the "no net loss" concept be applied at the site specific, local, statewide, regional or national level?

Ultimately, the nation's progress in achieving no net loss should be measured in national terms, but data collection would probably be easiest if conducted at the state level. Regardless of the accounting framework used to evaluate progress towards the goal, no net loss should not become an enforceable provision of Section 404 permits.

The Corps currently issues approximately 14,000 permits each year. By regulation, these permits authorize fills that are unavoidable and that will not significantly degrade environmental quality. In light of the fact that permit applicants must already prove that they have no other option than to fill the wetland and that doing so will not cause significant impacts on the environment, it would be unreasonable and unnecessary to add an additional requirement to prove that no net loss has been achieved. If no net loss is applied on a permit-by-permit basis, and an applicant cannot prove that no net loss will be achieved on a given site, the policy could result in permit denials for unavoidable, insignificant wetlands losses. Such an inequitable outcome would open the door to a flood of litigation.

To what extent can wetlands be created or restored?

A review of the literature and our members' experiences with mitigation suggests that wetlands creation is a viable enterprise, but one that has had mixed results. Clearly, the likelihood of successfully creating a wetland with the full functional value of the original wetland depends upon a wide range of site-specific factors.

It appears that some wetlands, such as salt marshes and mangrove swamps, are easier to create than others, such as bogs and bottomland hardwood swamps. However, many of the failures reported in the literature relate to management, maintenance, or administrative problems. It is likely that the science of creation is further developed and more viable than might be suggested by the results that have been reported to date.

Generally, restoration seems to be more successful than creation. In its recent book, Wetlands: Mitigating and Regulating Development Impacts, the Urban Land Institute reported the following findings:

- In a review of 14 tideland restoration projects in the San Francisco Bay Area, the Bay Conservation and Development Commission found that six of the projects were deemed successful, five were only partially successful, and three had failed primarily because the required work was not performed.
- A study of 63 restoration projects completed in coastal California between 1954 and 1985 discovered that 65 percent of the projects were wholly successful, 25 percent were

partially successful, and only 10 percent were entirely unsuccessful. Interestingly, success varied significantly according to the type of organization responsible for the restoration, and the highest success rate (63 percent) was achieved by the private sector. Restoration projects initiated by the federal government were successful 50 percent of the time. State projects were successful 40 percent of the time.

What role should mitigation banking play in working towards the goal of "no net loss?"

NAHB believes that mitigation banking provides the best chance of achieving no net loss of wetlands from development activities. Although EPA has traditionally resisted this concept, it did identify a role for mitigation banking in the Section 404 program in the Memorandum of Agreement on Mitigation (MOA on Mitigation) issued jointly with the Corps. Unfortunately, the MOA on Mitigation reflects EPA's hesitancy to embrace the mitigation banking concept fully, as the MOA stops short of providing guidance on the use of mitigation banks and instead notes that further guidance will need to be developed.

EPA has raised two basic concerns with mitigation banking. First, EPA believes that too much uncertainty still exists regarding the science of wetlands restoration and creation to rely on compensatory mitigation as anything but a last resort option. In support of its conservative view on the use of compensatory mitigation, EPA points to the mixed results of restoration and creation projects. EPA notes that many compensatory mitigation projects are not monitored and maintained properly and as a result, they ultimately fail to achieve the full functional value they were designed to provide. In addition, EPA argues that even when they are successful, created wetlands take years to evolve into fully functional wetlands. This causes a lag between the time a permit allowing a loss is issued, and the time compensation is actually achieved. Thus even when compensatory mitigation is successful there is at least a temporary loss of wetlands functions.

Second, EPA is concerned that instead of seeking to avoid wetlands, permit applicants will expect to be able to buy mitigation credits without first having to prove that they have no alternatives to filling wetlands. Because of this concern, EPA has insisted upon a strict sequence of decision-making for evaluating mitigation starting with an analysis of alternatives, moving then to an evaluation of methods of minimizing fills, and preceding to compensatory mitigation (i.e., wetlands creation) only as a last resort.

To evaluate fully the merits of mitigation banking, it is necessary to examine the concept in light of the practical implications of the goal of no net loss and the current requirements of the Section 404 program. In reality, no net loss can only be achieved in two ways: either permits to fill wetlands must be denied, or compensatory mitigation must be provided for fills that are allowed. No other options exist.

The Corps issues approximately 14,000 Section 404 permits per year. Under the current regulations, these permits are issued only for fills which are unavoidable and which do not cause significant degradation of environmental quality. Because these standards must be achieved under the current regulations, EPA and the Corps cannot reasonably argue that no net loss can be achieved by increasing the number of permit denials. From a practical standpoint an increase in the number of permit denials would result in a flood of takings claims filed against the federal government. Recent decisions in Loveladies Harbor and Florida Rock indicate that permit applicants would win a fair share of these cases. Thus, a pragmatic view of no net loss suggests that the goal can only be achieved through compensatory mitigation.

If no net loss is truly the objective, then the wetlands discussion must focus on responding to EPA's concerns with compensatory mitigation. NAHB believes that mitigation banking responds directly to each of EPA's concerns with compensatory mitigation.

Mitigation banking increases the chance that wetlands creation projects will succeed and it can provide greater environmental benefit than providing mitigation on a project-by-project, piecemeal basis. Mitigation banks can increase the chances of success because the bank site can be selected on the basis of its likelihood of being successful from a technical standpoint. That is, instead of trying to "force" mitigation on the site where the loss occurs, bank sites can be strategically planned and located where there is the greatest chance that the mitigation will actually work. In its report Mitigation Banking (Biological Report 88(41), July 1988), the U.S. Fish and Wildlife Service (FWS) notes that:

Mitigation projects for small losses that would ordinarily be carried out on a piecemeal basis by a number of different permit applicants can be consolidated into a single mitigation bank. Successful mitigation for very limited habitat losses can be difficult. Even when developers are able to locate mitigation sites, the sites may be costly and impractical in terms of desirable mitigation actions and may have limited habitat value if they are small and isolated. (p. 2)

The FWS also notes that aggregating many small mitigation projects into a larger bank can provide a larger, more environmentally valuable area that is more efficient and more economical to develop and manage than are several scattered sites.

Mitigation banking provides compensation in advance of the loss. Because restored or created wetlands would have to become functional before mitigation credits could be established, mitigation banks would have to be created well in advance of the losses to which the credits will be applied. Mitigation banks provide the best vehicle to respond to EPA's concern about the time lag between when a wetlands is lost and when compensation actually occurs.

Mitigation banks will receive better monitoring and maintenance than on-site mitigation projects. Because the owner of the bank will want to make sure that mitigation credits are available at the time he needs to make a withdrawal, or at the time another permit applicant needs to purchase mitigation credits, there is an economic incentive for the owner to make sure that the mitigation bank is in full compliance with applicable maintenance and monitoring requirements established by EPA and the Corps. If the bank is not in compliance with applicable maintenance standards and schedules, the bank owner risks losing the regulatory agencies' certification of the bank as one which will be accepted for mitigating wetlands losses under the Section 404 program. Currently, when mitigation is required as part of a Section 404 permit, the only way EPA and the Corps can force compliance with the applicable mitigation requirements is to take enforcement action against the permit applicant. Mitigation banks present the opportunity to replace enforcement as the driving force behind mitigation with an economic incentive.

EPA's second general concern with mitigation banking, that it will undermine the alternatives analysis, is really the reason why mitigation banking has not received the attention it deserves. Instead of looking for reasonable and creative ways to off-set unavoidable losses, EPA has focused on limiting permit issuance by tightening the requirements for the alternatives test through a series of court cases, Section 404(c) permit vetoes, and Section 404(q) permit

elevations. Interestingly, EPA touts the avoidance test as the most important standard in the Section 404 permit program, but it has been either unable or unwilling to issue comprehensive guidance on complying with the standard.

Lacking meaningful guidance on the alternatives test, permit applicants spend excessive amounts of time and money trying to comply with an open-ended standard. For example, it is not unusual for the Corps or EPA to identify an alternative development proposal that will have less impact on wetlands than the applicant's preferred plan, and to require the applicant to prove that he cannot develop the alternative plan cost-effectively. Because the Corps and EPA are concerned only with wetlands impacts, the alternative plans they suggest often fail to comply with other state and local development standards, such as zoning, building setback requirements, street design standards, etc. EPA has adopted the extreme position that an alternative that does not comply with state or local standards is not impracticable unless the applicant tries and fails to obtain a variance or exception to the standard.

The lack of guidance on the alternatives analysis causes permit applicants to waste money evaluating development plans that they have already rejected because of costs or the plan's inconsistency with state and local development standards. The open-ended standard not only subjects the applicant to the whims of the permit reviewer, it wastes resources that could be put to better use off-setting wetlands losses. The fact that the Corps issues approximately 14,000 permits per year proves that most fills are unavoidable.

Recognizing this, NAHB believes that the alternatives test is unnecessary for the majority of fills associated with housing development. Most housing development that affects wetlands occurs in isolated and headwaters wetlands, categories generally of low value compared to other wetlands types. NAHB believes that the Administration should eliminate the alternatives analysis for development activities in these wetlands so that developers could plow the cost-savings into restoring, enhancing, and creating wetlands through mitigation banks. This approach is consistent with EPA's and the Corps' determination that fills into isolated and headwaters wetlands do not pose significant impacts on the environment (as is recognized by their issuing Nationwide Permit #26). This approach is also consistent with Section II.C of the MOA on Mitigation that recognizes the avoidance test can be suspended when a proposed discharge can reasonably be expected to result in environmental gain or insignificant losses.

Mitigation banking presents the opportunity to take the money currently being wasted on preparing multiple site plans and other documentation required to address the alternatives analysis, and put this money to work creating wetlands. NAHB urges the Administration to create a role for mitigation banking in the Section 404 program.

Should wetlands be indexed according to their functions and values in applying the "no net loss" goal? If so, what criteria should be used to determine that index?

The standards for filling a wetland should reflect the value of the wetland and the mitigation required should be based on the functions that need to be replaced. Builders most often encounter isolated or headwaters wetlands, which are generally recognized as low in value. For example, if a builder encounters a low value wetland that provides no more than limited stormwater detention functions, he should only be required to provide a well designed drainage system to control stormwater runoff.

NAHB recommends adoption of a system of classification of fresh water wetlands that distinguishes wetlands based on their value in protecting the quality of water supplies and their role in sustaining endangered species. The classification system should provide standards to determine mitigation needs, which should be required only for the most valuable wetlands. Acre for acre replacement should not be the policy.

What are the potential effects of specific wetlands policies on farmers, public works projects, businesses, and the environment?

In issuing the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, EPA and the Corps effectively expanded the definition of wetlands, and thus federal jurisdiction over wetlands. This appears to have had a dramatic impact on some local economies. Although the economic impacts of wetlands regulation policies are difficult to assess, it does appear they can be substantial. In its April 1990 report, Economic Implications of Wetlands Regulations in Southeastern Virginia, the Southeastern Virginia Planning District Commission indicated that the cost to southeastern Virginia could range, under a worst case scenario, from \$50 billion to as high as \$97 billion.

Clearly, wetlands regulations affect land prices and thus, the cost of housing. Yet, few studies have been done to determine the precise economic implications of wetlands regulations. One study, the President's Commission on Housing, found that the Section 404 regulatory program resulted in constraints on land available for housing, as well as serious delays in the development of new housing in many areas. Unfortunately, this report has largely been ignored.

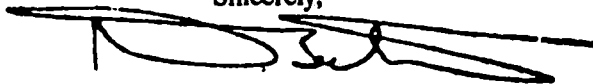
Depending on how the policy is applied, no net loss could exacerbate these problems further. If one were to apply this on site specific basis, and make it a requirement to be met on each permit, the impact could be tremendous. This would, in all likelihood, result in increased permit processing times and increased costs of mitigation.

What tools or approaches can be used to achieve restoration of converted wetlands?

Converted wetlands are good sites to be investigated for mitigation banking. Although they have been altered or disturbed, unlike creating wetlands out of uplands, at least some of the environmental conditions which are necessary to sustain a wetland should be present and thus have the best chance of becoming fully functional.

We appreciate the opportunity to offer these comments and look forward to working with the Administration on developing a no net loss policy.

Sincerely,



Martin Perlman
President

National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0200 (800) 368-5242

Martin Perlman
1990 President

December 5, 1990

Office of the Chief of Engineers
ATTN: CECW-OR
Washington, DC 20314-1000

Re: Proposal to Amend Permit Regulations for Controlling Certain Activities
in Waters of the United States

Dear Sir/Madam:

On behalf of the 157,000 member firms of the National Association of Home Builders (NAHB), I am pleased to submit comments on the proposed amendment to Permit Regulations for Controlling Certain Activities in Waters of the United States. NAHB members include not only people and firms that construct single-family homes, but also apartment, condominium, commercial, and industrial builders, as well as land planners and remodelers. NAHB is the voice of the American shelter industry.

NAHB adamantly opposes any increase in wetland permit application fees as well as the addition of the so-called special services fees. The imposition of new fees will unduly burden a vast majority of the industry. As of 1986, 72% of NAHB's members built 25 homes or fewer each year. The existing fee structure should be retained until other parts of the wetlands regulatory program are amended and clarified.

The housing industry continues to bear the brunt of federal wetlands regulatory protection efforts even though it causes only six percent of the wetlands losses in this country. The industry shoulders a radically disproportionate share of the regulatory burden while the major part of the problem--agriculture--remains largely exempt. The Army Corps of Engineers (Corps) is proposing to encumber further the regulated community by drastically increasing application fees, in some situations almost one hundred fold.

Relying on the Independent Offices Appropriations Act to levy fees to pay for its regulatory program, the Corps claims it based its estimates for the proposed fees in order "to recover 20 percent of the costs for implementation of the permit program and providing the services listed." The Corps goes on to say that these fees are for staff time and effort. Yet, the Corps provided none of the data from which it drew its conclusions. It is impossible to evaluate whether these fees even remotely reflect the true costs of the program to the federal government. Before the Corps increases its fees, it should submit the basis for its findings to public scrutiny.

The Corps has asked for comments on its decision to increase fees for permit evaluations, and to add fees for several special services: performing wetlands jurisdictional delineations, holding public hearings, and preparing environmental impact statements. NAHB opposes this rule on two levels. First, NAHB disagrees with the logic upon which this proposed rule is based, as set out in the preamble discussion. Second, NAHB objects to specific elements of the proposed rule, such as amount and type of fees being charged. The rest of this letter will address these concerns.

NO SERVICES RENDERED

The Corps claims in the preamble that it provides a service for which it may charge a fee to recover its costs. NAHB disagrees. The Corps is not providing a service, but rather it is performing an essential function of government. There is a cost to society of regulating private property--in this case, the cost of the § 404 program. The preamble discussion approaches this issue from the wrong vantage point by presuming that the individual should pay for the cost of the public's infringement upon private property rights. We believe the public should assume this cost.

The Corps also asserts that the program confers a benefit of value to applicants, namely that there is a benefit to having a predictable denial. We question this assertion. Virtually no private property owner benefits from the regulatory program as it reduces property values and requires property owners to spend large amounts of money to deal with the program. While there may be a benefit, it inures to the public, not to the individual.

OBJECTIVES NOT ACHIEVED

The Corps states the major objectives of the proposed fee schedule are equity, administrative simplicity, and predictability. Yet the Corps fails to apply these goals to the regulatory program itself. The current § 404 program is a maze of overlapping and inconsistent regulations and policies intended to protect wetlands. These policies cause excessive delays and unnecessary costs both to permit applicants and to the government. In addition, none of these goals will be accomplished by the proposed fee schedule.

No Equity

Charging a fee does not achieve equity, especially for a regulatory program that is designed to be unpredictable, incomprehensible, and tortuously slow. What is equitable about a government taking a year or more to process a permit while the property owner continues to pay taxes, mortgages, and other expenses? The Corps has not weighed the costs of the regulatory program to the property owner.

No Administrative Simplicity

Adding a fee does not provide administrative simplicity. Creating a reasonable application process provides administrative simplicity. Further, if the policies were clear and reasonable, it would not cost so much to run the program. For example, the excessive field costs for jurisdictional determinations result from a bad manual--the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. If a clearer manual were available, the government would not need to go into the field; rather, it could review the work of consultants in the office.

No Predictability

The Corps does not suggest that these increased fees will in any way reduce permit processing times, rather they will only offset existing costs. Lack of predictability costs builders money. The permit program needs to be clarified in order to provide predictability. If these fees are to be increased, there should be a commitment to reduce processing times. The fee schedule should remain as is until the Corps guarantees strict processing times.

FEES EXCESSIVE

The suggested fees are excessive. Not only must an applicant pay the \$100 initial application fee in advance, but the applicant will also have to pay an increased fee for the permit. In the case of most of our members, this will amount to \$2,000, the cost of a standard permit for commercial activities. Equally excessive are the charges for public hearings and wetlands delineations, which together can add up to \$2,500 or more. Most of NAHB's members run small operations. They do not have the ability to absorb such high costs. The \$2,000 permit fee, and any special services fees, will convert to larger and unknown sums once factors, such as interest payments being amortized over thirty years, are figured into the equation. These costs will go directly into the price of a new home, putting many first time buyers out of the market.

Permit applicants must pay \$100 for any modifications to the application, including requests for extensions of time. Yet, the Corps offers no justification for the increased cost to them to process modifications. The permit applicant has a vested interest in

getting through the application procedure quickly. If the Corps is interested in equity, it should pay permit applicants when it delays in processing applications.

SUPPLEMENTAL CHARGES INEQUITABLE

The Corps is penalizing builders for not being able to understand a regulation on which the Corps itself refuses to issue clear guidance. The wetlands program is based on a fallacious presumption that wetlands are easy to identify, and thus easy to avoid. Because builders are often unaware of the existence of federally regulated wetlands on their property, they may fail to apply for the proper permits before beginning work. As a result of this confusion, a builder must pay an additional 30% to the already outrageous fees.

The kinds of fills that most builders are engaged in involve small discharges into low quality wetlands. Most permits that builders apply for should fall under Nationwide Permit (NWP) 26. But in most regions of the country, NWP 26 is not allowed to work. Instead of merely filing a predischage notification, the builder is dragged through the lengthy process of filing an individual permit. This makes the program neither equitable, administratively simple, nor predictable. NWP should be reinstated as one method to achieve the goal of administrative simplicity. Finally, if an applicant files a predischage notice under NWP 26 with his \$100 application fee and the Corps then forces the applicant into a standard permit review, the \$100 should be credited to his new application.

SPECIAL SERVICES IMPOSED WITHOUT OPTION

Special services implies discretion on the part of the Corps. But jurisdictional delineations are not discretionary. First, a builder cannot get through the permit process without a jurisdictional delineation. Second, the Corps bases its fees on the size of the tract and not the size of the wetland. If an applicant has a 500 acre tract of land, he must pay \$1,500, whether there are 2 acres of wetlands or 200. This burdens the housing industry disproportionately to the size of its role in the problem. Fees should be levied in proportion to the number of acres of wetlands affected.

The Corps proposes to add a fee to cover the costs of holding a public hearing, \$1,000 payable prior to notice of meeting. The Corps does not limit who can request a hearing. Although the final determination to hold a hearing rests with the District Engineer, public opinion may get a DE to change his mind. If the Corps is going to charge a fee for a public hearing, the person requesting the hearing should pay the costs.

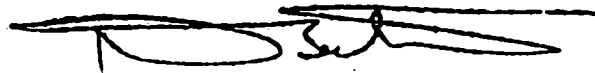
Office of the Chief of Engineers
December 5, 1990
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REGULATORY FLEXIBILITY ACT WRONGLY IGNORED

NAHB disputes the Corps's assertion that the Regulatory Flexibility Act will not have a significant impact on a substantial number of small businesses. As stated at the outset, the majority of our members--72%--are small businesses. We believe the Corps has a affirmative legal obligation to give more than perfunctory consideration to the potential impacts of this proposal on small businesses.

I appreciate your consideration of NAHB's views. If you have any questions or would like to discuss any issues raised in these comments, please do not hesitate to call me. My number is (202) 822-0200.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin Perlman", written over a horizontal line.

Martin Perlman
President

Citation: Section 404 of the Clean Water Act of 1977
40 CFR Part 230
404(b)(1) Guidelines

Title: Wetlands--Sequencing Requirement

Status: The regulations issued in 1980 did not contain a sequencing requirement. This policy was adopted in a guidance document known as the Memorandum of Agreement (MOA) on Mitigation, between the Army Corps of Engineers and the Environmental Protection Agency, signed February 6, 1990.

Background: The Section 404(b)(1) Guidelines require that an applicant take all appropriate and practicable steps to mitigate the impacts of the proposed project. Although not set out in the regulations, EPA and the Army Corps of Engineers (Corps) designated a decision-making review process which requires an applicant to show that he has avoided wetlands to the maximum extent practicable, minimized the unavoidable impacts to the wetlands, and then provided compensatory mitigation for those impacts. This decision making process is known as "sequencing."

Responses to the criteria set forth in the President's directive to the agencies regarding which regulations should be reviewed:

(a) The benefits to society of sequencing do not outweigh the costs. "Sequencing" was adopted in an agency guidance document, known as the Memorandum of Agreement (MOA) on Mitigation between EPA and the Corps, and actually runs counter to the regulations. The regulations state that, "the actual process followed may be iterative," meaning that the results of one step may require a re-examination of previous steps. Were the regulations implemented as written, society would benefit because an applicant's proposed mitigation plan, i.e., restoring degraded wetlands or creating new wetlands, could be taken into consideration in evaluating the overall impacts to the environment and whether to issue the permit.

Society also benefits when it is allowed to participate in regulations issued by the federal agencies. This guidance was adopted without a chance for the public to comment, which was particularly egregious because the guidance contradicted the regulations that were adopted in proper notice-and-comment proceedings.

(b) This regulation is not fashioned to maximize net benefits to society. Maximizing net benefits means protecting valuable aquatic resources while keeping regulatory costs to a justifiable level. Contrary to the regulations, strict sequencing requires an evaluation of whether the fill can be avoided before evaluating whether the impacts have been minimized, and before considering any compensation proposals made by the applicant. By analyzing these decisions individually and sequentially, society does not have the benefit of a well-balanced decision. Balanced decisions may sometimes work to the disadvantage of the environment. The question that must be answered is whether the benefits to society are worth the costs.

(c) The sequencing requirements are not performance standards but rather command-and-control requirements. The MOA on mitigation requires a one-for-one functional replacement of wetlands plus "an adequate margin of safety," to achieve a no net loss goal. This is as open-ended a standard as can be crafted.

(d) The sequencing requirements do not take full advantage of market mechanisms. There are no market mechanisms of sequencing. In fact, sequencing interferes with the "market." To embrace the concept fully, a permit applicant must delineate several sites, some of which the applicant may not have access to. To gain access to have a delineation performed, an applicant needs to have an interest in the property, such as placing an option to buy the property. In a hot market, a seller will not want to grant a long-term option necessary for a delineation to be performed. Or a buyer may have to place a higher option on the property. All of these add up to increased costs that will be passed on to the consumer.

The only other "positive" market mechanism that could come into play would be the use of mitigation banking. Although not currently recognized by the agencies, it is both a viable means for achieving no net loss of wetlands and a vehicle that responds directly to most of EPA's concerns about compensatory mitigation (i.e., scientific uncertainty, timing, enforcement). Mitigation banking provides an economic incentive for the owner of the bank to make the mitigation project succeed. Because the bank owner needs to sell mitigation credits to Section 404 permit applicants, he has an economic incentive to make the mitigation work. In addition, mitigation banking increases the chance that wetlands creation projects will succeed by aggregating the many small wetlands creation projects that would normally be scattered throughout a region. Mitigation banks can be strategically located and, unlike on-site mitigation projects, bank sites can be selected on the basis of the likelihood of wetlands creation actually being successful, as well as providing mitigation in advance of the loss. For a greater discussion of mitigation banking, see Attachment A1, (Letter to the Wetlands Coordination Team dated September 26, 1990.)

(e) The regulation does not provide clarity and certainty to the regulated community nor is it designed to avoid needless litigation. By adopting guidance contrary to the regulations, EPA has needlessly confused and angered the regulated community. The National Wetlands Policy Forum characterized the current state of wetlands protection policy by saying, "In short, current programs are too cumbersome and the responsibilities too diffuse to guarantee anyone -- landowners, the regulated community, conservationists, or even the regulators themselves -- consistency, predictability, timeliness, or effectiveness. [Forum Report, p. 11]

Responses to the criteria set forth by EPA regarding which regulations should be reviewed:

(a) These suggested changes are within EPA's statutory authority. EPA has the authority under Section 404(b) of the Clean Water Act to develop guidelines for issuing permits. It is this authority that allowed EPA to promulgate the current regulations

and EPA continues to retain this authority. EPA should invite the public to participate in developing regulations rather than issue regulations in the form of "guidance" to avoid the rule-making procedure.

(b) Significant economic savings would be possible if these changes are made. Sequencing is inefficient and in some cases, counter-productive from an environmental standpoint. This policy forces permit applicants to focus all their efforts and most of their resources on documenting why they cannot avoid the wetland on multiple sites. This may involve developing several different site development plans with varying levels of wetlands fills ranging from zero to the full amount of fill requested in the permit application, and a breakdown of the cost impacts of each development plan. This analysis typically results in a decision that the wetland cannot be avoided completely as is evidenced by the fact that less than five percent of permit applications are denied by the Corps or vetoed by the EPA. However, to get to this point, the applicant must waste time and money preparing multiple site plans to justify his preferred development plan.

Most startling is the fact that over 50 percent of applications are withdrawn before a decision is ever reached on their permit. The costs associated with permit applications, such as placing options on property and having delineations performed, are passed on to the consumer, including the costs that arise from all those permit applications that are withdrawn. These dollars are wasted that could otherwise be put to use in the economy.

(c) These proposed changes will not compromise environmental protection goals. The sequencing requirement can lead to less than optimum permit decisions with respect to the environment. By divorcing the evaluation of the applicant's mitigation proposal from the evaluation of alternatives to fill a wetland, applicants are precluded from presenting a comprehensive picture of the net environmental impact of their project.

For example, a developer may propose to fill five acres of wetlands and mitigate the impact by creating five acres of wetlands on an adjacent site. The agencies may identify an alternative site which can be developed without filling any wetlands and thus does not require a Section 404 permit. Strict sequencing requires the applicant to build his project on the alternative site. It may turn out that while the wetlands there were avoided, storm water discharges or other activities not regulated under Section 404 may adversely affect the wetland on the alternative to the point where the wetland would lose much of its functional value over time. Because Section 404 does not regulate activities on the upland, the Corps and EPA have no authority to obtain any mitigation for the impacts on the alternative site. In this case, there may have been a net environmental benefit to allowing the developer to fill the wetland on the preferred site and mitigate the impacts by creating five acres of wetlands that would be protected in perpetuity. Unfortunately, strict sequencing does not allow this type of flexibility to be entertained in the decision-making process.

Citation: Section 102(d) of HUD Reform Act of 1989
24 CFR Part 12, Subpart D
Administrative Guidelines

Title: Section 102 (d) Guidelines

Status: Guidelines issued April 9, 1991

Background: Pursuant to Section 102(d) of the HUD Reform Act of 1989, the Secretary is required to certify that HUD assistance to any housing project not be more than is necessary to provide affordable housing after taking into account other government assistance. The Department has developed administrative guidelines which place specific percentage limitations on developers' fees, builders' fees, syndication fees, and internal rates of return for multifamily projects and have other restrictions and limits.

These guidelines are now being applied to HUD Assisted Multifamily Projects using the low income housing tax credit. HUD programs for which the guidelines are being applied include HUD multifamily mortgage insurance, Section 8 Moderate Rehabilitation Program for single room occupancy projects, Section 8 Project Based Assistance Program, and those programs for the homeless funding through the Stewart B. McKinney Homeless Assistance Act.

These guidelines are unworkable, add an unnecessary administrative layer, and block a needed increase in HUD affordable rental production. Industry groups, over the past year, have met on several occasions with HUD staff to press for addition of a workable program. However, to date, HUD has been unwilling to make any modifications to the guidelines.

How the guidelines inhibit growth: The guidelines have substantially reduced and quite possibly have eliminated participation in HUD multifamily programs. This means that HUD programs for the creation of multifamily housing cannot be utilized. Thus thousands of low and moderate income households will not receive affordable housing. (See attachments A1, A2 and A3)

How the guidelines could be modified in order to promote growth:

The Secretary should withdraw the existing cumbersome and unworkable Section 102(d) Administrative Guidelines and replace them with determinations made by the program administrators for the Low Income Housing Tax Credit Program for HUD multifamily tax credit projects and with previously existing HUD underwriting procedures for HUD multifamily projects not assisted by the tax credit program.



National Association of Home Builders

1201 15th Street, N.W., Washington, D.C. 20005-2800
(202) 822-0401 Fax No: (202) 822-0374

Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

March 12, 1992

Mr. Arthur J. Hill
Assistant Secretary for Housing
FHA Commissioner
U.S. Department of Housing and Urban Development
Room 9100
451 Seventh Street, SW
Washington, DC 20410

RE: Administrative Guidelines for
Section 102(d) of the HUD Reform Act

Dear Art:

We are most appreciative of the opportunity you provided last week to our members, staff, and other representatives of the housing industry, including non-profit sponsors, housing finance agencies, and tax credit program administrators, to share our concerns regarding the Section 102(d) Administrative Guidelines and to review specific cases illustrating how these guidelines are unworkable.

As you requested, we have written up our analysis of a HUD tax credit review presented last week and our analysis of another HUD review conducted for a similar multifamily tax credit project. These are attached. I have also enclosed letters that were sent to the Department from other participants in last week's meeting that detail their concerns.

We believe that this evidence clearly shows that HUD's current approach is unworkable. While the attached examples reveal errors in HUD's methodology, the fundamental problem is that the process does not recognize the workings of the private market place. As we emphasized in the meeting, it is not possible to reduce the complex interactions and decisions of the tax credit process to formulas, particularly as

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the variables change dramatically depending on project type, location and size. Monitoring of subsidy layering is a difficult task, but to be done effectively, the process must recognize the individual characteristics of each deal and allow the private market to function.

The NAHB Board of Directors has adopted policy urging HUD to withdraw the existing cumbersome and unworkable Section 102(d) Administrative Guidelines and replace them with determinations made by the tax credit program administrators for HUD multifamily tax credit projects and with previously existing HUD underwriting procedures for HUD multifamily projects not assisted by the tax credit program.

More important, however, is the need to quickly address the paralysis that the guidelines have caused. We feel that a few straightforward modifications to HUD's approach would allow worthwhile projects the opportunity to move forward and avoid the damage to the supply of affordable rental units that is threatened by the continued inability to use HUD programs with tax credit projects.

Our proposed modifications involve utilization of the tax credit allocation and monitoring system that is already in place in each state and the use of actual market results and more realistic limits on profits and fees:

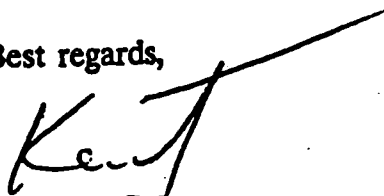
- 1) Responsibility for administration of the guidelines for HUD tax credit projects should be delegated to the state agencies that serve as administrators of the tax credit program.
- 2) A net equity approach of setting minimum equity contributions should be adopted. Net equity available from syndication proceeds should be evaluated for its reasonableness in relation to the equity generated by similar equity capital raising techniques for similar multifamily projects. Syndication cost limits currently set in the guidelines are at levels which do not pay the direct expenses of and compensation for syndicators to raise equity for these multifamily projects. Also, since the value investors place on ownership interests is determined in the marketplace, setting levels of investor returns is inappropriate.
- 3) The developer's fee (for all projects, including HUD-insured multifamily projects) should be allowed to range between 15 and 20% of total project costs. The builder's fee should not have specific limits, rather the proposed builder's fee should be evaluated for its reasonableness for the type, size, complexity and location of the multifamily project to be constructed. The developer and builder fee limitations in the guidelines

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are at levels which will not provide adequate compensation for the expenses, overhead, time and risk involved in developing and constructing affordable multifamily housing and the inevitable capital needed for unforeseen events in the construction and operation of projects. These same limitations do not recognize that projects vary in their degree of complexity and risk, the amount of time necessary for development, their location (e.g. difficult inner city and rural areas), affordability lock-in periods, and size for economies of scale.

We hope you will re-evaluate and revise your approach before our system of providing affordable rental housing suffers irreparable harm. We are happy to provide this information to assist you in these revisions and are available to answer any questions you may have.

Best regards,

A handwritten signature in black ink, appearing to read "Kent", with a long, sweeping horizontal line extending to the right from the end of the signature.

Kent W. Colton
Executive Vice President &
Chief Executive Officer

KWCsdj
Enclosure



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005

Telex 89-2600 (202) 822-0401

Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

June 7, 1991

Rules Docket Clerk
Office of General Counsel
Room 10276
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Re: Administrative Guidelines; Limitations on Combining Other Government
Assistance with HUD Housing Assistance Docket No. N-91-3186; FR-2929-N-01

Dear Sir or Madam:

The National Association of Home Builders is most appreciative for the opportunity to comment on the Administrative Guidelines that have been proposed to meet HUD's obligations under Section 102(d) of the HUD Reform Act of 1989 and on the overall matter of limiting the total amount of governmental assistance, including HUD assistance, to affordable housing projects. We wish to make it clear that we firmly believe that federal, state, and local government assistance to any one housing project should be provided only in amounts necessary to create affordable housing. The major task is to create systems which limit the amount of government assistance but do not create procedures that stifle the production of affordable housing for low and moderate income American households.

A. NAHB RECOMMENDATION

The National Association of Home Builders recommends that HUD utilize existing HUD program procedures for the certification required under Section 102(d) for HUD-assisted multifamily projects not assisted by the Low Income Housing Tax Credit Program. We also recommend that HUD utilize, with appropriate HUD oversight, the underwriting determinations made by the administrators of the Low Income Housing Tax Credit Program in making this certification for HUD-assisted multifamily tax credit projects. Since these actions will satisfy HUD's certification obligations, the proposed Administrative Guidelines should be withdrawn.

B. OVERVIEW

- The Guidelines add an unnecessary administrative layer. For HUD-assisted multifamily projects which are not assisted by the Low Income Housing Tax Credit, HUD already has program procedures in place that meet or could be adapted to meet the certification requirements of Section 102(d). Under the Guidelines, a HUD-assisted tax credit project must undergo duplicative reviews conducted by HUD and the administrator of the tax credit to make the same determination.
- The Guidelines are unworkable. The Guidelines will substantially reduce and quite possibly eliminate participation in affected HUD programs for affordable multifamily housing. The developer and builder fee limitations are at levels which will not provide adequate compensation for the expenses, overhead, time and risk involved in developing and constructing affordable multifamily housing and the inevitable capital needed for unforeseen events in the construction and operation of projects. These same limitations do not recognize that projects vary in their degree of complexity and risk, the amount of time necessary for development, their location (e.g. difficult inner city and rural areas), affordability lock-in periods, and size for economies of scale. Syndication cost limits are at levels which will not pay the direct expenses of and compensation for syndicators to raise equity for these multifamily projects. Since the value investors place on ownership interests is determined in the marketplace, setting minimum levels for investor equity contributions is inappropriate. Investors will not invest without appropriate returns and developers cannot supplement these returns if they exceed HUD investor return limitations. Therefore, developers, builders, syndicators, and investors will be unable to participate in HUD programs subject to the Guidelines and these HUD programs will not be utilized or, at best, will be under-utilized.
- The Guidelines will block a needed increase in HUD rental production. NAHB estimates that through 1995, 231,000 additional multifamily rental units will be needed each year. Each year, 134,000 additional households will seek to rent affordable multifamily units. Currently, HUD directly assists only about 14,000 multifamily starts annually and insures mortgages for new properties containing only about 20,000 multifamily units annually. The ability to meet the demand for affordable rental housing depends on a restoration of HUD activity to reasonable levels. An important first step is to restore the ability to use HUD-insured funding with tax credit projects. HUD's Guidelines will severely limit the availability of HUD-insured funding. HUD should concentrate on restoring the HUD

multifamily mortgage insurance delivery system and increasing HUD rental production to meet the rental housing needs of low and moderate income households.

C. GUIDELINES ADD UNNECESSARY ADMINISTRATIVE LAYER

1. Existing HUD Program Procedures

HUD already has procedures in place that meet or could be adapted to meet the certification requirements of Section 102(d) and those procedures are time tested and effective. These procedures could be used for HUD-assisted multifamily projects which are not the subject of the Low Income Housing Tax Credit Program.

2. Tax Credit Program Administration

Under Section 42 (m)(2) of the Internal Revenue Code, added by Section 7108(o) of the Revenue Reconciliation Act of 1989, administrators of the Low Income Housing Tax Credit Program must permit only the amount of tax credits necessary for financial feasibility and long-term viability of the project after taking into account all Federal (including HUD assistance), state, and local subsidies. Congress, in enacting these provisions, required administrators to examine project costs, including developer fees, for reasonableness.

The language in Section 102(d) of the HUD Reform Act of 1989 is almost exactly the same as Section 7108(o) of the Revenue Reconciliation Act of 1989 and the intent of these two statutes is certainly the same. Under the HUD Administrative Guidelines, a HUD-assisted project which is the subject of Low Income Housing Tax Credit must undergo duplicative reviews conducted by HUD and by the administrator of the tax credit. We feel that two reviews conducted by different entities for the same determination is unwarranted and can cause extreme coordination problems.

The Farmers Home Administration (FmHA) is required by Section 401(f) of the HUD Reform Act of 1989 to make the same certification required of HUD under Section 102(d). FmHA chose to remedy the problems associated with duplicative reviews for FmHA projects assisted by tax credits by utilizing the underwriting determinations of the tax credit administrators in making their required certification. Through this method they have been able to meet their certification obligation without interrupting production in their programs for the past 17 months.

D. ADMINISTRATIVE GUIDELINES ARE UNWORKABLE

The Guidelines will substantially reduce and quite possibly eliminate participation in affected HUD programs for affordable multifamily housing. The developer and builder fee limitations are at levels which will not provide adequate compensation for the expenses, overhead, time and risk involved in developing and constructing affordable multifamily housing and the inevitable capital needed for unforeseen events in the construction and operation of projects. These same limitations do not recognize that projects vary in their degree of complexity and risk, the amount of time necessary for development, their location (e.g. difficult inner city and rural areas), affordability lock-in periods, and size for economies of scale. Syndication cost limits are at levels which will not pay the direct expenses of and compensation for syndicators to raise equity for multifamily projects. Since the value investors place on ownership interests is determined in the marketplace, setting minimum levels for investor equity contributions is inappropriate. Investors will not invest without appropriate returns and developers cannot supplement these returns if they exceed HUD investor return limitations. Therefore, developers, builders, syndicators, and investors will be unable to participate in HUD programs subject to the Guidelines and these HUD programs will not be utilized or, at best, will be under-utilized.

The Guidelines have a track record because HUD began applying them last winter. This record supports our conclusion that the Guidelines are unworkable since, to our knowledge, very few transactions are being processed and approved with mortgages and rents acceptable to their developers; other transactions have received deep cuts in the mortgages or rents and developers for these transactions and other as yet unprocessed transactions are seeking or have obtained alternative financing or subsidy arrangements which would not subject their projects to the Guidelines.

1. Observations on Specific Guidelines

Developer and Builder Fees - The fees permitted in the Guidelines for developers and builders for both HUD-insured and other multifamily projects are far below industry standards.

HUD inappropriately relied on two sources in establishing these fee limitations. First, the Department's reliance on the North American Securities Administrators Association (NASAA) Guidelines is totally misplaced. The NASAA Guidelines limit developer and builder fees to

15% of project costs in rare cases in which the developer is also the syndicator. The limitation in such circumstances is understandable since the syndicator is also receiving compensation for comprehensive financial packaging services. However, the NASAA limitation should not be applied in situations where there is no identity of interest between the developer and the syndicator.

Second, the Department utilized ICF's unpublished draft report: "Evaluation of the Low-Income Housing Tax Credit." HUD attempts to justify the developer's fee and builder's profit limit of 15% by inappropriately comparing it to the ICF's 13.9% reported average developer's fee which does not include builder's profit. Further, the ICF fee was understated in that its calculation included developments in which the developer retained substantial shares of ownership. Separately, ICF reported substantially higher developer fees than the 13.9% for developments with low developer ownership shares, rental subsidies, larger number of units, and major rehabilitation activities.

Syndication Costs - The limit of 15% of gross syndication proceeds is far below industry standards for syndication costs for public offerings and quite possibly below standards for private offerings. Again, HUD inappropriately relied on ICF's Draft Report to set this limit near the ICF reported level of 13.8% for private placements. ICF in the text of their report raises questions as to the validity of their number since it was derived from a developer survey and not a syndicator survey.

Contributed Equity - Setting minimum levels for investor equity contributions is inappropriate and unworkable. The value investors place on ownership interests is determined in the marketplace based on competing investments, perceptions of risk, interest rates, term of investment and the overall economy. These values will change deal-to-deal and over time as the underlying determinants change. The amount of investor equity contributions should be left to market forces.

Guideline Formulas - Under the formulas, amounts for individual uses such as site acquisition costs, development costs, syndication costs, and bridge loan interest which exceed Guideline limitations are generally directed to reduction of developer and builder fees. Shortfalls in required investor equity contributions are also directed to these same fees. Therefore, generally the effect of the formulas is to reduce or eliminate already low developer and builder fees.

Distributions of Project Income and Rent Limitations - Limiting income distributions and applying rent limitations for HUD-assisted projects except where explicitly required by the applicable program statute is inappropriate and unwarranted. Income distributions from surplus cash serve as an important incentive for investor participation in affordable multifamily housing. Limiting rents for tenant affordability is certainly warranted; however, unnecessarily constraining rents will damage long term viability of projects.

2. Technical Comments

Builders/Sponsor's Profit and Risk Allowance(BSPRA); Sponsor's Profit and Risk Allowance(SPRA) - In general, the Guidelines are unclear as to how BSPRA or SPRA will result in actual compensation to the builder and to the sponsor.

The Guidelines indicate that HUD will use its mortgage insurance procedures to assess BSPRA and SPRA. Under these procedures BSPRA equals 10% of total project costs except acquisition costs. SPRA equals 10% of the total of architectural fees, carrying charges and financing, legal and organization expenses and off-site costs. These levels are far below the unworkable developer and builder fees permitted under the Guidelines for projects which do not utilize BSPRA or SPRA. Developers and builders of projects with HUD insured mortgages should receive equivalent compensation to sponsors and builders of projects with mortgages which are not insured by HUD.

Builder's profit is permitted when SPRA is used under Guideline number 6 and under HUD mortgage insurance procedures; however, the formula in this guideline for builder's profit does not work when SPRA replaces the developer's fee.

Processing Steps - Requests for HUD Mortgage Insurance - The instructions for adjusting mortgage and equity amounts in Step 2.a.3 are not consistent with HUD underwriting procedures for mortgage insurance. First, HUD insured mortgages are based on percentages of total cost, thus a reduction in cost does not equal the same reduction in mortgage as required in this step. Second, in cases in which uses exceed sources, this Guideline requires an increase in equity; however, mortgage insurance procedures also permit, in such cases, an increase in the mortgage amount when rents and income permit.

Contributed Equity - Income and Expense Trending - Trending both income and operating expenses upward by 3% per year in order to estimate cash flow and taxable income during the compliance period will overstate potential cash flow and result in inflated HUD required equity contributions. Neither lenders nor equity investors will accept pro formas that assume operating expenses will increase only 3% annually. Multifamily housing experience has shown that operating expenses annually increase at a rate significantly above 3%.

**E. GUIDELINES WILL BLOCK A NEEDED INCREASE
IN HUD RENTAL PRODUCTION**

NAHB estimates that through 1995, 231,000 additional multifamily rental units in structures with 5 or more units (at all rent levels) will be needed each year to accommodate household growth and to compensate for removals from the stock. Each year, 134,000 additional households will seek to rent multifamily units that rent for less than \$450. While some of this demand will be met through the filtering of existing housing into low-income multifamily rental stock and the working off of excess multifamily inventories, additional new construction will be required to meet the demand for affordable rental units.

HUD has directly assisted just over 1 million multifamily rental unit completions (excluding public housing) since 1970. As a result of reductions in, and the termination of, programs for new construction, the number of HUD-assisted annual rental completions dipped in the mid-1970s and again in the mid-1980s, falling to a 20 year low in 1985. Currently, HUD directly assists only about 14,000 multifamily starts annually.

HUD has insured a total of \$72.7 billion of multifamily mortgages for conventional and low-income projects in the past 21 years, including \$56.6 billion for new properties. In the years 1970 through 1987, HUD played a significant role in the finance of new properties with annual volumes ranging from \$1.3 billion to \$5.6 billion and market shares ranging from 25.8% to 52.3%. Annual volume dropped to \$744 million in 1988 (8.3% market share), and \$630 million in 1989 (7.59% market share). Currently, HUD insures mortgages for new properties containing only about 20,000 multifamily units annually.

The ability to meet the demand for affordable rental housing depends on a restoration of HUD activity to reasonable levels. If the deterioration in HUD programs is not repaired then some low-income renters will have to

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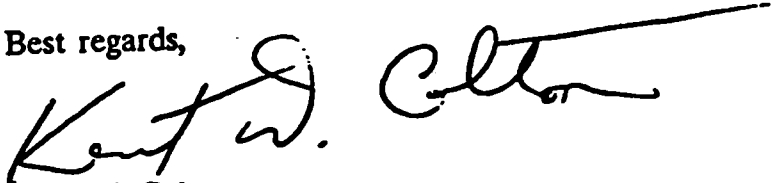
June 7, 1991

rent more expensive units, some will have to seek low-income rentals in the single family stock, some will have to double up, and some will have to forgo forming households. In the worst case, some renters will end up homeless.

An important first step is to restore the ability to use HUD-insured funding with tax credit projects. As pointed out, HUD's Administrative Guidelines are unworkable and will severely limit the availability of HUD-insured funding. HUD should, in HUD-assisted tax credit projects, utilize the underwriting determinations made by the tax credit administrators for the 102(d) certification to permit concentration on restoring the HUD multifamily mortgage insurance delivery system and increasing HUD rental production to meet the rental housing needs of low and moderate income households.

Again, we appreciate the opportunity to comment on these Administrative Guidelines and are available to answer questions or discuss any issues related to our comments and suggestions.

Best regards,


Kent W. Colton
Executive Vice President
& Chief Executive Officer

January 10, 1992

The Honorable Jack Kemp
Secretary for Housing
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Re: **Administrative Guidelines -- Limitations on Combining
Other Government Assistance with HUD Housing Assistance**

Dear Secretary Kemp:

We are requesting a meeting to seek your help in correcting some severe dislocations that have resulted from HUD's efforts to implement a provision of the HUD Reform Act of 1989. Specifically, we would like you to review the Administrative Guidelines that are being applied to meet HUD's obligations under Section 102(d) of that Act. This is a case where the private sector and non-profits need your direct involvement.

First, we wish to make it clear that we firmly believe that federal, state, and local government assistance to any one housing project should be provided only in amounts necessary to create affordable housing. Systems can be created to limit the amount of government assistance without stifling the production of housing for low- and moderate-income American households. To achieve that balance, however, those systems must be realistic and flexible enough to allow the market to function within the framework of safeguards.

We have a strong common concern that the Administrative Guidelines being used by the Department to meet HUD's obligation under Section 102(d) do not meet this test and are unworkable. The developer and builder fee limitations are at levels which do not provide adequate compensation for the expenses, overhead, time and risk involved in developing and constructing affordable multifamily housing and the inevitable capital needed for unforeseen events in the construction and operation of projects. These same limitations do not recognize that projects vary in their degree of complexity and risk, the amount of time necessary for development, their location (e.g.

Jack Kemp
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January 10, 1992

difficult inner city and rural areas), affordability lock-in periods, and size for economies of scale. Syndication cost limits are at levels which do not pay the direct expenses of and compensation for syndicators to raise equity for these multifamily projects. Since the value investors place on ownership interests is determined in the marketplace, setting levels of investor returns is inappropriate. A net equity approach of setting minimum contributions is a reasonable approach to regulation of both syndication costs and investor return. Investors will not invest without appropriate returns and developers cannot supplement these returns if they exceed HUD investor return limitations. Therefore, the current Guidelines severely hinder participation in HUD programs by developers, builders, syndicators, and investors.

HUD programs, particularly the FHA multifamily insurance programs, are needed to solve the extreme debt financing shortage for multifamily tax credit projects. If this financing shortage problem is not resolved, projects receiving allocations of tax credit authority will not be built and low income Americans will not receive needed housing.

We would be like to meet with you and provide case examples which illustrate why the Guidelines are not workable. We hope you will reevaluate and revise these Guidelines before our system of providing affordable housing suffers irreparable harm.

Again, we emphasize our agreement that multifamily housing projects for low and moderate Americans should only receive the amount of government assistance needed. The free market system, however, must be allowed to produce this product without stringent price controls. Your leadership is needed to restore the funding systems for affordable housing to working order.

We look forward to a positive response.

Sincerely,

National Association of Home Builders

National Association of Realtors

Coalition to Preserve The Low Income Housing Tax Credit

Council for Rural Housing and Development

Jack Kemp
Page 3
January 10, 1992

The Enterprise Foundation

Local Initiatives Support Corporation

National Apartment Association

National Corporation for Housing Partnerships

National Housing and Rehabilitation Association

National Leased Housing Association

National Multi Housing Council

/sdj

Citation: 24 CFR Part 92, Subpart B, Section 92.51

Title: Home Investment Partnerships

Status: Interim Rule Issued December 16, 1991

Background: The Cranston-Gonzalez National Affordable Housing Act of 1990 created a program entitled HOME, which provides formula grants from HUD to states and local governments for affordable rental and homeownership programs designed and implemented by state and local governments. The Act requires HUD to determine the jurisdiction's eligibility to conduct new construction activities. HUD's rules that set forth the methodology for determining a jurisdiction's eligibility to conduct new construction activity results in 70% of the jurisdictions in the country being precluded from conducting this activity. Principal factors used in the HUD methodology include low vacancy, low turnover, high proportion of substandard housing, high fair market rents, and high population growth. HUD states that affordable housing needs of lower income citizens can be met more cost-effectively through the rehabilitation of existing housing stock and/or the provision of rental or homebuyer assistance payments and thus, limiting new construction eligibility to 30% of the jurisdiction is appropriate. HUD does have an appeal process which is based on local data reflecting local market conditions; however, the appeal process is also seriously flawed.

How the rules inhibit economic growth: The distribution of local governments and areas within states eligible to conduct new construction activity with HOME funds is concentrated in suburban and urban areas in the far west (primarily California) and in the corridor between Boston and DC. Thus, the majority of the geographic area of the United States is excluded from the construction of new housing using HOME funds. Funds received by jurisdictions in these excluded areas will be primarily directed towards housing rehabilitation and housing activities which do not involve housing construction (e.g. housing vouchers). Thus thousands of construction jobs will be lost. (See attachments B1 and B2)

How the rules could be modified to promote growth: HUD should use a local market study approach -- with appropriate criteria to gauge local market conditions and the need for new construction supply - - to determine jurisdictions' eligibility to conduct new construction activities with HOME Investment Partnership Program funds.



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0200 (800) 368-5242

President's Office

November 26, 1991

The Honorable Jack Kemp
Secretary for Housing
U.S. Dept. of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

Dear Mr. Secretary:

As you will recall, when we met last week we briefly mentioned our concern about the Department's proposed overall methodology for determining jurisdictions' eligibility for conducting new construction activities under the HOME Investment in Affordable Housing Program. This letter is to follow up on that topic.

We feel that the methodology set forth for the Department has some serious flaws that will result in the exclusion of 70% of the jurisdictions in the country, many of which have inadequate housing supply. This will preclude jurisdictions in need of affordable housing from using HOME program funds to construct new housing, and this seems contrary to the intent of the statute. Let me explain in greater detail.

For new construction activity to be permitted in a jurisdiction, the statute for the HOME program requires HUD to make determinations, based on objective criteria, that the jurisdiction has an inadequate supply of housing at rents below the Section 8 Fair Market Rents (FMR) and a severe shortage of substandard residential structures suitable for rehabilitation as affordable housing. While the proposed rule sets forth five criteria to determine new construction eligibility -- low vacancy rates, high proportion of substandard housing, low turnover, high fair market rent, and high population growth, several of these criteria are inadequate for making the required HUD determinations. For example, low vacancy rates and low turnover of all units in a jurisdiction do not measure inadequate supply for housing at rentals below the Section 8 FMR. In addition, none of the criteria listed in the proposed rule properly address the rehabilitation determination.

Jack Kemp

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November 26, 1991

Each of the five criteria in the proposed rule are expressed as a ratio that compares the local jurisdiction's data to the national average. For a jurisdiction to qualify for new construction activity, at least three of the five factors must be above average and the jurisdiction's composite factor must be more than a yet-to-be-specified margin (e.g. 10%) above the national average on the composite factor. The use of relative measures is problematic since some areas show consistent differences over the long-run. For instance, the northeast (and the west to a lesser extent) always registers lower vacancy rates than the rest of the country, so it will naturally score higher on these grounds without necessarily providing an indication of uncharacteristically low vacancies. The same is true for turnover rates. Low turnover rates will also give an advantage to cities with rent control, which we do not feel deserve such encouragement.

The measure for substandard housing includes rent burden which is an income problem first, not a direct indicator of housing stock condition. Nationally, the proportion of renter households paying more than 30 percent of income for rent has risen from 37 percent to 48 percent between 1975 and 1987 while most structural adequacy measures have improved. The two measures should not be included in the same index, but as separate indicators. Paying 40 or 50 percent of income should carry greater importance than lacking a stove or refrigerator.

High FMR is another criteria that may not necessarily indicate areas in need of housing supply. High rents can indicate high cost of living in general, especially since the FMR is based on the entire distribution of rents. A more accurate measure of affordability would be the ratio of rent to income in each jurisdiction.

Another serious deficiency in the designation of jurisdictions eligible to build new construction is the regulatory statement under Section 92.51(d) where local governments may appeal their omission from the list based on "evidence of an error in census data or in HUD's computation." The statute clearly allows for appeals on the basis of "additional information." The HUD interpretation is far too restrictive.

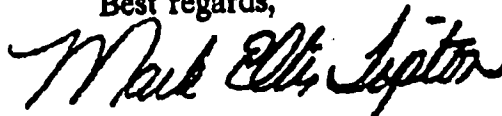
We suggest that HUD use a market approach in making the new construction eligibility determination. First, HUD should choose criteria based on absolute measures to determine local market areas with an inadequate supply of multifamily housing at rents below Section 8 FMR and a severe shortage of substandard residential structures suitable for rehabilitation as affordable rental housing. To refine the proposed formula based primarily on census data from 1980, HUD should gather recent local market area data for the criteria for all metropolitan cities, urban counties, consortia, and other counties in the jurisdiction of the HUD area offices. Based on the data gathered, HUD should make the definitive determinations required in the statute for local jurisdictions. These determinations should be based on local market conditions and the

Jack Kemp
Page 3
November 26, 1991

need for new construction supply and not on relationships to national averages.

We would appreciate hearing from you on this topic, and if you would like for us to discuss our ideas with anyone on your staff please let us know.

Best regards,

A handwritten signature in cursive script that reads "Mark Ellis Tipton". The signature is written in dark ink and is positioned above the typed name and title.

Mark Ellis Tipton
President

MET/sdj



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

December 31, 1991

Mr. Mark Ellis Tipton
President, National Association
of Home Builders
15th and M Street, N.W.
Washington, DC 20005

Dear Mr. Tipton:

Thank you for your letter of November 26, 1991, commenting on the Department's HOME Rental Housing Production Formula. It was a pleasure to hear from you.

Your letter questions the methodology employed to determine eligibility for HOME Rental Housing Production set-aside amounts and expresses the view that the methodology utilized results in the exclusion of 70 percent of the jurisdictions in the country, many of which have an inadequate housing supply.

Title II of the National Affordable Housing Act requires that the Department designate 15 percent of HOME amounts available for allocation for the production of rental housing through new construction or substantial rehabilitation. By statute, no fewer than 30 percent of jurisdictions eligible to receive HOME formula funds are to be designated as eligible to receive Rental Housing Production set-aside amounts.

The methodology employed to determine eligibility for receiving a Rental Housing Production set-aside amount was designed to assure that at least 30 percent, but not much greater than 30 percent, of all HOME participating jurisdictions would be eligible for a Rental Housing Production set-aside. The Department's decision to limit the percentage of jurisdictions eligible to receive a Rental Housing Production set-aside was based on several factors. Chief among these is a strong conviction that the affordable housing needs of lower income citizens can be met more cost-effectively through the rehabilitation of existing housing stock and/or the provision of rental or homebuyer assistance payments, rather than through the construction of new housing. However, it should be noted

that once a jurisdiction meets the criteria for receiving a Rental Housing Production set-aside, the regulations permit that jurisdiction to utilize as much of its HOME formula amount as it wishes for new construction, and does not limit the amount that can be used for new construction to its set-aside amount.

The factors used to determine eligibility for a Rental Housing Production set-aside are the same factors used to determine each eligible jurisdiction's set-aside amount. While you may not agree that some of the formula factors used are the best factors which can be used to measure the need for a Rental Housing Production set-aside, the Department believes that the factors utilized were the best factors possible, based on the need to utilize data which was readily available (for every HOME jurisdiction) to construct the formula factors.

The Department agrees with your stated view that the grounds for appealing omission from the list of jurisdictions eligible for a Rental Housing Production set-aside were too restrictive as contained in the HOME proposed rule. The HOME interim rule provides for an appeal process designed to provide jurisdictions the opportunity to submit "additional information" that can demonstrate a need for new construction.

The Department is committed to reexamining the HOME formula and the Rental Housing Production formula when it receives 1990 U.S. Census Bureau data. At that time, the Department would welcome the opportunity to discuss with members of your organization, and others, potential alternative formula factors and data sources.

Thank you for writing.

Very sincerely yours,


Jack Kemp

Citation: Cranston-Gonzalez Affordable Housing Act of 1990,
Section 718;
Mortgagee Letters 89-1, Issued January 4, 1989 and
89-9, Issued February 1, 1989

Title: Rules Governing FHA Acceptance of VA Certificate of
Reasonable Value (CRV)

Status: The industry is operating under administrative relief provisions that expire on June 15, 1992. A period of legislative relief expired on June 15, 1991. Legislation for a further extension, which was the basis for the current administrative relief, has foundered, threatening the administrative reprieve. FHA has drafted proposed regulations that get FHA out of the subdivision approval business. The proposed rule was issued on April 16, 1992.

Background: FHA attempted in 1988 to implement a reversal in policy by refusing to honor appraisals done for the VA of new construction in subdivisions because VA does not review and approve subdivision plans. The industry has been operating since then on interim legislative and administrative relief provisions that continued the previous policy of reciprocity.

Although VA and FHA provide essentially the same service to the same clients (VA clients are a subset of FHA's) they have had entirely different requirements for determining whether new construction is eligible for their program. For new construction in subdivisions, FHA requires either FHA subdivision approval or an environmental assessment. VA requires neither. Since January 1984, builders have been able to avoid unnecessary and costly FHA processing by going to VA first. In March 1988, FHA tried to stop this practice.

VA's position is that a VA action to approve a new unit for loan guarantee is not a "major Federal Action" covered by the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321-4370a). VA takes this position because its action does not require the expenditure of federal funds. [See 38 CFR Part 26 - Environmental Effects of VA Actions Sec 26.6 (b)(1)(xiii).] VA has also taken the position that a VA action to approve a unit for loan guarantee in a new subdivision does not require VA to review and approve the social, economic and physical characteristics of the entire subdivision in order to protect its financial risk. VA takes this position because its authorizing legislation does not mandate such a review and because it believes that localities generally do an acceptable job of reviewing subdivisions.

FHA on the other hand, had taken the position in its regulations that an action to approve a new unit for mortgage insurance is a "major Federal Action" covered by NEPA if it is part of a group of five or more new units. [See 24 CFR Part 50 - Protection and Enhancement of Environmental Quality Sec 50.20(a).] Moreover, FHA has also taken the position in regulation that, in order to protect its insurance risk when approving a new unit for mortgage insurance in a subdivision, defined as a group of 25 lots -- (see 24 CFR Part Sec. 203.12 (b((1)-) it must examine and approve the social, economic and physical characteristics of the entire subdivision. Finally, FHA had taken the position that approving new subdivision is a "major Federal Action" covered by NEPA. [See 24 CFR Sec. 50.17 (a)(1)].

In September 1990 HUD announced that it had made a policy decision that would conform to VA's positions. The Department proceed to draft regulations implementing this decision.

How the Mortgagee Letters will inhibit economic growth: FHA processing of subdivisions is time consuming, costly, and redundant. Subdivision plans and specifications are extensively reviewed by local, county and, in some instances, state governments. These reviews cover all aspects of land development including environmental concerns. FHA does not have the staff to adequately review subdivisions even if it were considered necessary, which it is not.

How the Mortgagee Letters could be modified to promote economic growth: FHA has drafted a rule to get out of the subdivision approval business. This rule should be adopted as a final rule as soon as possible after the 60 day public comment period.

Citation: Cranston-Gonzalez National Affordable Housing Act
Section 109

Title: Requirements on energy provisions of the Minimum
Property Standards

Status: Rules currently pending at HUD/OMB/Council of
Competitiveness

Background: Under the Cranston-Gonzalez National Affordable Housing Act of 1990, HUD is required to upgrade the energy provisions of the Minimum Property Standards to meet or exceed the CABO Model Energy Code and be cost effective with respect to construction and operating costs. HUD proposed incorporating the 1989 CABO MEC into the MPS. At NAHB's urging, HUD delayed final action pending resolution of the cost effectiveness action.

In November 1990, HUD published a proposed revision of its Minimum Property Standards that included a provision to adopt the CABO 1989 Model Energy Code as the minimal thermal performance standard for all HUD related new construction. The CABO 89 MEC is a more stringent code than the HUD code it will replace for homes heated by fossil fuels. HUD is poised to issue a final rule incorporating the CABO 89 MEC into its Minimum Property Standards. The final rule is at OMB for review. HUD intends to issue the rule without having conducted either a Regulatory Impact Analysis or a Regulatory Flexibility Analysis of the impact of the rule on small entities. In addition, HUD has not demonstrated to its own, or the public's satisfaction, that the CABO 89 MEC is both cost effective and affordable.

NAHB has been urging the Department to study these issues in detail before it increases its thermal performance requirements. We have specifically urged the Department to consider the following issues.

- a. Use of the CABO 89 MEC will significantly increase construction costs.
- b. The CABO 89 MEC needs to be substantially corrected to eliminate some basic problems.
- c. HUD must make a showing of cost effectiveness.
- d. The CABO 89 MEC produces significant affordability problems.

We have also argued that if the Department persists in adopting this code it must alter its underwriting standards to offset the affordability impact of increased first costs. (See attachments D1 and D2)

How the proposed HUD action would inhibit growth: FHA proposes to adopt higher minimum thermal performance standards for all new construction related to FHA programs. These standards will increase the cost of housing for all buyers and renters of new housing. Significant numbers of families will be closed out of the housing market because of these increased, and more costly requirements.

How the proposed HUD action could be modified in order to promote growth: HUD should not increase its thermal performance requirements for new construction unless and until it has determined that these increases are cost effective, and HUD puts in place Energy Efficient Mortgages that make it possible for buyers to finance the entire incremental cost of meeting higher standards.



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
(202) 822-0401 Fax No: (202) 822-0374

Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

April 9, 1991

Mr. Arthur Hill
Acting Assistant Secretary
for Housing/FHA Commissioner
U.S. Department of Housing and
Urban Development
451 7th Street, S.W., Room 9100
Washington, D.C. 20410

Dear Art:

I am writing to urge you to study the impact on homebuyers before publishing a final rule that would amend the Minimum Property Standards (MPS) in 24 CFR part 200, Subpart 5 by, among other things, removing HUD's thermal performance requirements and referencing the 1989 Model Energy Code promulgated by the Council of American Building Officials (89 CABO MEC). I realize NAHB has already commented on this proposed rule, but within the last several months a variety of developments have occurred which suggest that further analysis may be appropriate. Let me explain.

On January 4, 1991, NAHB submitted comments to HUD generally endorsing the adoption of the 89 CABO MEC, but suggesting that the Department support the adoption of certain changes that we believe would bring the code into conformance with standard building practices. However, since that time there have been a number of developments in the area of residential energy efficiency standards and energy-related mortgage incentives that our members believe require further analysis before the Department adopts a final rule.

First of all, President Bush announced his National Energy Strategy which, in part, directs HUD and the Department of Energy to encourage increased financial and technical support for energy efficiency ratings and their use in home financing. We were pleased to be invited by representatives from the Department of Energy to participate in an industry and government-wide meeting on March 16, 1991, at which HUD was represented, to discuss how to meet the President's challenge. The thrust of this proposed

Mr. Arthur Hill
Page 3
April 9, 1991

Art, as I mentioned, we would like to visit with you in the next several weeks to discuss some preliminary thoughts we are developing on the relationship between the 89 CABO MEC and underwriting adjustments to offset higher construction costs. I will call your office to set up a time for that meeting.

I look forward to the opportunity of discussing these important issues with you.

Best regards,



Kent W. Colton
Executive Vice President
& Chief Executive Officer

KWC:cim



National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
Telex 89-2600 (202) 822-0500 (800) 368-5242

Dale Stuard
1988 President

March 22, 1988

The Honorable Samuel R. Pierce
Secretary, U.S. Department of Housing
and Urban Development
451 Seventh Street, Room 10000
Washington, D.C. 20410

Dear Mr. Secretary:

On March 16, 1988 HUD sent out a memorandum which rescinded earlier authority for FHA to accept Master Certificates of Reasonable Value (MCRV), and Certificates of Reasonable Value (CRVs) issued by the Veterans Administration as evidence of administrative approval of a subdivision for the purpose of issuing an FHA Master Conditional Commitment.

This abrupt action ends a reciprocity arrangement between VA and FHA which is highly valued by the homebuilding industry. You may recall that, following a similar problem last year, resulting from FHA's change in appraisal policy, we brought to your attention the importance of the reciprocity arrangement in the planning and development of a new home subdivision. The FHA and VA new home markets have substantial overlap, and acceptance of the MCRV enables builders to serve both markets, and to obtain a financing commitment without obtaining costly multiple appraisals. Home buyers of course, also benefit from a greater choice in the financing most suited to their needs.

In response to our concerns last year, you graciously intervened to bring about a restoration of reciprocity between the two agencies. We are requesting your assistance again to maintain this arrangement. Moreover, we want to work together to develop a mutually acceptable solution.

We understand the concerns that have generated this action by the Department. Environmental issues are an increasing concern of our builders as well as home buyers, local governments and credit agencies

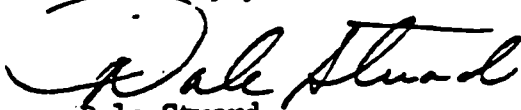


and we want to cooperate with you in assuring that appropriate review practices are followed. However, this unexpected policy change after so many years of accepted practice leaves builders in an untenable position. Those builders who had obtained an MCRV prior to March 16 but had not converted it to an MCC will find their applications rejected and their time tables for construction obsolete. As we enter the spring building season other builders who were counting on proceeding quickly will face unexpected delays.

We urge you to permit a full and open discussion of this issue and of the concerns of builders, realtors and lenders. At a minimum, a change of this magnitude must provide for an orderly transition by the industry --- we believe that a period of 6 months should be allowed. Therefore, we respectfully request that the March 16 notice be rescinded immediately, while a proposed rule is prepared and published for public comment. We are anxious to work with you in the development of such a rule, and believe that we can create a solution which addresses HUD's valid concerns, while maintaining an important financing tool for our industry and for home buyers.

We would like to meet with you at your earliest convenience to discuss our recommendations for short term relief, and ways we can work together to develop a longer term policy solution.

Sincerely yours,



Dale Stuard
President

DS:ifd

Citation: Section 324 of Cranston-Gonzalez National Affordable Housing Act; Mortgagee Letter 91-24

Title: FHA Maximum Loan Calculations

Status: HUD issued Interim Rule on May 30, 1991 and Mortgagee Letter on May 28, 1991

Background: FHA has implemented new restrictions on maximum loan to value and financing of closing costs. There is now a 57% limit on the closing costs that can be financed. The letter also effectively blocks seller payment of closing costs for borrowers as a way of helping borrowers meet larger cash requirements at closing.

FHA is required by law to operate its MMI Fund on an actuarially sound basis. However, a 1990 study by Price Waterhouse found that FHA had not been operating on a actuarially sound basis and that FHA's capital would continue to erode if steps we're not taken to raise premiums and reduce the number of low downpayment loans being insured. Based on this study, the Congress increased FHA's mortgage insurance premium structure. It also placed a limit on the mortgage amount at 98.75% of the appraised value of the property (97.75% where the appraised excess \$50,000). Unfortunately the Department decided to further increase, by regulation, the equity FHA borrowers have in their properties by reducing the amount of closing costs that could be financed from 100% to 57%.

How the Interim Rule and Mortgagee Letter inhibit growth: FHA's restrictions on the amount of closing costs that can be financed have increased the amount of cash buyers require to purchase a home, particularly in states where closing costs are high. Literally thousands of families, many of whom are first-time home buyers, have had to either defer or abandon the prospect of home ownership. (See attachment E1)

This rule substantially increased the amount of cash borrowers must have to buy a home, particularly in states where closing costs are high. There are 10 States where closing costs are 3% or more of the price of a home and the effect of the rule in these states is to increase cash required to purchase a median priced home anywhere from \$1,100 to \$2,600. Literally thousands of families are having to defer or abandon the prospect of home ownership because of this rule.

How the Mortgagee Letter could be modified in order to promote growth: The restriction on financing closing costs should be rescinded or alternatively, third parties should be permitted to pay a buyer's closing costs without any subsequent adjustment of the sales price when computing the maximum mortgage amount allowed.



National Association of Home Builders

1201 15th Street, N.W., Washington, D.C. 20005-2800

(202) 822-0401 Fax No: (202) 822-0374

Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

July 17, 1991

Rules Docket Clerk
Office of General Counsel
Department of Housing and
Urban Development
451 Seventh Street, S.W.
Room 10276
Washington, D.C. 20410-0500

RE: Minimum Mortgagor Equity Applicable to Most FHA Single Family
Mortgages, Docket No. R-91-1517, FR-2939-I-01

Dear Sir or Madam:

The National Association of Home Builders has examined the interim rule published in the May 30, 1991 Federal Register implementing certain provisions in the Omnibus Budget Reconciliation Act of 1990 that establish a minimum mortgagor equity requirement applicable to most FHA single family mortgages. We have also reviewed the preamble to the proposed rule, which announces that HUD is imposing a limit of 57% on the proportion of closing costs that may be financed in an FHA-insured mortgage.

Supplementary information provided with the rule makes it clear that HUD will continue its policy of deducting any seller paid contributions to closing costs from the lesser of sales price or appraised value when computing the mortgage amount based on the 97/95 percent rule. We strongly object to the continuation of this policy and urge HUD to examine an alternative.

The concerns we have about this policy can be summarized as follows:

- a) In states with high closing costs, the statutory Loan-to-Value limit, when combined with the 57% limitation on closing costs, requires FHA borrowers to come up with significantly more cash than was discussed during the debate on how to improve the financial viability of FHA's Mutual Mortgage Insurance Fund; and

Rules Docket Clerk

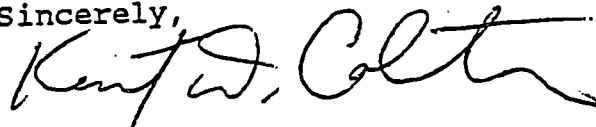
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July 17, 1991

- b) Trying to help a borrower meet this significantly higher cash requirement by paying all or part of a buyer's closing costs is effectively precluded if the sales price is reduced by an amount equal to the seller contribution to closing costs when determining the maximum mortgage amount.

NAHB believes that HUD should alter its policy and permit some portion of a buyer's closing costs to be paid by a seller without a consequent deduction when applying the 97/95 rule.

Sincerely,



Kent W. Colton
Executive Vice President
& Chief Executive Officer

KWC:th

All Dates
after May 2
are tentative.

CONFIDENTIAL -- CLOSE HOLD

Regulatory Reform Working Group
Rollout Schedule (Tentative) as of 4/14/92

<u>Date</u>	<u>Subject Area</u>	<u>Actions</u>
4/22	Transportation	air transport reforms; "intrastate" trucking rates; ocean shipping reforms; EIS, 404 reforms necessary to increase spending under highway bill [?]
4/23	Financial Services	lender liability; SEC reforms; leverage ratio; other access-to-capital initiatives
4/27[?]	Market-Based Environmental Policies	RCRA mixed waste rule; Title I Preamble (includes scrappage, mobile-stationary trading); reformulated gasoline; CAFE adjustment [?]; EPA evaporative control, on-board diagnostic rules; SIP credit for opt-ins to CA clean fuel program; NOX rule [?];
4/27 May	Communications	CC telecom "white paper" [?]; television reform; network-cable cross-ownership; contracting out federal spectrum; UHF-Cellular trading; rural telco-cable exemption; PCS spectrum allocation
4/27	Exports	"single mail box"; eliminate unilateral requirements; international harmonization
4/27[?]	Tax Relief	repeal of 150 IRS rules; payroll tax reforms
4/27[?]	Antitrust	joint venture guidelines; HSR revisions
4/28[?]	Presidential Speech	discuss successes thus far; outline implementation plans; legislative proposals; institutional reforms
4/29	Privatization	policy guidance on privatization; BWI Airport decision [?]
4/29[?]	Deregulation Paper	
4/29[?]	Labor	homeworkers[?]
4/30[?]	Private Property	wetlands, Endangered Species Act, historic preservation reforms

CONFIDENTIAL -- CLOSE HOLD

~~Gene~~ - 5-3

4/30[?]	Small Business	
5/1	Agency Reports	
5/4[?]	Risk Assessment	issue executive order or other government-wide guidance
5/6	Agriculture	"minor use" pesticide reform; USDA commodities program reforms; reform FmHA, FCA lending regs; guaranteed farm loan reform; FDA food labelling
5/7	Energy	DOE Notice of Inquiry Re: Oil Pipeline Deregulation
5/8[?]	Biotechnology	FDA road maps; USDA biotech transportation permit reform; EPA FIFRA rule [?]; possible Presidential event in California
5/10	Small Business	
5/13	Energy	pipeline construction rule; coordinated NEPA review for pipelines, hydropower[?]; DOE oil pipeline deregulation proposal; DOE natural gas pipeline deregulation study; DOE study of natural gas wellhead decontrol report; coal reforms

Council on Competitiveness Issues

Nancy Mitchell

1. Selected EPA issues
 - a. Permitting
 - b. VAST
 - c. Superfund
2. Commerce
3. Council Legislation (S. 1942)

James Gattuso

1. Antitrust
2. Telecommunications
3. Transportation
4. Financial issues
5. Agriculture

Dave Rivkin

1. EPA issues
2. Energy Issues
3. Tax issues

Bill Burrow

1. Labor Issues
 - a. OSHA
 - b. EEOC
2. Interior Issues - Endangered Species
3. Education

John Cohrsen

1. FDA issues
2. Biotech issues
3. Health Care
4. Risk Assessment letters
5. Bio-diversity
6. HHS issues
7. Technology Transfer

Jonathon Tollman

1. Wetlands issues
2. Mining Issues (MSHA)

Kristin Ryan

1. Small business
2. Issues involving the Commodity Futures Trading Commission.
3. Source for fact sheets or general information on the moratorium.



OFFICE OF THE VICE PRESIDENT

WASHINGTON

The President's Deregulation Initiative - At a Glance
April 1, 1992

January 28, 1992 -- The President announced in his State of the Union Speech the 90 day Moratorium and Review. In addition, he issued an explanatory memorandum to certain Department and Agency heads.

January 29, 1992 -- The Department of Labor announced that it would begin implementing its "helper" regulation, which had previously been blocked by an appropriations rider. The regulation gives contractors greater flexibility in staffing construction projects. CBO estimates that implementation of this rule will save \$600 million per year in inflated construction costs.

January 30, 1992 -- Deputy Secretary of Treasury, John Robson, IRS Commissioner, Fred Goldberg, and the Vice President announced several measures including Security and Exchange Commission reforms, to improve access to capital and to simplify the payroll tax system. These changes could substantially increase the tax amount of loans available and save significantly in regulatory costs.

January 30, 1992 -- The White House released a fact sheet entitled, The President's Plan for reducing the Burden of Regulation Through Administration Action. The fact sheet is more detailed and explains the Administration's specific goals.

February 4, 1992 -- The Vice President issued a memorandum which outlined the various initiatives and the mechanics of the 90 day Moratorium and Review.

February 6, 1992 -- The Wall Street Journal reported the review of changes proposed by Commissioner Marshall which advocated the acceleration of depreciation rates for phone companies to spur investment in existing telephone networks and relaxed ownership restrictions on radio and television to help stations stay afloat. Proposals included lifting or relaxing the ban on individual or corporate ownership of more than 12 AM radio

stations, and 12 television stations nationwide and lifting a ban on network ownership of cable systems.

February 10, 1992 -- In response to the President's Deregulatory Initiative, Don Clay, a top official at EPA, proposed changes in the laws for cleaning up toxic waste sites. The proposals included: exempting some waste from strict disposal requirements, replacing enforcement action against polluters with friendlier negotiations, encouraging the use of innovative technologies by exempting companies that use new cleanup techniques from strict legal liabilities currently found in the law, and allowing companies contracted by the Government for toxic waste cleanups to pile contaminated soil and other debris at a site, without need to obtain special permits. The new laws would "significantly decrease the regulatory reach of hazardous waste laws".

February 14, 1992 -- EPA decided to allow broad use of certain pesticides. The decision was based on a survey which demonstrated that the health risks to consumers from ethylene bisdithiocarbamate were substantially less than EPA had originally estimated.

February 18, 1992 -- The SEC announced proposals to reduce, and in some cases eliminate, the public disclosure requirements for small companies that issue stock. Among others, a proposal was introduced to raise from \$500,000 to \$1 million the amount that can be raised through stock offerings without registering with federal or state authorities for "seed money". Their new proposals would also make it easier for mutual funds to invest in small and new businesses.

February 19, 1992 -- EPA sets a specific timetable to narrow the scope of two hazardous-waste rules which it has determined to be excessively stringent. This change could save more than \$2.0 billion per year.

February 24, 1992 -- The White House issued new Government policy on biotechnology products stating that genetically engineered products are not inherently dangerous; and that safe, new drugs, agriculture products, and organisms which help clean the environment should be commercialized without excessive scrutiny from federal regulators.

February 26, 1992 -- FCC staff proposed abolishing limits on how many radio stations nationwide that one owner could own.

March 2, 1992 -- The New Times noted "the volume of new rules and proposals has shrunk to 25 per week, versus a weekly average of 149 last year," a reduction of over 83 percent.

March 5, 1992 -- Securities and Exchange Commission issued a rule allowing the American Stock Exchange to permit addition of a new section to the American Stock Exchange Company Guide, establishing listing criteria for an Emerging Company Marketplace.

March 13, 1992 -- The Administration announced that it will not require the auto industry to install small canisters in cars to capture fumes. The responsibility for controlling these fumes will fall on refueling stations

March 18, 1992 -- The Administration announced a series of steps that will help clean up air pollution and promote jobs by reducing regulatory costs. Specifically, the announcement called for the establishment of a Cash-for-Clunkers program, expansion of the unregulated "common zones", establishment of market base rates, and conclusion on the rule to exempt railroads from the Elkins Act.

March 18, 1992 -- Secretary Madigan announced a several action to reduce the burden of regulation on American farmers, consumers and businesses. These actions will enhance USDA's ability to serve the public and streamline administrative processes. Among other actions USDA has agreed to extend the implementation period for food labeling regulation for one year. This will save the food industry more than \$3 billion dollars, and it will postpone a 7% to 9% increase for consumers.

April 2, 1992 -- Working with the Council on Competitiveness and the Treasury Department, the regulatory agencies that oversee financial services today announced several concrete steps to reduce regulatory barriers to lending and to eliminate unnecessary regulatory compliance costs.

April 2, 1992 -- The President announced a unified antitrust enforcement policy for mergers and acquisitions by the Department of Justice and the Federal Trade Commission. This common policy will provide the business community with greater certainty about the standards to be applied in enforcing the antitrust laws.

THE WHITE HOUSE
Office of the Press Secretary

January 30, 1992

THE PRESIDENT'S PLAN FOR REDUCING THE BURDENS OF REGULATION
THROUGH ADMINISTRATION ACTION

FACT SHEET

Regulatory reform is a key element of the economic growth package the President laid out in his State of the Union address. The President explained why in a speech he gave in Philadelphia today:

"Every regulation that reduces efficiency slaps a hidden tax on the consumer From the tab on a bag of groceries at the checkout line to the sticker price on the showroom floor -- every American takes a hit when the government over-regulates."

Although Congress has thus far refused to pass most of the Administration's regulatory reform proposals -- including those in banking and energy -- there is much the Administration can do and will do on its own to reduce the burden of regulation. Following up on the President's request that federal agencies accelerate programs that enhance economic growth, the Administration today announced the details of several specific reform initiatives to spur growth and enhance job creation, particularly by small and emerging businesses.

Today, the President also described the comprehensive, 90-day review of federal regulation that he announced in his State of the Union address: "We will undertake a top-to-bottom review in the fields of energy, the environment, transportation, exports, financial services, and communications, among others." During this 90-day period, federal agencies will "accelerate any regulations that encourage growth and the creation of jobs." Agencies will also adhere to a 90-day moratorium on regulations that could hinder growth, to the extent they can do so without violating statutory deadlines or threatening health and safety.

I. SPECIFIC ADMINISTRATIVE ACTIONS

The President announced several concrete steps that the Administration will take within the next 30 days to promote economic growth and pare down unnecessary government red tape and other regulatory costs. These fall into two broad categories: improving access to capital, and improving the economic climate for small business.

A. Improving Access to Capital.

Passage of the Administration's proposed banking reform legislation is the best way to resolve the "credit crunch" that has impeded economic growth and job creation. However, the Administration has recently taken actions under existing law to alleviate this problem. And it has recently proposed rules to permit federal thrifts to branch across state lines (thereby enhancing these institutions' financial health) and to make more credit available for home construction. Building on these efforts, the President has asked all federal agencies with authority over financial institutions carefully to review their regulatory programs and to implement additional measures that will promote access to capital -- both debt and equity -- without weakening the Nation's financial system.

In addition to these efforts, federal agencies will take the following administrative steps to improve businesses' access to capital, and thereby create jobs and enhance economic growth:

- o Banking Reform. The bank and thrift regulatory agencies will enhance the ability of banks and thrifts to raise additional capital by:
 - promptly promulgating a proposed rule permitting financial institutions to include a greater percentage of the value of purchased mortgage servicing rights and credit card relationships as Tier One Capital;
 - phasing out the supervisory definition of "highly-leveraged transactions" for banking companies, which will enhance many businesses' access to debt capital; and
 - reducing unnecessary regulatory burdens on thrifts by streamlining application procedures for healthy institutions and by reducing financial reporting requirements from twelve to four times per year.

At the same time, the FDIC will implement the new risk-based premium system ahead of the deadline authorized by last year's banking legislation, and in a manner that provides clear guidance to banks and does not arbitrarily expand bank examiners' discretion. Healthy banks should be rewarded with lower premiums, which in turn can generate new lending to help fuel the economy without endangering the FDIC's insurance fund.

- o Securities Reform. The Securities and Exchange Commission will undertake to simplify registration

requirements, reduce costs, and improve access for small businesses seeking capital from securities markets by proposing rules to:

- increase the maximum size for public offerings under the streamlined procedures of SEC Regulation A from \$1.5 million to \$5 million;
 - create a simplified securities registration form designed for easy use by small businesses; and
 - reduce regulatory paperwork under the Investment Company Act and expand the number of companies eligible for investment by Business Development Companies and Small Business Investment Companies.
- o Clarification of Lender Liability Under Superfund. Businesses often have difficulty obtaining loans for many projects because of a fear on the part of banks that they will be saddled with liability under the federal Superfund law for environmental damage done by their borrowers. To alleviate these concerns and thereby improve the lending climate nationwide, the Environmental Protection Agency (EPA) will promulgate its final rule clarifying lenders' liability under Superfund.
- o These steps will provide billions of dollars in additional capital to the Nation's economy.

B. Creating A Better Climate For Small and Emerging Businesses.

Many regulations have a disproportionate impact on small businesses, which account for a large percentage of domestic employment and have a disproportionate impact on economic growth. The President has therefore asked all major federal regulatory agencies to examine their existing regulations and weed out or modify those that impose an undue economic burden on small business.

The following steps, which will be taken by the appropriate agencies during the next 30 days, are examples of the kinds of actions the Administration will take during the next few months to spur the growth of small and emerging businesses:

- o Payroll Tax Reform. One of the barriers to increased employment and higher economic growth is the payroll tax system, which imposes billions of dollars per year in compliance costs. This burden falls disproportionately on small and emerging businesses. To reduce this burden, the Administration strongly supports certain features of the payroll tax simplification legislation now pending in Congress.

- The proposed legislation (H.R. 2775 and S. 1610) would substantially simplify the payroll tax system, reduce uncertainty, and reduce the number of payroll tax deposits that small employers must make.

In addition, the Department of Treasury, in cooperation with the Department of Health and Human Services, will reduce the economic burden of the payroll tax system by:

- establishing a single wage reporting system that will eliminate the need for employers to make multiple federal and state filings;
 - establishing a voluntary program that will allow businesses to verify tax information (such as employee social security numbers) by a simple telephone call, thus eliminating burdensome paperwork and correspondence with the IRS;
 - establishing a voluntary electronic payment system that will allow employers, at their option, to make payroll tax contributions directly from the employer's bank account to a designated Treasury account, thereby eliminating substantial paperwork costs; and
 - through the IRS's Compliance 2000 program, helping small and emerging businesses voluntarily meet their obligations through clearer guidance and increased taxpayer assistance; education and outreach efforts, thus reducing the need for after-the-fact enforcement.
- o Trucking Reform. Many businesses rely heavily upon trucks to carry their goods to customers. To reduce the costs of truck transportation, and to reduce regulatory burdens on some 52,000 mostly small owner/operators currently regulated by the federal government, the Interstate Commerce Commission will begin or complete rulemaking proceedings to:
- further deregulate motor contract carriage by repealing the regulatory definition of "contract" and relying instead upon the statutory definition;
 - abolish the requirement that trucking companies keep a unique set of "regulatory" accounting books in addition to standard financial and tax records; and

- deregulate truck transportation in large metropolitan areas by expanding "commercial zones."
- o Together, these steps will eliminate billions of dollars a year in regulatory costs, thereby making American businesses more competitive and increasing employment.

II. REGULATORY REVIEW

The above initiatives are examples of reforms the Administration will implement as a result of an intensive, 90-day review launched today by the President. The review will be coordinated by a working group of the Council on Competitiveness, chaired by Council of Economic Advisers Chairman Michael J. Boskin and Counsel to the President C. Boyden Gray. The review will proceed as follows:

- o In accordance with the President's request, the heads of the major federal regulatory agencies will set aside a 90-day period to review regulations and programs that may hinder economic growth, and to identify and accelerate action on initiatives that will reduce the burden of existing regulations or otherwise promote economic growth.
- o During this 90-day period, each agency will work with other agencies and the Council on Competitiveness to identify regulations and programs that significantly reduce jobs or otherwise impose a significant burden on the economy. Each such regulation or program will be carefully reviewed to determine whether it satisfies five requirements:
 - the expected benefits to society should clearly outweigh the costs to society;
 - the regulation should be fashioned to maximize net benefits to society;
 - to the maximum extent possible, the regulation should rely upon performance standards instead of prescriptive command-and-control requirements;
 - to the maximum extent possible, the regulation should rely upon market mechanisms;
 - the regulation should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.
- o To the extent permitted by law, and as soon as possible, each agency will propose administrative changes that will bring each of its existing and proposed regulations into

conformity with these standards. Each agency will report the results to the President.

- o Where statutes impose regulatory requirements that do not conform to the standards discussed above, agencies will prepare draft legislation to bring the law into compliance with those standards.
- o The head of each agency will designate a senior official to serve as a permanent regulatory oversight official. This official will have responsibility for conducting the comprehensive review, implementing the resulting proposals, and ensuring that new regulations comply with the standards discussed above.
- o To the extent permitted by law, and without imperiling health or safety, each agency will refrain from proposing or issuing new regulations and programs that retard economic growth, while accelerating development and implementation of those that promote economic growth.

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OFFICE OF THE VICE PRESIDENT
WASHINGTON

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS
STREAMLINING FEDERAL REGULATION OF BIOTECHNOLOGY PRODUCTS
FACT SHEET

"Today, I am announcing major new ground rules for regulation of biotechnology. This 4 billion dollar industry should grow to 50 billion by the end of the decade -- if we let it. The rewards we will reap include new medicines, safer ways to clean up hazardous wastes, and a revolution in agriculture. The United States leads the world in biotechnology, and I intend, through sensible regulation, and in some instances, deregulation, to keep it that way."

President George Bush
February 24, 1992

Noting the Bush Administration's initiative to increase FY '93 funding for biotechnology R&D by 7%: "Were federal agencies to regulate products simply because an innovative process such as rDNA technology had been used, we would be unable to reap the benefit of our own research investments. The degree of oversight should be commensurate with risk, and the need for oversight should be properly supported by credible scientific evidence of reasonably foreseeable risk to health or the environment."

D. Allan Bromley, Advisor to the President for
Science and Technology, February 24, 1992

The President ~~announced~~ announced a plan to streamline federal regulation of new biotechnology products ~~today~~. The plan developed by the Council on Competitiveness, which is chaired by Vice President Quayle, will protect safety, health, and the environment and at the same time removing unnecessary regulatory barriers to development of biotechnology products.

There are three phases to the Council's initiative:

Phase I -- The Final Scope Document for Planned Introductions of Biotechnology Products in to the Environment will be published by the Office of Science and Technology Policy this week. The Final Scope document sets forth a scientifically sound risk-based policy for the exercise of statutory discretion by federal agencies

in the oversight of biotechnology products used outside of the laboratory. Completion of the Scope was recommended in the Council's 1991 Report on National Biotechnology Policy.

Phase II -- Complete review and publish proposed rules by agencies responsible for oversight of various biotechnology products (for example EPA's upcoming regulation of biotechnology products that act as pesticides). These rules will reduce the burden of current federal oversight.

Phase III -- Develop of detailed "road-maps" based on the principle of "one stop shopping" to clearly describe the pathway for obtaining federal approvals to commercialize biotechnology products including foods, animals, microorganisms and plants.

Background on Biotechnology

The US is the world leader in new biotechnology, the use of various biological processes to make products and perform services with living organisms or their components. Sales of the US biotechnology industry produced reached \$4 billion in 1991, and are expected to be \$50 billion by the year 2000 assuming appropriate federal oversight.

Advances in molecular technology over the past two decades have added new tools to the biotechnology techniques traditionally used in agriculture, food production, and other processes. The first new biotechnology products were innovative pharmaceuticals and medical devices developed during the last 15 years. Increasing efforts are underway to develop and bring to market biotechnology products for a broad range of agricultural and environment applications ranging from improved plant varieties to environmental clean-up.

To ensure that the US retains its competitive lead in this industry, the Council's plan establishes the general principles for federal regulation of new products. All federal oversight for products used in the environment should be based on risk, and not on any specific biotechnology process used to develop a product. This policy seeks to avoid the burden on innovation that could occur were oversight to be simply triggered by the use of an innovative new technology.

FOR FURTHER INFORMATION PLEASE CONTACT

John Cohrssen (202) 456-6222

THE WHITE HOUSE

Office of the Press Secretary
(Oklahoma City, Oklahoma)

March 6, 1992

FACT SHEET

As part of his 90-day regulatory relief initiative, the President today announced several steps the Administration is taking to improve economic conditions in the natural gas industry and, at the same time, reduce utility rates to American consumers.

Noting the importance of the natural gas industry to the Nation's economic health and security, the President also acknowledged that the industry has fallen on hard times. The specific actions, all of which were called for in the President's National Energy Strategy, are as follows:

1. Remove Regulatory Barriers to Use of Natural Gas By Electric Utilities. Two additional actions will eliminate regulatory barriers that impede the use of natural gas by electric utilities:

- o Final WEPCo Rule. Within the next two weeks, EPA will issue a final rule (the so-called "WEPCo" rule) allowing electric utilities to make certain physical and operational changes at existing power plants without having to undergo expensive and time-consuming "new source" review. Because many of the modifications discouraged by the current regime are conversions to natural gas or gas co-firing generators, the final rule should lead to increased natural gas usage as well as lower electricity rates. The final rule will be substantially the same as EPA's proposed rule.
- o Incentive Regulation for Electric Utilities and Natural Gas Pipelines. Currently, the manner in which the Federal Energy Regulatory Commission regulates the rates of electric utilities and natural gas pipelines reduces significantly their incentives to reduce costs. FERC Chairman Martin Allday and Commissioner Branko Terzic have proposed a policy statement permitting electric utilities and natural gas pipelines to choose "incentive regulation" as an alternative to traditional "cost-of-service" regulation. Over time, this new approach will increase consumption of natural gas by electric utilities as well as other consumers of natural gas. When fully implemented, moreover, a shift to incentive regulation should ultimately reduce total electricity and natural gas transportation costs by \$1-3 billion per year, thereby significantly reducing utility rates to consumers.

2. Remove Regulatory Barriers that Prevent Increased Usage of Natural Gas Vehicles. The Administration has already taken a number of steps to enhance usage of natural gas vehicles (NGVs), including substantial purchases of NGVs for use in government fleets. Two additional steps will lead to greater usage of natural gas vehicles:

- o Remove Regulatory Barriers to the Sale of Compressed Natural Gas. Federal Energy Regulatory Commission Chairman Martin Allday has proposed for Commission action a rule that will remove perceived regulatory barriers to the sale of compressed natural gas (CNG) for use in motor vehicles. The rule will exempt from FERC jurisdiction most local sales of CNG. For distribution companies or others that cannot be exempted from FERC jurisdiction, the rule will allow FERC to grant a "blanket" certificate authorizing generically the sale of CNG for use in motor vehicles.
- o Issue Emissions Standard for Natural Gas Vehicles. The Environmental Protection Agency will issue proposed emission standards for natural gas vehicles that will allow them to compete on an equal basis with other vehicles. Specifically, the new standards will eliminate the separate total hydrocarbon standard for natural gas vehicles -- an onerous requirement that places natural gas vehicles at a disadvantage.

THE WHITE HOUSE

**Office of the Press Secretary
(Detroit, Michigan)**

For Immediate Release

March 13, 1992

FACT SHEET

The President announced today that, because of safety concerns raised by the Department of Transportation (DOT) and others, the Environmental Protection Agency (EPA) has decided not to require automakers to equip new cars with "onboard refueling vapor recovery systems," known as onboard canisters. EPA's decision will not only promote safety, but will also relieve the automobile industry of a costly regulatory burden.

- o When a car is refueled at the service station, gasoline fumes escape into the atmosphere. These vapors contribute to ozone problems in many urban areas. The use of onboard canisters is one approach that has been considered for controlling these emissions.
- o Under the Clean Air Act Amendments of 1990, EPA was directed to consult with DOT about the safety of onboard canisters before deciding whether to require them on new cars.
- o DOT concluded that onboard canister systems unnecessarily increase the risk of vehicle fires. Noting that safer, alternative control measures are available, DOT recommended that onboard systems not be required.
- o In light of safety concerns and the availability of alternative control measures, EPA has decided not to require automakers to include such systems on new cars.
- o The necessary pollution reductions will be achieved more quickly through safer, less costly measures that can be targeted at high pollution areas.

The President also announced that, as part of his 90-day regulatory relief initiative, the Administration will be taking additional actions that will improve economic conditions in the automobile industry and, at the same time, reduce costs to American consumers and promote a cleaner environment.

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THE WHITE HOUSE
Office of the Press Secretary

March 18, 1992

FACT SHEET ON TRANSPORTATION REFORMS

As part of the President's 90-day regulatory relief initiative, the Administration today announced several actions to reduce the economic burdens created by federal regulation of automobile, truck, rail, and ocean transportation.

Federal regulation in the transportation sector can have at least three harmful effects on American consumers and workers. First, regulation can increase costs borne directly by consumers -- for example, the costs of cars and airline tickets. Second, because transportation generally accounts for 20 percent of the delivered cost of manufactured products, regulation acts as a "hidden tax" on all consumer goods. Third, unnecessary regulation makes all American goods and services less competitive in the world marketplace, and thereby leads to lower wages and employment.

By reducing regulatory burdens, the following actions will help create jobs, make American goods and services more competitive abroad, and reduce prices to consumers.

1. Reducing the Environmental Costs of Automobile Transportation. One cost-effective way to reduce pollution in many urban areas is to retire older cars, which are the dirtiest and least efficient on the road today.

- o Within the next two weeks, EPA will issue a guidance document encouraging states to adopt programs that allow businesses to satisfy the requirements of the Clean Air Act by purchasing and retiring old, high-polluting vehicles. In addition to cleaning up the environment, car scrappage programs will also reduce the regulatory burden on U.S. businesses and reduce reliance on imported oil.
- o The EPA "cash for clunkers" program is just one example of innovative, market-based programs that allow trading of emission reduction credits between "stationary sources" (like factories and power plants) and "mobile sources" (like cars). EPA will develop more general guidelines to clarify that businesses and state and local governments may satisfy Clean Air Act requirements by trading emissions reductions between mobile and stationary sources. Such trading will further reduce compliance costs, thereby promoting jobs,

economic growth, and environmental quality.

2. Reducing the Costs of Truck and Rail Transportation.

Because most consumer products and manufacturing materials are shipped by rail or truck, consumers and workers inevitably suffer when the government imposes excessive regulatory costs on truck and rail transporters. The Interstate Commerce Commission (ICC) today announced several actions to amend or repeal existing regulations that impose unnecessary regulatory burdens, or that unduly interfere with the ability of some 52,000 motor and rail carriers to negotiate and implement mutually beneficial transportation arrangements with their customers. Specifically, the ICC announced that it will:

- o initiate a proceeding to expand unregulated "commercial zones," and thereby further deregulate trucking in large metropolitan areas;
- o initiate a proceeding to accelerate elimination of the requirement that motor carriers obtain a registration stamp for each of their vehicles from each state in which they operate;
- o initiate a proceeding to abolish the requirement that motor carriers keep a unique set of "regulatory" accounting books in addition to standard financial and tax records;
- o conclude a rulemaking that will further deregulate motor contract carriage by repealing the regulatory definition of "contract" and allow carriers to rely instead upon the simpler definition contained in the statute;
- o initiate a proceeding to streamline and simplify motor carrier tariff regulations, easing the burden on carriers for filing negotiated rates in lawful tariffs and thereby making it easier for shippers to protect themselves from future undercharge claims;
- o conclude a proceeding to exempt railroads and their customers from current regulations requiring them to file contracts for private rail carriage;
- o conclude a proceeding to allow railroads to establish market-based rates for the use of each other's rail cars;
- o propose a rule to permit rail carriers to establish market-based incentives to ensure that rail equipment is not unreasonably detained at shippers' facilities;
- o conclude a proceeding to exempt railroads from the Elkins Act, thereby permitting them to engage in business development activities;

- o propose simplified rules governing consolidation, merger, and control cases that involve no more than one major, Class I railroad, thereby reducing paperwork and shortening decision time;
- o complete a rulemaking to treat the Postal Service like other shippers by relieving it of the burden of filing with the Commission copies of its motor carriage and rail contracts.

When fully implemented, these reforms have the potential to reduce the total costs of truck and rail transportation by more than \$1 billion annually.

3. Reducing the Costs of Ocean Shipping. Importers and exporters spend more than \$30 billion per year to transport U.S. goods to foreign markets and to bring foreign goods to U.S. consumers. The cost of ocean shipping adds a significant percentage to the delivered cost of goods. Various federal agencies today announced several steps to reduce the costs of ocean shipping:

- o Current Federal Maritime Commission (FMC) rules do not permit shippers to amend service contracts, even with the consent of the ocean carrier. Those rules also do not permit shippers to combine their worldwide shipping contracts into a single contract with an ocean carrier. To correct these problems, the FMC will initiate two rulemakings to allow amendment of service contracts, and to allow service contracts of worldwide scope.
- o The Coast Guard will initiate a rulemaking to establish streamlined record-keeping practices for vessels subject to Coast Guard jurisdiction.
- o The Maritime Administration (MARAD) will complete a rulemaking to eliminate unnecessary oversight of certain mortgage and sales transactions and encourage investment by reducing the costs of financing transactions.

THE WHITE HOUSE

Office of the Press Secretary

March 19, 1992

FACT SHEET ON AGRICULTURE REFORMS

As part of the President's 90-day regulatory relief initiative, Secretary of Agriculture Edward Madigan today announced several actions to reduce the burden of regulation on American farmers, consumers and businesses. These actions will reduce regulatory compliance costs and enhance USDA's ability to serve the public.

1. Reducing Regulatory Compliance Costs. The Department is taking the following steps to reduce regulatory compliance costs while still protecting consumers and taxpayers.

- o Nutrition Labelling. In November, USDA's Food Safety and Inspection Service (FSIS) proposed certain nutrition labelling requirements for meat and poultry products. To reduce costs to consumers and the economy, FSIS will make three changes to its November proposal:
 - provide an exemption for small businesses, as FDA has, so that the regulation does not make meat and poultry labels too expensive for hundreds of food producing firms;
 - extend the implementation period for another year to give firms needed flexibility to comply with the new regulations, reducing their costs by an estimated \$210 million; and
 - allow the use of databases for nutrient labelling information when appropriate, thereby reducing expected implementation costs by about \$650 million.
- o Prior Label Approval. Currently, labels on meat and poultry products must be approved by FSIS prior to being used. FSIS receives 170,000 applications for prior approval each year. FSIS will publish a request for public comments on options for reforming or eliminating the prior label approval process. This will not only reduce costs, but will also allow new products to reach consumers more quickly. Nutrition labels will continue to meet same high level of accuracy as under the current system.
- o Official Commercial Inspection Service. Grain inspection by the Federal Grain Inspection Service (FGIS) is voluntary for domestic markets, but is not always convenient or cost-

effective. FGIS will create a new Official Commercial Inspection Service which will use FGIS authorized inspectors and equipment to provide domestic inspection services in a more flexible manner and at a reduced cost to the applicants.

2. Enhancing Service to the Public. Good programs and regulations serve the needs of the public rather than bureaucratic needs. USDA is accelerating two program reforms that will enhance its ability to serve the public.
- o Electronic Benefits Transfer. USDA's Food and Nutrition Service (FNS) is testing the use of on-line electronic systems to distribute food stamp benefits through the use of special "debit cards." The new system will be more secure and easier for retail grocers and food stamp recipients to use.
 - o Employment and Training. To improve interagency cooperation, the FNS will conduct demonstration projects to increase the coordination between its Food Stamp Employment and Training program and the JOBS program administered by the Department of Health and Human Services. This coordination will be designed to more efficiently and effectively assist food stamp recipients in becoming self-reliant.
 - o WIC Breastfeeding Program. To remove any government disincentives to breastfeeding, the FNS will propose a new program that allows women who breastfeed their infants the option of receiving additional dietary supplements instead of infant formula. The new package would augment the foods now provided to breastfeeding mothers in order to meet their unique nutritional needs.
 - o Guaranteed Rural Housing Loans to Moderate Income People. Although FmHa provides loan guarantees to persons with low or moderate income for rural housing, the loan guarantees have not been attractive to lenders and the secondary loan market because they contain unique conditions. FmHa will seek to make its loan conditions more like those used in the mortgage loan industry to better meet the needs of borrowers, lenders, and the secondary loan market.
 - o FmHA Single Family Housing Program. The Farmers Home Administration (FmHA) currently specifies very detailed requirements for homes on which it makes direct loans to low and very low income families. FmHA is initiating a rulemaking proceeding to relax the detailed design specifications to enable potential homeowners to choose housing designs which best fit their needs.
 - o Farmer Loan Eligibility Requirements. To obtain credit under FmHA farm credit programs, farmers must demonstrate

that their expected income is sufficient to cover expected loan payments. Because expected income is calculated on the basis of a five-year average, farmers who suffer crop losses because of natural disasters now have difficulty obtaining loans because the disaster years depress their average income. To avoid this problem, FmHA will allow farmers to exclude up to two years when calculating their five-year average for loan eligibility.

- o Holding Time for Foreclosed Farms. FmHA holds in inventory more than 3,000 foreclosed farm properties. Current regulations require FmHA to hold the farms at least three years before they can be sold to the general public. FmHA will change the regulation to allow the public sale of foreclosed property after one year, returning the idle land to productive use and generating \$89 million in annual gross farm income.
- o Assistance to Beginning Farmers. FmHA will also create a program designed to assist beginning farmers and ranchers in obtaining suitable farm land held in FmHA inventory.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

March 20, 1992

The President's Address Announcing Tax Bill Veto

FACT SHEET

I. Vetoing the Congressional Democrats' Tax Bill

President Bush signed a message to Congress today vetoing the tax bill crafted by Congressional Democrats because raising taxes will stifle economic growth. He again urged Congress to pass his seven-point plan to promote economic growth without raising taxes and called on Congress to "stop holding the American economy hostage in a partisan game."

II. Restoring Congressional Accountability

The President observed that the failure of Congress to enact an economic growth plan without raising taxes reflects "a deeper systemic problem that is gnawing at the strength of our nation....Our Congressional system is broken."

The President called for:

- Eliminating political action committees (PACs);
- Enacting term limitations for Members of Congress;
and
- Having Congress apply to itself the same laws that it imposes on American citizens and businesses.

III. Protecting Workers' Rights

Declaring that "no worker should be forced to have money taken out of his paycheck to fund politicians he or she disagrees with," the President announced a government-wide effort to implement the Supreme Court's decision in Communications Workers of America v. Beck. The Beck decision prohibits unions from expending certain employee fees for political activities over the employee's objections.

- The President will soon issue an Executive Order to ensure that employees working on government contracts are informed of their Beck rights. The President will direct the Secretary of Labor to institute procedures for enforcing the Executive Order.
- The President expects the National Labor Relations Board to take further steps to implement the Beck decision in the near future. He also expects the Department of Labor promptly to issue a proposed regulation to ensure that union members are better informed about how union leaders are spending their money.

IV. Restraining Federal Spending and Reducing Unnecessary Regulation

The President declared that "in spite the hopelessly tangled Congressional web of PACs, perks, privilege, partisanship and paralysis," he would use "every legal means at [his] disposal to keep the economy moving up."

Line-Item Rescissions

The President today sent to the Congress a series of 67 special messages which propose line-item rescissions of \$3.6 billion in fiscal year 1992. The President indicated that these rescissions would be the first of a series he plans to send to Capitol Hill in the coming months. The President indicated that he would work with Republicans in the Congress to force a vote on each of these proposals -- thus increasing accountability and inhibiting waste and abuse of taxpayer dollars.

The President noted that his fiscal year 1993 budget proposes to freeze domestic discretionary spending and government employment and to cap the growth of "mandatory" programs, without touching Social Security.

The rescissions submitted by the President are consistent with his proposal to terminate 246 Federal programs, and over 4,000 individual projects, in his fiscal year 1993 budget.

Most of the items proposed by the President for line-item rescission in fiscal year 1992 were proposed for termination in fiscal year 1993. Many of these are projects which were not selected on a merit or peer-reviewed basis, are not nationally significant, and would not have qualified for Federal funding in a traditional competitive process. The President noted that spending on such projects "destroys public confidence in the integrity of the government."

Regulatory Reform

In the President's State of the Union address, he announced an intensive, government-wide effort to cut needless red tape and curb regulations that impose an undue economic burden on businesses, consumers, and workers. Today the President noted that the Administration has "already taken specific steps to remove the regulatory roadblocks to growth," as the following examples illustrate:

- The Administration has issued government-wide guidance that will reduce the regulatory costs of developing and marketing innovative biotechnology products. These reforms will help the biotechnology industry -- which is expected to raise revenues of \$50 billion a year, with a large expansion of high-skilled jobs over the next ten years -- maintain its competitive edge.
- The Department of Labor has given contractors greater flexibility to hire semi-skilled "helpers" for Federally-funded construction projects. This will reduce construction costs and create more entry-level jobs in building trades.
- The Federal Energy Regulatory Commission and the Environmental Protection Agency have taken several actions to remove regulatory barriers to the use of clean-burning natural gas. Increased natural gas use means more American jobs, lower energy costs for consumers, and cleaner air for our Nation's cities.
- The Administration has developed a market-based plan to help remove old cars -- the biggest polluters and gas guzzlers -- from the road. This "Cash-for-Clunkers" program will help businesses meet the tough standards of the Clean Air Act at less cost, without sacrificing either the environment or economic growth.
- The Securities and Exchange Commission has taken steps to make it easier for small businesses to raise money to finance their growth. Small companies are creating most of the new jobs in America.
- The Interstate Commerce Commission and the Federal Maritime Commission are trimming complex regulations that needlessly increase the costs of truck, rail and ocean transportation. Moving goods more cheaply means a stronger economy and lower prices for American consumers.

- The Department of Agriculture is reducing the costs of implementing nutrition labelling requirements.

V. Creating Public/Private R&D Partnerships with Federal Laboratories

The President today announced two steps taken by the Department of Energy to advance the President's efforts to help move American innovations from the laboratory to the marketplace. The President has proposed, in each of his budgets, to sharply increase investment in applied research and development into high-payoff technologies that will help Americans compete in the global marketplace.

The President's fiscal year 1993 budget includes substantially increased investments in such areas as high performance computing and communications, advanced materials, biotechnology, and energy R&D. In conjunction with this increased investment, the Administration has launched the National Technology Initiative, an interagency effort designed to improve increased U.S. global competitiveness by stimulating the transfer of Federally funded technology from the public sector to American industry for rapid commercialization.

As part of this effort, the Department of Energy today signed a model Cooperative Research and Development Agreement (CRADA) with the Computer Systems Policy Project (CSPP). This agreement, which will serve as a model for cooperation in a number of fields, grew out of the interagency High Performance Computing and Communications Initiative created by the President. It sets forth the terms and conditions under which the nation's leading computer manufacturers will cooperate with the DOE labs in an attempt to usher in a new generation of scalable computers 1000 times more powerful than today's computers and to develop a national network with dramatically enhanced communications capability.

In addition, DOE is also initiating a new \$50 million per year competitive program to pursue research in promising dual-use technologies at its national labs in partnerships with private sector entities. Under the program, the labs will compete for applied R&D funds for promising projects in dual-use technologies. To qualify for the funds, the labs will have to have secured a private sector partner willing to cooperate in the research on a cost-shared basis. This will ensure that the R&D is conducted in areas felt by the private sector to have sufficiently high commercial promise.

VI. Ensuring American Success in a Global Economy

The President noted that "for more than two centuries, America has been a force for change...Because of this, today America is the most productive nation on earth, with the highest standard of living." He expressed concern, however, that "at the exact moment of triumph for American values around the world," the current paralysis of Congress has caused too many Americans to lose confidence in our future.

The President outlined a five-point strategy for ensuring American success in a global economy:

- Expand markets for American products by negotiating free and fair trade agreements, investing in basic research and development and in key technologies, and changing the tax code to encourage increased private investment;
- Prepare our workforce to compete by revolutionizing American education, and consolidating and simplifying federal job training programs;
- Comprehensively reform the nation's health care system;
- Reform the legal system to reduce litigation costs and create incentives for early dispute settlement; and
- Accomplish these reforms without raising taxes or increasing government spending.

The President's strategy rejects the status quo approach of the Democratic Congress and instead embraces the kind of change "which respects markets more than government dictates; which recognizes fundamental American values and the difference between right and wrong; which rewards excellence and punishes wrongdoing..." and recognizes "that actions should have consequences."

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THE WHITE HOUSE

Office of the Press Secretary

April 2, 1992

FACT SHEET ON FINANCIAL SERVICES REFORMS

The Administration continues to eliminate needless regulatory burdens and red tape that impede economic growth and job creation. Working with the Council on Competitiveness and the Treasury Department, the regulatory agencies that oversee financial services today announced several concrete steps to reduce regulatory barriers to lending and to eliminate unnecessary regulatory compliance costs.

1. Reduce Unnecessary Regulatory Barriers to Lending. The Administration's comprehensive banking reform legislation remains the most effective long-term strategy for alleviating the credit crunch that has slowed the economy's climb out of the recession. The Nation, however, can no longer afford to wait for Congress to act. Building on its past efforts to ease access to capital and promote job creation and economic growth, the Administration is taking the following concrete steps -- on its own -- to reduce regulatory barriers to new lending.

o Stimulate Real Estate Lending. Today, the Office of Thrift Supervision (OTS) and the Office of the Comptroller of the Currency (OCC) took two steps to enhance lending for real estate:

-- Home Construction Loans. The OTS and the OCC are taking action to reduce the amount of capital that banks and thrifts must hold against conservatively underwritten loans for construction of pre-sold homes. The Administration believes this modification alone could free up enough capital to support several billion dollars in additional residential lending.

-- Real Estate Appraisal Requirements. The OCC and OTS are increasing from \$50,000 to \$100,000 the threshold for requiring appraisals from licensed appraisers on loans secured by real estate. This should stimulate additional real estate loans in the \$50,000 to \$100,000 range.

o Permit Interstate Branching by Federal Thrifts. A key component of the Administration's comprehensive banking legislation is to allow depository institutions to branch across state lines. Interstate branching allows greater efficiency, fosters healthy competition, and ultimately improves the quantity of credit available to consumers.

Fortunately, the Administration already has authority to permit interstate branching by federal thrifts. Today the OTS exercised that authority by issuing final regulations setting out procedures by which well-capitalized thrifts may open new branches in any U.S. state or territory.

- o Increase Bank Capital. The OCC, the OTS, and the Federal Deposit Insurance Corporation (FDIC) are taking action today to modify the definition of capital so that purchased mortgage servicing rights and credit card servicing relationships can be counted as capital. These adjustments will significantly enhance the ability of banks and thrifts to make loans.

- 2. Reduce Regulatory Compliance Costs. The regulatory agencies are also taking numerous steps to reduce or eliminate unnecessary compliance costs. Excessive compliance costs are ultimately paid by consumers in the form of higher interest charges or other fees. The specific actions are as follows:
 - o Reduce Reports by Futures Exchanges. The Commodities Futures Trading Commission (CFTC) has reduced by 77 percent the amount of market surveillance data that the nation's futures exchanges are required to file with the CFTC in the form of paper reports. Savings of more than one million pages annually will be achieved through greater reliance on electronic reporting.
 - o Streamline New Contract Approval Procedures. The CFTC has implemented expedited procedures for approving new contracts that are submitted by the various U.S. futures exchanges. This action will reduce costs and enable U.S. futures and options exchanges to better meet global competition in these products.
 - o Simplify Disclosure Rules. The OCC is amending its disclosure requirements for publicly held national banks by incorporating, through cross reference, disclosure regulations of the Securities and Exchange Commission. This change will simplify compliance, promote more consistent disclosure in the capital markets, and eliminate delays associated with the adoption of separate OCC regulations.
 - o Streamline Thrift Application Processes. The OTS is significantly simplifying filing requirements for various business activities by federal thrifts. It is also establishing standard and expedited filing procedures for healthy thrifts that wish to engage in certain new activities.

- o Streamline Financial Reporting for Thrifts. The OTS is reducing from twelve to four the number of standard financial reports that thrifts must file with the agency each year. This change will not only reduce compliance costs, but will also bring thrift reporting requirements into conformity with those for commercial banks.
- o Clarify Rules Governing Transactions with Insiders. The OTS is taking action to simplify rules governing transactions by insiders. It is doing so by applying to thrifts the same rules that currently apply to banks.
- o Eliminate Disparity Between Fidelity Bond Requirements. The OTS has eliminated the burdensome disparity between the fidelity bond insurance requirements of thrifts and commercial banks.
- o Increase Flexibility for Thrift Operating Subsidiaries. The OTS is taking action to permit thrifts to invest without limit in subsidiaries that engage only in activities permissible for a federal savings association -- e.g., data processing. This rule will give thrifts more flexibility in the way they organize their operations.



OFFICE OF THE VICE PRESIDENT

WASHINGTON

THE PRESIDENT'S COUNCIL ON COMPETITIVENESS
FACT SHEET

"But you know as well as anyone how government--sometimes with the best of intentions--can hobble innovation and risktaking, the lifeblood of a successful business. Government naturally tends to expand ever outward, its red-tape oblivious to anything in its path. It touches everyone. Every regulation that reduces efficiency slaps a hidden tax on the consumer as well. . ."

President George Bush
January 30, 1992

"We at the Competitiveness Council are committed to reducing and--wherever possible--eliminating excessive, burdensome and unnecessary regulations. Such regulations, in our view, threaten the loss of American jobs; place billions of hours of needless government paperwork on America's small business; impose millions of dollars of unnecessary federal mandates on our cities and towns, and raise the cost of products to American consumers."

Vice President Dan Quayle
October 1991

Purpose

The President established the President's Council on Competitiveness to maintain and improve America's competitiveness. America's ability to compete depends upon achieving the following goals:

- 1. Reducing Regulatory Burdens on the Free Enterprise System:** The Council on Competitiveness continues the duties of the Task Force on Regulatory Review, formerly chaired by then-Vice President Bush. The Council reviews government regulations to ensure they are cost effective and impose the lowest possible burden on the economy.
- 2. Cutting Back Excessive Litigation:** The Council spearheads Administration efforts to promote product liability reform legislation and civil justice reform through federal legislation, model state legislation, and Executive Order 12778. These efforts will restore fairness to our court system and eliminate abuse of the legal system that imposes tremendous cost on our society.
- 3. Developing Human Resources:** The Council develops strategies to improve America's human resources to provide for a knowledgeable, skilled and flexible work force. Reforming the American education system is a first step in improving U.S. competitiveness. The Council considers other issues such as labor, health, welfare, and

immigration, along with measures affecting the ability of the American work force to adapt to new technological advances that improve quality and productivity.

4. **Bringing Science to Market:** The Council seeks to eliminate government imposed burdens on scientific and technological progress which harm U.S. competitiveness. The Council also examines policies affecting commercialization of government research, federal procurement, and federal funding of research and development.

5. **Ensuring Access to Capital:** The Council pursues policies to allow the free flow of investment capital necessary for economic growth, such as reduction of the tax burden on investment capital.

REDUCING REGULATORY BURDENS

90-Day Pause and Review of Excessive Regulation

- o **President's Regulatory Relief Initiative:** The Council is coordinating a 90-day review of federal regulation announced by the President in his State of the Union address. During this 90-day period, the Council is working with federal agencies to eliminate or modify regulations which place an unnecessary burden on the economy and to accelerate any regulations that encourage growth and the creation of jobs. Agencies will also adhere to a 90-day moratorium on regulations that could hinder growth, to the extent they can do so without violating statutory deadlines or present an imminent threat to health and safety. The initiative is coordinated by a Council working group co-chaired by White House Counsel C. Boyden Gray and Council of Economic Advisers Chairman Michael Boskin.
- o **White Paper on Benefits of Deregulation:** The Council is preparing a comprehensive white paper examining the positive effects of deregulation for American consumers, workers, and businesses (including deregulation in the airline, trucking, railroad, oil and gas, and telecommunications fields).

Overseeing Regulatory Review Process (E.O 12291)

- o **Cost/Benefit Review:** The Council oversees the OMB review process to ensure that federal regulations do not place unnecessary burdens on businesses, and that the benefits outweigh the costs. For example, the Council worked with EPA to remove costly, mandatory recycling requirements from a new municipal waste combustor air emissions rule; OMB worked with HUD to set reasonable building standards under the Americans With Disabilities Act. OMB also reviewed regulatory burdens on pension funds, and made sure that voluntary pollution prevention initiatives are cost effective.

Clean Air Act Amendments

- o The Council monitors progress on implementation of the new Clean Air Act through regular meetings with the Environmental Protection Agency, Council of Economic Advisers, Office of Management and Budget and other agencies. The Council will work with the agencies to use all available administrative discretion to ensure that the regulations implementing the Act do not impose unnecessary costs on the economy. The Council's goal is to ensure the regulatory costs stay within the \$26 billion cost estimate agreed to by the President and Congress when this historic legislation was passed. This will maximize clean air benefits to society at minimum cost to the economy.

Working Group on Drug Approval Process

- o The Administration adopted the Council's goals to expedite the rapid development of safe and effective therapies necessary to save lives and eliminate suffering and to enhance U.S. competitiveness:
 1. By 1994, the FDA will reduce by 45% (to 5.5 years) the average development time for therapies eligible for "accelerated approval," i.e., therapies used to treat serious or life-threatening diseases or therapies for which there is no alternative therapy. To accomplish this, FDA will reduce the approval time for new drug applications (NDAs) to six months.
 2. By 1994, the FDA will reduce by 25% (to 7 years) the average development time for all other (non-accelerated) therapies. To accomplish this, FDA will reduce its approval time for these NDAs to 12 months.
- o To achieve these goals, FDA will implement 11 specific reforms recommended by the Council on Competitiveness that will expedite approval of both "accelerated approval" and all other therapies.
- o These reforms will augment efforts FDA has initiated to improve the drug review process. FDA has begun streamlining the process for submitting and reviewing applications, providing much greater access to patients for experimental drugs, strengthening management, and increasing cooperative discussions with sponsors during the development of new drugs in order to decrease development and review times.

Takings -- Protecting Property Rights

- o The Council coordinates Administration support for Senator Symms' Private Property Act (S. 50) and works with OMB and the Justice Department on legislation to increase agency accountability for "regulatory takings" under the

Fifth Amendment. The Council seeks to highlight an important concern: the need to minimize the impact regulations have on property rights.

- o The Council worked with the four agencies administering the wetlands program to revise the definition of wetlands so that dry lands are not inadvertently included as wetlands. The Council protects private property rights within the framework of the President's goal of no net loss of wetlands.

Telecommunications

- o The Council on Competitiveness is preparing a white paper outlining a comprehensive approach to government telecommunications policy, describing the opportunities presented by new communications technologies and regulatory barriers to their development.

CUTTING BACK EXCESSIVE LITIGATION

Federal Civil Justice Reform Agenda

- o The Council has recommended 50 major reforms that will reduce costs and delay in the federal courts. The reforms include:

The Fairness Rule, under which the losing party in litigation would pay the prevailing party's legal expenses in certain limited cases;

Discovery Reform, under which presumptive numerical limits would be placed on discovery, beyond which additional discovery would be governed by market incentives; and

Expert Evidence Reform, to eliminate "junk science" and to ban contingency fees paid to expert witnesses.

Product Liability

- o The Council developed the Administration proposal to reform United States product liability laws. Protecting consumer interests by safeguarding the price, availability, and variety of products; reducing the enormous litigation costs associated with product liability cases; and reducing liability risks that impede the development of safer products have long been policy goals of President Bush and Vice President Quayle. The Council will continue to work with congressional sponsors to pass product liability reform legislation.

DEVELOPING HUMAN RESOURCES

- o **Job Training and Education:** On January 17, 1992, President Bush announced his Job Training 2000 program. The initiative was developed by a joint working group of the Council on Competitiveness and the Domestic Policy Council, chaired by Secretary of Labor Lynn Martin. It is designed to meet the nation's workforce needs into the 21st century. The Job Training 2000 initiative consists of four major elements: 1) reforming vocational training; 2) facilitating the transition from Welfare-to-Work; 3) enhancing the transition from School-to-Work; and 4) promoting life-long learning.
- o **Promoting Choice in Education:** The Vice President has strongly supported state and local initiatives to implement parental choice in America's schools. The Council will aggressively push the President's AMERICA 2000 Education strategy which promotes: 1) better and more accountable schools through choice; 2) creating a new generation of American Schools for tomorrow's students; 3) transforming America into a nation of students; and 4) making our communities places where learning will happen.

BRINGING SCIENCE TO MARKET

Biotechnology Working Group

- o In January 1991, the Council released its Report on National Biotechnology Policy that makes 15 recommendations to enhance the competitive status of the American biotechnology industry and outlines the Administration's policy to support free market development of biotechnology products.
- o The Working Group will propose an Administration policy on the type and character of oversight necessary for certain environmental and agricultural research and products. The result will describe the pathway for commercialization of these important new products.

Working Group on Commercialization of Government Research

- o The Council focuses on Administration policy for ensuring an appropriate free market climate for the development and commercialization of technology. An important issue is the Administration's overall strategy and specific mechanisms to facilitate transfer of federally-funded research.
- o The Council released a fact sheet on April 25, 1991, entitled "Achieving Competitiveness in National Critical Technologies: Policies in Support of Technological Development in America." The Council is developing free market policies and deregulatory initiatives to allow private industry to develop new technologies in the National Critical Technologies Report in collaboration with the Office of Science and Technology Policy.

Banking Reform

- o The bank and thrift regulatory agencies will enhance the ability of banks and thrifts to raise additional capital by permitting financial institutions to include a greater percentage of the value of purchased mortgage servicing rights and credit card relationships as Tier One Capital; and phasing out the supervisory definition of "highly leveraged transactions" for banking companies, which will enhance many businesses' access to debt capital.
- o At the same time, the FDIC will implement a new risk-based premium system ahead of the deadline authorized by last year's banking legislation, and in a manner that provides clear guidance to banks and does not arbitrarily expand bank examiners' discretion. Healthy banks should be rewarded with lower premiums, which in turn can generate new lending to help fuel the economy without endangering the FDIC's insurance fund.

Securities Reform

- o The Securities and Exchange Commission will undertake to simplify registration requirements, reduce costs, and improve access for small businesses seeking capital from securities markets by proposing rules to: increase the maximum size for public offerings under the streamlined procedures of SEC Regulation A from \$1.5 million to \$5 million; and create a simplified securities registration form designed for easy use by small businesses; and reduce paperwork for small businesses.

Council Structure

On March 31, 1989, President George Bush established the Council on Competitiveness. The Council is chaired by Vice President Dan Quayle and is comprised of:

The Secretary of the Treasury, Nicholas Brady
The Attorney General, William Barr
The Secretary of Commerce, Barbara Franklin
The Director of the Office of Management and Budget, Richard Darman
The Chairman of the Council of Economic Advisers, Michael Boskin
The Chief of Staff to the President, Samuel Skinner (Ex Officio)

The Executive Director of the Council on Competitiveness, David M. McIntosh, is responsible for coordination of the Council activities.

There are five Associate Directors: Bill Burrow, John Cohrssen, James Gattuso, Nancy Mitchell, and David Rivkin.

Jurisdiction

The Council reviews regulatory issues, and other such issues as may be referred by the President, bearing on competitiveness in coordination with other Cabinet councils.

In reviewing regulatory issues affecting competitiveness, the Council exercises the same authorities that were given to the Presidential Task Force on Regulatory Relief pursuant to Executive Orders No. 12291 (February 17, 1981) and No. 12498 (January 4, 1985).