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It's Time We Renovate Regulations to Solve the Housing Crisis

THOM AMDUR, LINCOLN AVENUE COMMUNITIES

The United States is facing a chronic affordable housing crisis. The 2024 State of the Nation's Housing Report by the Harvard Joint Center for Housing Studies, found that homeowners and renters continue to struggle with high housing costs, and that the number of cost-burdened renters is at an all-time high. According to the National Low Income Housing Coalition, there is a structural deficit of affordable housing in United States that exceeds 7.1 million affordable, available homes for renters with extremely low incomes.

Problems Are for Solving

With such dire needs, it is imperative that the affordable housing production ecosystem operate like an efficient production line, churning out hundreds of thousands of new affordable housing units annually where they are needed most. Unfortunately, for practitioners, it often feels more like a Rube Goldberg Machine replete with bespoke processes, head-scratching twists and turns and the constant fear that the whole contraption will collapse if just one more person tinkers with it.

Development is stymied by "regulatory friction" when 60 years of federal, state and local programs, policies regulations and processes are stacked on top of each other, usually without consideration to how they interact with each other or for the collective burden and the effective tax they create. Rube Goldberg Machines are fanciful and fun science, technology, engineering and math teaching tools (my fourth and fifth graders will attest to that!) but they are no way to develop affordable housing. Einstein said it best when he quipped "we cannot solve our problems with the same thinking we used when we created them."

When Opportunity Knocks, Open the Door and Let It In

President Donald Trump has emphasized that deregulation is a cornerstone of his economic policy. He started his second term in office by issuing Executive Order 14219, which directs agencies to repeal regulations deemed unlawful by the Supreme Court (i.e., the Chevron decision) and April 11, the Office of Management and Budget began soliciting "ideas for deregulation from across the country," looking for "proposals to rescind or replace regulations that stifle American business and American ingenuity." There are a numerous areas that the Trump administration can pursue to boost housing production under this mandate.

Simplify Davis-Bacon and Prevailing Wage

Let us start with Davis-Bacon and prevailing wage compliance regulations, which under the current regulatory structure can add anywhere from 10% to 20% to the total cost of an affordable housing project and reduce the competitive bidding environment. In a limited resource environment, Davis-Bacon reduces the total number of units that can be produced when U.S. Department of Housing and Urban Development (HUD) funds are part of the capital stack. Many stakeholders are calling for Trump to declare an affordable housing emergency and to temporarily suspend the applicability of Davis-Bacon in affordable housing projects. Beyond a suspension, there are still numerous improvements that should be considered, including changes to how wages are surveyed, updating regulations to allow developers to use local wage determinations or project-labor agreement wages as the prevailing wage, repealing and replacing guidance relating to "split-wage decisions" and updating the programmatic definitions of "residential construction" to include buildings taller than four stories.

Reform NEPA and Environmental Reviews

Trump flagged Environmental Review Reform as a major focus when he issued Executive Order 14154, instructing the Council of Environmental Quality to revoke its existing National Environmental Policy Act regulations and shifting responsibility to individual federal agencies. As federal agencies such as HUD and the Department of Transportation consider how to update their regulations and processes, we hope they'll consider several areas for improvement including repealing and amending regulations governing the applicability and timing of "choice limiting actions," shorten internal and external environmental review timelines and consider changes to eliminate duplicative third-party reports and reviews where there are federal and local requirements.

Drive Management and Operational Efficiency

The administration can also take steps to help affordable rental communities operate more efficiently and safely. For example, the administration should review and repeal COVID-era federal eviction notification requirements, which are duplicative and additive to local eviction administrative protections. To enhance resident safety and create more efficient leasing of affordable housing units, it would also be timely to review and update resident screening guidance.

Waive Build American, Buy America for Affordable Housing

Build America, Buy America (BABA) requirements represent another opportunity. While privately owned affordable rental housing benefits the communities it serves, it is not "public infrastructure" and should not be treated as such. Repealing and replacing HUD CPD-25-01 with an updated notice that issues a blanket exemption for affordable rental housing would go a long way to reduce costs where federal funds are used and would be particularly timely given that domestic supply chains are already stressed.

The Only Way Out is Through

It is important to recognize that there is no single way to solve the affordable housing crisis. Federal regulatory reform is just one of many strategies we should implement concurrently to bend the cost and production curve. Regulatory reform will be most impactful when paired with critical legislative initiatives like the Affordable Housing Credit Improvement Act (which will expand and improve our most critical affordable housing production program), adequate funding for community development programs, improvements in the building supply chain, innovative design and construction techniques, local land-use reform and stable capital markets. Strategically targeting federal resources and programs to reward and incentivize communities that implement strategies to remove local regulatory barriers can further amplify production where the federal government does not have direct jurisdiction.

While affordable housing developers are excited about the opportunities described in this article, like many of our peers, we have serious concerns that dynamics in policy and economic environments could have an adverse impact on affordable housing production. Proposed cuts and consolidations to critical housing programs at HUD as well as the uncertainty and volatility created by the current tariff and trade environment represent significant headwinds that could potentially offset other gains. Affordable housing is an issue that transcends partisan politics and philosophies in part because we embrace the old proverb that says that "bridges are built from both sides of the river." Regulatory reform represents an area of potentially fertile and common ground.

Thom Amdur is senior vice president, policy and impact at Lincoln Avenue Communities (LAC), one of the nation's fastest-growing developers, investors and operators of affordable and workforce housing, providing high-quality, sustainable homes for lower- and moderate-income individuals, seniors and families nationwide. LAC is a mission-driven organization with a presence in 28 states and a portfolio of 170-plus properties comprising 30,500-plus units housing 80,000-plus residents.

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