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How Local Regulations Can Help Meet Our Housing Needs

In the Boston metropolitan area, as in other parts of the country with tight labor and housing markets, housing costs have increased dramatically—especially in terms of land, labor, and financing costs. While a limited supply of land and inflation in cost of materials are responsible for part of this increase, government regulations also have an impact.

This article will outline the role of state and local regulations in creating economic barriers to new housing construction and will identify the potential for effective housing strategies through regulatory reform. In particular, we concentrate on possible changes to zoning ordinances and building codes as a means of reducing development costs (thereby facilitating affordable housing development), improving administrative efficiency, and achieving livable communities. We provide background on the development of state and local housing regulations as a way to understand the goals of reform. Then, we offer a snapshot of local and national efforts that can serve as housing policy models.

Origins

In Massachusetts, regulation of the building process began with the first generation of Puritan settlers struggling to coexist with the rugged landscape. In 1649 the General Court passed an ordinance declaring that all buildings should be made of brick, a preventive measure against fire. This practical legislation has been followed by decades of revision in building codes and zoning regulations designed to accomplish multiple public goals, ranging from health and safety concerns to what are considered acceptable paint colors for one's seventeenth-century historic residence.

A model zoning-enabling act was imported from Germany in the 1920s and, with encouragement from the U.S. Department of Commerce, was immediately adopted by local municipalities across the country. The typical zoning ordinance specified segregated uses in order to separate industry, commerce, and residential living spaces, with the idea that this type of subdivision would protect residential spaces from industry. By 1966, zoning practices were so popular that "thousands of local officials regard[ed] zoning as the greatest municipal achievement since the perfection of public sanitary systems."[1] In time, the regulatory environment was influenced by local, state, and federal government.

The urban renewal process in the 1950s increased federal funding for housing programs and, with it, regulations over the type and location of new development, favoring single-family suburban starter homes over multifamily buildings such as duplexes and triple-deckers. The 1970s environmental movement bred another kind of regulation and marked the advent of the environmental impact review. This area of land-use regulation continues to evolve. Some of the current legislation to emerge from the Massachusetts General Court includes Title V (1995), governing septic systems, and the Community Preservation Act (2000), which allows local governments to raise fees on recorded deeds to preserve open space and develop affordable housing, among other policy objectives.

"As a purely social measure, reforming building codes to encourage renovation would be a huge step in the fight against sprawl."

Still another aspect of the regulatory process, community review, has been the center of media attention, as Boston creates development plans for its Seaport District waterfront. This type of review is hardly new. The Boston Zoning Code adopted in 1964 was based entirely on the city's urgent need to stimulate economic growth.[2] Therefore, it abolished height limits established in 1924 and applied a uniform set of suburban-style controls. When the zoning process failed to produce an adequate mix of residential housing among the high rises and copious commercial growth, the mayor instructed the city's planning and development agency, the Boston Redevelopment Authority, to promote more balanced growth and protect the distinct character of the neighborhoods. Thus Boston's more comprehensive zoning code, of which several articles are still under review, was designed to promote community participation, preservation, and enhancement of the public realm; protection of residential neighborhoods; and controlled economic growth.

The important point of this historical information is that zoning ordinances and building codes are not static. As regulations are means rather than ends, the real question raised by them is: What do citizens expect from their cities and towns?

Regulatory Reform Goals

Livable communities begin with good housing. Although each community has distinctive features and opportunities, the vitality of any community depends on its ability to provide bridges to a wide range of cultural, social, and economic opportunities. Development should be inclusive, recognizing that every city and town has a range of housing needs and preferences. It should also offer numerous opportunities and public spaces for interaction. The placement and design of housing should complement the distinctive characteristics of a community. Zoning for moderately high densities and diverse land use reinforces rather than detracts from the existing strengths of a community. It cultivates neighborhood livability.

As a purely social measure, reforming building codes to encourage renovation of existing buildings would be a huge step in the fight against sprawl. Increasing density by developing and rehabilitating mixed-income, mixed-use housing protects the nation's cities and towns from the harm sprawl brings—unemployment, higher crime rates, and lack of civic participation. This is crucial for inner-city residents, who see resources and jobs locating ever farther away.

The regulatory reform the Center for Urban and Regional Policy suggests includes both substantive changes—for example, zoning overlay districts to encourage a variety of building types—and procedural changes to make the current system more responsive to the goals outlined above. To meet these goals, local and state building codes should be amended, permitting and inspection services speeded up, government financing mechanisms streamlined, and zoning laws revisited. These changes will reduce the time and cost of producing housing without compromising safety or environmental quality.

How Regulations Work in Massachusetts

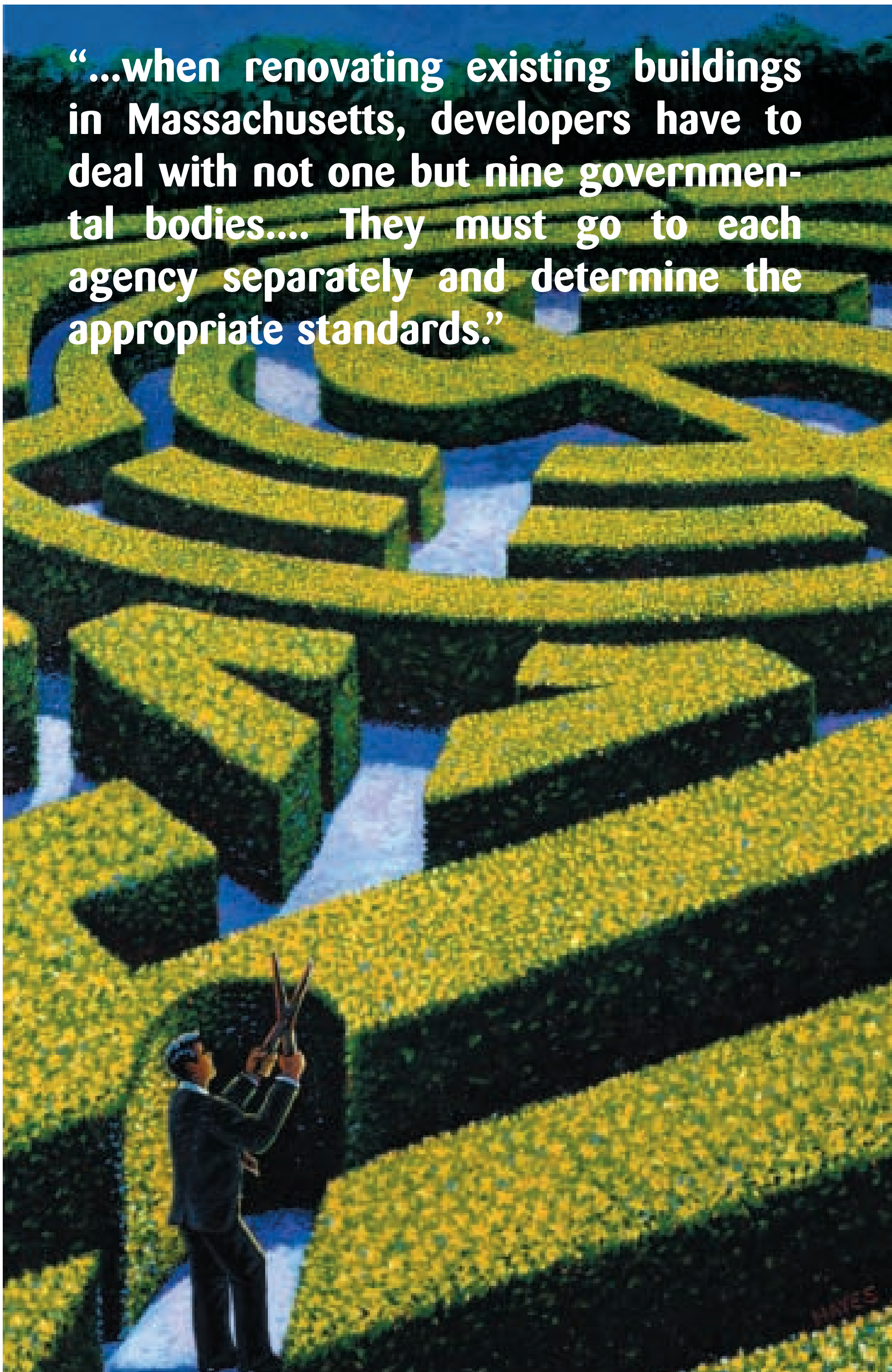
While the Massachusetts building code (780 CMR) is established and promulgated by the state through the State Board of Building Regulations and Standards, it is implemented by the Commonwealth's 351 cities and towns along with a number of related statewide codes, local zoning ordinances and bylaws, and permitting processes. Under the Zoning Act of 1975, cities and towns have wide discretion to enact local zoning regulations that will "encourage the most appropriate use of land" and promote "a balance of housing opportunities," with the authority to enforce these regulations through local planning boards.

Planning Boards, often staffed by part-time volunteers, can adopt additional regulations that affect the design and dimensions of streets, passageways, and buildings, so long as they are consistent with local bylaws or ordinances. Planning boards are also responsible for interpreting building codes, establishing administrative reviews, conducting review processes, checking permits, and approving final plans.

In the city of Boston, if a project is not "as of right"—if it requires zoning relief or a variance—the developer may bring the decision to the city's board of appeal within 45 days. If the appeal is granted after a public hearing, a copy of the decision ordering changes or granting relief is returned to the original examiner at the building department. The minimum time frame for this process is three months, although no time limit is specified. In the simplest case a builder will need as many as nine permits to get started.

One exception to the hegemony of local control predates the Zoning Act. In 1969, Massachusetts became the first state to pass legislation that overrode local zoning in order to facilitate the construction of low- and moderate-income housing. Chapter 774 of the Acts of 1969 created the Massachusetts Comprehensive Permit Law (commonly referred to as Chapter 40B), under which local zoning boards of appeal may approve comprehensive building permits (CP) authorizing subsidized housing so long as the "need" for housing outweighs any valid planning objections to the proposal, including health, design, or open space.

The CP process allows developers to file a single application, rather than follow the conventional and time-consuming process. If a zoning board of appeal fails to approve a comprehensive permit, it can be further appealed to the state's Housing Appeals Committee, which through 1994 upheld the local rejection of hous-



ing plans in only 9 of 154 rulings, or 6 percent. As of 1999, an estimated 20-25,000 units were built in at least 171 municipalities using the CP process—approximately 21 percent of all units added between 1990 and 1997.[3]

While Chapter 40B has undoubtedly been successful in creating additional low- and moderate-income housing units, locally adopted regulations to spur housing may not always work in tandem with the state's legislation. For example, nothing in the law encourages developers to follow locally selected patterns of density or dwelling type and, in fact, the economics of the subsidy often recommend a low-density location.[4] This stands in stark contrast to recommendations for mixed-income, mixed-use development and reduces the effectiveness of proactive planning efforts among local actors.

"Throughout Boston, hundreds of existing properties could be converted to residential use if regulatory barriers did not add excessive time, cost and administrative headaches to the process."

The Costs of Regulation

• Administrative inefficiencies

In cities and towns across the region, housing developers begin projects with the understanding that they will have to request a wide range of variances, but they are not allowed to do so until their development projects have been reviewed and rejected by the local planning board. Regulations that generate frequent variance requests may signal that code provisions are unnecessary or unreasonable. Major sources of delay and cost are the uncoordinated and fragmented quality of project review and the limited review capacity of inspection staff in smaller municipalities throughout the region.

For example, when renovating existing buildings in Massachusetts, developers have to deal with not one but nine governmental bodies, including the State Board of Building Regulations and Standards, the Architectural Access Board, the Massachusetts Fire Service Commission, and the Board of State Examiners of Plumbers and Gasfitters, among others. Developers and building owners have no clear guide to what is necessary to renovate their buildings. They must go to each agency separately and determine the appropriate standards. In addition, if any detail in the renovation process requires interpretation beyond the law, local inspectors must go to the state level for an answer—often to more than one state body. Such a fragmented process not only wastes construction time and drives up the costs of the project as a whole, it suggests that the codes themselves are arbitrary.

• Limiting building types

Zoning laws often restrict the use of land, reducing the overall supply of potential housing parcels. Strict separation of land use often prevents housing development above commercial spaces in thriving retail areas. Zoning that makes it difficult to convert former industrial properties limits the ability of existing metropolitan centers and suburbs to adapt to changing economic needs and conditions. Young families, students and singles are increasingly likely to work at home and to want social activities and economic opportunities nearby. Zoning practices that limit density and make it more expensive to build in town centers also keep elderly residents from convenient access to health care and social service networks.

In Massachusetts, a developer is required to conform an existing building to the standards for new construction when the purpose of the construction is to change the building's original intent. In other words, if a former warehouse, factory or office building is going to be converted into residential use, it is required to be "modernized" using new construction codes. An appeal process is available for developers who wish to challenge the new construction codes' application but the appeal itself adds significant time—and therefore, cost—to the project.

Living in adapted commercial buildings is an increasingly popular choice for urban dwellers; warehouses converted to artists' lofts provide the most common example. Throughout Boston, hundreds of existing properties could be converted to residential use if regulatory barriers did not add excessive time, cost, and administrative headaches to the process. Of the 495 abandoned buildings the Department of Neighborhood Development listed in 1999, nearly 30 percent were commercial or mixed-use properties restricted from efficient conversion to residences. Policies that provide incentives for Boston's commercial property owners to redevelop their buildings could significantly increase the city's supply of housing.

• Unplanned growth

Local zoning restrictions and building code requirements impose additional costs by contributing to sprawl. Between 1950 and 1990, the amount of developed land in the Commonwealth increased at a rate greater than six times population growth, sending people farther and farther out into greenfields, increasing traffic congestion and pollution, and requiring enormous infrastructure investment. To counter this trend, 45 communities in Massachusetts have recently adopted explicit growth-rate bylaws that limit new construction to 50 units per year. Six communities have adopted regulations making it impossible to build multifamily housing in any form.[5]

Zoning bylaws in already built-up areas deter construction of smaller homes or multifamily homes such as triple-deckers, exacerbating sprawl. Floor-to-area ratios and setback requirements reduce the overall floor space that can be built on a single plot of land. If existing buildings could be rehabilitated in creative ways, the need for new construction and the development of open space would both decrease.

Impact

The greatest cost of regulation is that many families are unable to afford housing. Some studies indicate that zoning and other land-use controls can add as much as 50 percent to the cost of certain housing developments. Indeed, the Massachusetts Executive Office of Administration and Finance recently released a policy report, *Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts*, arguing that zoning laws and land use controls have had a dramatic upward effect on housing prices in the Commonwealth.

Not In My Backyard, a HUD report on regulatory barriers to affordable housing, is cited as evidence that 20 to 35 percent of housing price increases in some communities can be attributed to excessive regulation.[6] The report found that the adverse impacts of some laws—including zoning and building code regulations that restrict the construction of medium-density, multifamily, single-room-occupancy apartments, and accessory apartments—could be greatly reduced without sacrificing the key benefits of such laws. Much of the regulatory savings, however, derive from permitting the construction of smaller and less luxurious apartments.

The National Association of Home Builders, a professional association concerned with government regulation in the housing industry, polled builders in 42 markets around the country about their experiences with regulatory authorities from the time of land purchase to the time of final home sale. They found that about 10 percent of the cost of building a new home could be saved by using a streamlined process. In particular, encouraging coordination among permitting agencies and establishing specific approval-process time limits would help cut costs.

Suggestions for Regulatory Reform in Greater Boston

A number of regulatory reforms should be considered for the Greater Boston metropolitan area. To support the creation of "communities within communities," cities and towns should employ zoning techniques that foster increased densities in "village" centers, allowing multifamily home development on lots that are currently zoned exclusively for single-family homes or for commercial use. To respond to the area's changing demographics and lifestyles, municipalities should issue permits to allow accessory apartments, "live-work" spaces, and housing that is mixed in with commercial and industrial buildings.

To expedite the construction of multifamily housing, cities and towns could provide permits for specific models of multifamily dwellings, which could then be awarded to developers "by right" rather than on a time-consuming, case-by-case basis.

All communities should be encouraged to identify and rezone publicly owned land as well as vacant or neglected property. To expedite development of buildings that fit the community's character, municipal governments should identify parcels for building and establish clear, prescriptive standards for housing development in advance of specific project proposals. Developers who meet these standards should be allowed access to the properties and a streamlined approval process.

In some cases, cities and towns can simplify the administrative process by creating a review committee that looks at proposals before they are sent to the planning board. Ideally, all cities and towns would designate a local housing official to shepherd the process of development at the local level.

The Commonwealth should enact legislation to mandate "Approval Rules" that would require cities and towns to review development plans in a timely manner. Development plans that meet the community's residential housing goals and zoning requirements could be approved without the explicit consent of a local planning body if it failed to act within a specified time period. In addition, developers of infill projects (redeveloping deteriorated or abandoned lots) who submit complete development and financing plans should be entitled to "fast-track" approvals that complement the time frame specified in the "Approval Rules."

Finally, to encourage cities and towns to adopt inclusionary housing, the Commonwealth should pass statewide legislation that provides legal protection to municipalities choosing to adopt inclusionary housing practices.

Best Practices

Throughout the country, cities and towns are creating and modifying regulations to assist development and rehabilitation of housing in order to further their goals for community and economic development. Here are some regulatory and zoning practices that Greater Boston should consider emulating.

"States interested in reforming their building codes may want to take a look at what the IBC is doing—waiting for this new code may take only as much time (if not less) as creating new codes from scratch."

• Building Codes and Streamlined Processes

New Jersey encourages the adaptive reuse of existing buildings by establishing predictable code requirements and maintaining that developers should not have to undertake additional work outside the scope of their property improvement, as long as safety is not compromised. The New Jersey Division of Codes and Standards asked themselves this: If a building has already proven to be sturdy enough to survive decades of use, are specific dimensions in the code for new construction necessarily safer than the architectural quirks many old buildings contain? Historic preservation advocates applauded the "rehab subcode" measure, maintaining that the same details new codes try to standardize—variations in window, staircase and door size, building materials, and setback from the street—are what make up the unique character of cities and towns. The program has achieved remarkable success—garnering a $100,000 award from the John F. Kennedy School of Government's Innovations in Government Program and enjoying a 50 percent increase in rehabilitation work across the state.

Also in New Jersey, a "cookbook" system of code books aims to make rehabilitation work as clear and concise as possible. In states like Massachusetts, the cookbook system would prevent developers from gathering codes from various organizations and digesting them separately. Specific code books are used to explain everything developers will need to know about complying with the current codes—no more, no less, and all in one easy-to-read format. An up-front understanding of everything that rehabilitating a specific building entails encourages more developers to take on urban renovation projects because they know there won't be hidden costs or wasted time.

In another example, the City of San Jose's Department of Housing formed a Housing Action Team, which includes staff from the city's housing, planning, building and code enforcement, public works, and fire departments, to provide housing developers with one place to go for all necessary permits. Furthermore, the city has developed a rating system for funding rental developments that gives the highest scores to developers who meet city housing priorities for affordable housing. Affordable housing is developed within walking distance of existing or planned light rail lines and in close proximity to employers. For every dollar in city funding, more than four dollars have been leveraged to produce 6,000 new units of affordable housing and 2,000 rehabilitated units.

To help other communities streamline their building codes, a new International Building Code (IBC) is currently being written, with John Terry, one of the creators of New Jersey's rehab subcode, serving as committee chairman. The IBC will use the best of current building codes and should be available within two years for use by jurisdictions across the country. States interested in reforming their building codes may want to take a look at the work the IBC is doing—waiting for this new code may take only as much time (if not less) as creating new codes from scratch.

• Zoning

Zoning reform is also a critical step in the development of new housing opportunities. According to a recent study of zoning in the New England region, 118 communities in Massachusetts, or one-third of all cities and towns in the state, have adopted zoning provisions to encourage the inclusion of affordable units as part of their residential development strategy. Even in Massachusetts, where Chapter 40B has offered a state-supported process for developers interested in affordable housing, 1 percent of housing production since 1990 has been in developments relying on local zoning measures for their approval (7 percent of the total statewide production of subsidized units).[7] The most successful inclusionary zoning provisions (in terms of effectiveness at expanding housing opportunities) are those that are tailored to and supported by the community, apply to the type of residential development that is likely to be constructed, and provide clear legal and technical direction.

The City of Cambridge has recently taken steps to ameliorate the impact of a soaring housing market. It passed a zoning ordinance to help the city take advantage of infill properties and, more significantly, the redevelopment of warehouses and condominium buildings in former industrial and transition zones. As an example of one of the Commonwealth's stronger local inclusionary housing measures, the city mandates that in all new or converted residential developments of 10 or more units or 10,000 square feet, 15 percent of the units must be affordable for at least 50 years and must be of exactly the same quality and size as the market-rate units.

To make the developments financially solvent and to compensate for the added regulation, the city allows a 30 percent density bonus—allowing an additional number of market-rate units to be built on-site equal to the number of affordable units that are created. According to officials from the city's planning department, residents laud the ordinance because it creates affordable units without additional cost (the administration of the program was absorbed by the existing planning department) and proactively manages growth by building in places that are likely to be developed anyway. Developers can also live with the ordinance because it is explicit and yet flexible—preventing the kind of extensive, litigious, and costly negotiations observed in other communities. To date, 27 units have been created with another 150 in the pipeline.

There are also many other types of zoning provisions that can address a lack of housing supply. In 1988, San Rafael, California changed their local zoning to encourage affordable housing and an appropriate jobs-housing balance by reducing the amount of parking required for each apartment constructed in a designated area. In addition, housing development is permitted anywhere in downtown areas, in conjunction with any other type of development. Ten percent of new housing must be affordable under the "workforce housing" plan, and the city provides a density bonus to developers who add additional affordable housing units.

Important zoning reforms are also happening in Texas. To construct housing around an urban or town center in the City of Austin would have required at least 30 variances. To avoid this, the city adopted a new zoning option called a "Traditional Neighborhood District." Under this new option, three types of development are specified: neighborhood centers that include commercial, retail, and residential mixes; mixed residential areas of single-family, duplex, townhouse, and multi-family dwellings along with small-scale commercial; and single-family housing subdivisions. To encourage use of Traditional Neighborhood Districts, the City waives a portion of park land dedication fees and expedites site plan review procedures.

The town council of Chapel Hill, North Carolina passed a "small house" ordinance this year seeking control of housing size and development costs. Under the town's regulations, developers must limit the size of 25 percent of the units of multifamily developments to no more than 1,100 square feet.

Conclusion

In the *Journal of Real Estate Development*, Phil Herr, a local expert on zoning, contests the notion that housing price responds easily to regulatory change. He writes, "While it is commonly asserted that land cost is the central problem of housing affordability, and that much more generous zoning density rules are the key to resolution, the problem is much more complex."[8] He recommends careful design and understanding of the distinctions among regulations that facilitate housing affordability, provide incentives for its production, or require its inclusion.

The Center for Urban and Regional Policy agrees. Regulatory reform alone will not solve this region's housing affordability problems. But it lays the groundwork for creating affordable housing and represents a commitment to the rich infrastructure of existing communities. Most urban advocates would not automatically consider building codes and zoning to be tools for promoting urban reinvestment and increasing the supply of affordable housing, but nuts-and-bolts processes often make the biggest difference in the overall picture.

About the Authors

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Maggie Adams is the managing editor of the Center's web site which is updated biweekly and spotlights Greater Boston's planning iniatives, community activities, and ongoing research projects.

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productive partnerships

A Progress Report of Insurance Industry Investors

by Andrea Caliz Luquetta

Two years have passed since the Massachusetts Legislature and Governor established "An Act Insuring Community Investment and the Equitable Taxation of Insurance Companies in Massachusetts." This legislation provides the first state mandate directing insurance companies to invest in community development efforts. Specifically, the act directs Massachusetts-based life and property and casualty insurance companies to capitalize two investment initiatives at a rate of $20 million annually for five years. Insurers that do not participate become ineligible for significant tax relief estimated to be worth $50 million annually to the industry. In addition, companies based outside of Massachusetts are encouraged to participate by an additional tax credit of 1.5 percent of the amount invested.

The passage of the legislation marked a victory for organizations such as the Massachusetts Association of Community Development Corporations (MACDC), the Massachusetts Affordable Housing Alliance (MAHA), and the Organization for a New Equality (ONE). For over eight years, these organizations worked diligently with legislators and the insurance industry to increase investments in low- and moderate-income (LMI) communities.

The performance of the Life Insurance Investment Initiative (The Life Initiative) and the Property and Casualty Insurance Investment Initiative (PCI) thus far has proved that the insurance industry can find and invest in critical community development efforts throughout Massachusetts. Already, over $66 million has been committed to community development initiatives; one-third of the commitments have already been received and are being used by recipients. The large volume of early commitments recognizes the strong need within the community development field for these resources.

Industry participation, however, has lagged somewhat behind legislative expectations. While all of the largest life insurance companies are participants in the Life Initiative, the PCI has received less investment than expected by the legislation. Though PCI staff are working to increase the rate of capitalization by 2003, they expect to attract a total of only $85 million—$15 million less than was intended by the legislature.

Many of the larger property and casualty companies still have not invested in the PCI. As a result, they are not eligible for the intended tax benefit. In addition, no out-of-state insurers have participated in either Initiative. Their financial participation in this program would make them eligible to receive a 1.5 percent tax credit on premiums paid in Massachusetts.

With the capital currently available, Charles Grigsby and Susan Schlesinger of the Life Initiative, and Stacey Townsend and Rufus Phillips of PCI have successfully identified over 36 community development investment opportunities in various regions of the

This is a summary of progress and recommendations by Andrea Caliz Luquetta of the Massachusetts Association of Community Development Corporations. MACDC issued the full report, entitled "Insuring the Future of our Communities: The First Progress Report on the Massachusetts Insurance Industry Investment Initiatives," in November 2000.

Andrea Caliz Luquetta is Director of Housing and Community Reinvestment for the Massachusetts Association of Community Development Corporations. Andrea advocates on behalf of MACDC's 67 members throughout the Commonwealth for improved resources from the financial services sector for affordable housing development. She is also on the Board of the Massachusetts Community and Banking Council. Andrea co-authored an article in the Winter 1999 issue of *Communities and Banking* discussing the then-new insurance industry community reinvestment legislation, its background and prospects.

Commonwealth. Observation of these first commitments indicates the following:

• Of the committed capital ($66 million), 45 percent is for development of affordable housing opportunities for LMI households, 29 percent is to promote business and economic development programs, and 26 percent is to finance community revitalization and services, such as health care and child care centers.

• Community development efforts in Greater Boston and Western Massachusetts have each received 18 percent of the funds committed. Central Massachusetts has received 7 percent of the capital, Southeast Massachusetts 4 percent, and Northeast Massachusetts 2 percent. Over 51 percent of the funds are going to organizations with a multi-regional service area. Because most of these commitments have not yet closed, it is currently difficult to evaluate actual geographic distribution.

• Large volumes of funds have been committed among regional networks where both the need for capital and the infrastructure to use it are strong. For example, affordable housing commitments are concentrated among applicants based in and/or serving the Greater Boston area, which has both a severe lack of affordable housing and a strong network of developers and advocates.

• Seventy percent of the $66 million has been committed to intermediary community development financial institutions. The remaining capital has been committed to organizations that directly serve low- and moderate-income and minority communities.

• Over 80 percent of the capital has been committed in the form of loans. These loans typically offer lower rates and/or more flexible terms than might otherwise be available. The Initiatives have also made equity investments and secondary market purchases. These include unprecedented commitments to purchase below-market-rate mortgage loans and small-business loans, and an equity commitment to support venture financing of businesses serving LMI communities.

In compliance with legislative requirements, each Initiative named two community representatives to its investment committees. The PCI appointed Charles Clark, a community development lender at Citizens Bank and chair of the board of Boston Community Capital, for a one-year term and Chris Sikes, Executive Director of the Western Massachusetts Enterprise Fund, for a two-year term. The Life Initiative appointed Allan W. Blair, President and CEO of the Economic Development Council of Western Massachusetts, for a two-year term and Willie Jones, Senior Vice President and Director of the Southeast Region for The Community Builders, Inc. for a one-year term.

This year, the Initiatives also began hosting their legislatively mandated public meetings in each of the five geographic regions of Massachusetts. Through October 31, 2000, both Initiatives have held meetings in Western, Central, Southeastern, and Northeastern Massachusetts (only Greater Boston remains).

continued on page 13

Insurance Investing Overview

Life insurance and property and casualty insurance companies in Massachusetts have expanded their investment array by providing funding for low- and moderate-income community development. Following 1998 state legislation calling for "community investment and the equitable taxation of insurance companies," Massachusetts insurance companies have pooled their resources to capitalize The Life Insurance Investment Initiative and The Property and Casualty Insurance Investment Initiative (see Fast Facts for details). These funds invest in low- and moderate-income communities both for civic and for financial results.

Senior Vice President and Life Initiative Fund Manager Charles Grigsby believes that his private and for-profit organization is distinct because it commits to a variety of community development projects and because the Initiatives are flexible in their financing. Neither Initiative is required to specifically allocate its funding to one area of community development, so each finances as directed by their respective investment committees. In addition to investing directly throughout the Commonwealth, each Initiative can also route financing through smaller loan funds and intermediaries, thereby strengthening their capacity.

"Initially the insurance companies were cautiously optimistic, but now they seem pleased by the progress we are making and the impact their capital is already having."

—Charles Grigsby

The life insurance companies have had some experience with community reinvestment through the Massachusetts Capital Resource Company, formed by the life insurance industry in 1977 to provide capital to local communities. The Property and Casualty Insurance Companies, however, are in new territory. As Rufus Phillips, Vice President of the Property and Casualty Initiative explains, there are more small property and casualty insurers working in Massachusetts than small life insurers. Despite the newness of community development investing, coupled with the difficulty of involving numerous small operations, the PCI is proud of committing $22 million in funds in its first year of operation.

—Kristin Kanders

Fast Facts

Full capitalization ($100 million) of The Life Initiative is expected in 2003 and $85 million capitalization is expected for The Property and Casualty Initiative in 2003.

Included in the funds' community and business investments are affordable housing, both rental and homeownership; job creation; community services; small businesses; and minority- and women-owned businesses.

Common fund investments include mortgage debt, senior loans, subordinated loans, credit enhancements, equity, and pooled securities.

Qualifying applicants must serve low- and moderate-income households or communities. Low- and moderate-income households are defined as earning under 60 and 80 percent of area median income, respectively. Low- and moderate-income communities have a median income of less than 80 percent of their metro area as defined by HUD. A community may also qualify if it has an unemployment rate higher than the statewide average or if it has been designated an Economic Target Area, Enhanced Enterprise Community, or Empowerment Zone.

Other states, including California, New York, Ohio, and Pennsylvania, are looking at the Massachusetts model to involve insurance companies in community development.

Each Initiative is relying on the community development experience of its staff for guidance. The Life Initiative calls on Grigsby's experience as Boston's Director of Neighborhood Development after a career in community development and urban planning, and on Vice President Susan Schlesinger, who is a former Assistant City Manager for the City of Cambridge and has a background in affordable housing and planning. Stacey Townsend, Executive Director of The Property and Casualty Initiative, has a commercial lending background and has worked with the Massachusetts Business Development Corporation. Vice President Rufus Phillips has worked for the Massachusetts Housing Finance Agency and with a for-profit developer of affordable housing.

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continued from page 11

The Initiatives have also generated other press and publicity through events and media reports. More public outreach and interaction is needed though, particularly to attract investment opportunities in Northeast and Southeast Massachusetts.

The Initiatives could take several steps in this regard. First, they should take advantage of broad-based umbrella organizations and trade associations to spread information about the Initiatives as capital sources. They should also appoint additional community representatives to the investment committees, in order to benefit from a broader variety of community interests and expertise.

The Commissioner of the Massachusetts Division of Insurance (DOI) is in a unique position both to monitor the implementation of the Initiatives and to help increase public education about them. For example, without violating its role as the regulator of financial health of the industry, the DOI could disseminate information about the Initiatives through its website and ask for public input regarding the Initiatives' activities.
The Initiatives should also continue to offer creative financing models and encourage creative community development strategies. For example, the PCI commitment to invest in Boston Community Capital's second venture fund will help BCC to continue serving a largely untapped market and provide much-needed equity to businesses in low- and moderate-income areas. Similarly, the Life Initiative's commitment to purchase Soft Second first-time home buyer mortgages will help increase the capacity of area banks to continue originating such mortgages beyond those currently being provided.

Two important issues must also be addressed within the next several years. The first is the tension between the Initiatives' desire to revolve their capital among a variety of investments within a two- to four-year life span and the need of many community development efforts for long-term capital. A related dilemma, given the current rate of commitments, is that relatively little additional capital will be available for investments beyond the fifth year of capitalization.

We encourage the Initiatives to make strategic long-term commitments and to reserve a portion of their capital for short-term revolving use. In addition, the Initiatives should explore opportunities to grow capital through additional investments by domestic and out-of-state insurers beyond the minimum required amounts and the initial five years.
Overall, the Insurance Investment Initiatives have been a success. Massachusetts has become the first state in the nation to attract a significant volume of capital for community development from the financial services industry beyond the bank-CRA model. Much of the Massachusetts insurance industry has expanded its investment portfolio to include community development efforts that provide both a social and a financial return. The Initiatives' continued success may well help strengthen the viability of community development investments among other sources of capital, such as investment firms. While continuing to monitor this model's success, thinking should turn toward increasing insurer investments directly into community development efforts and planning the program's expansion.

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"Two important issues must also be addressed within the next several years.

The first is the tension between the Initiatives' desire to revolve their capital among a variety of investments within a two- to four-year life span and the need of many community development efforts for long-term capital."

Conference Highlights:

Faith-Based Economic Development

by Anitt Wilkinson

On September 18 to 20, 2000, the Federal Reserve Bank of Boston and 24 collaborating organizations hosted "A National Faith-Based Community Economic Development Conference: Engaging the Black Church." The conference, held at the Boston Park Plaza Hotel, brought together a national audience of 600 attendees including pastors, church officials, nonprofit community developers, financial service providers, government officials, academics, and others. One of the conference goals was to enhance participants' knowledge of available resources to assist them in expanding opportunities for economic development and capital accumulation in impoverished and underserved communities.

In her opening remarks, Cathy E. Minehan, President and Chief Executive Officer of the Federal Reserve Bank of Boston, told the group that the Federal Reserve System recognizes the importance of collaborative partnerships. She noted other projects the Federal Reserve Bank of Boston has been involved in, such as expanding access to homeownership for low- to moderate-income individuals in metro Boston and Rhode Island, expanding business opportunities for minority entrepreneurs with major corporations in the Boston area, and creating multi-bank lending consortiums in Maine and New Hampshire to provide debt and equity financing for affordable housing. President Minehan described the faith-based conference as an extension of those types of partnerships and said that the conference should "foster the sharing of knowledge, experiences, and best practices among some of the nation's most skilled practitioners in community economic development."

Boston's Mayor Thomas Menino, who also addressed the gathering, told the audience that faith-based organizations are the "new energy within our cities, as they are the ones who are now making things happen." Mayor Menino was especially proud to note the involvement of the faith community in Boston's redevelopment efforts, specifically the city's Grove Hall, Dudley Street, and Blue Hill Avenue areas. Prior to being elected mayor, he had recognized that millions of dollars had been spent to compile studies of these areas. Upon becoming mayor, he vowed that there would be no more studies and instead, the community and faith-based organizations would be encouraged to work on redevelopment.

Renowned author, economist, and president and CEO of Last Word Production in Washington, DC, Dr. Julianne Malveaux treated the attendees to a spirited and engaging presentation on the new economy and its impact on various communities, and especially the African-American community. Dr. Malveaux informed the audience that not everyone was benefiting from the new economy. She said, "The new economy was shaped by the proliferation of technology and globalization. But while it has been stated that our country will need half a million new systems engineers in the next ten years, there will also be a need for half a million home health aides." She said that these aides are usually women of color who earn minimum wage and are not in sync with the new economy. Dr. Malveaux suggested that African-Americans, Native Americans, Latinos, and low-income people were unprepared to take advantage of the changes brought by the new economy.

According to Dr. Malveaux, the most important issue for African-Americans in this economic expansion is the increasing wealth gap, which exists because "African-Americans have not fully participated in those engines of economic expansion--that is, they do not have the savings and investment tools that are necessary to do so...." Dr. Malveaux also drew the audience's attention to the "unprecedented" levels of spending occurring in our economy, with household debt reaching historic levels and 1.3 million people declaring bankruptcy in 1997 and 1998. In explaining how the faith-based community could begin to educate their congregations about some of these issues, Dr. Malveaux noted that faith-based organizations could start with the following actions: (a) anchoring conversations about money, so that money is not seen as the root of all evil; (b) teaching people about financial literacy and providing vehicles for savings, investment, education, homeownership, and capital formation, (c) insisting on the partnership aspect of economic development; and (d) bringing morality and balance to the profit model, by encouraging local entrepreneurs to provide fair rates of return.

Cathy Minehan and Mayor Menino chat before addressing the audience.

Rev. Dr. Floyd Flake, former U.S. Congressman and Senior Pastor at the 12,000 member Allen African Methodist Episcopal (AME) Church in Jamaica, N.Y. (one of the largest private employers in Queens), talked about the new paradigm shift taking place throughout America. He explained, "There has been a major paradigm shift, but all too often our language seems to suggest that we are lost in a vacuum, a vacuum that for many is 35 years old, as we merely continue to repeat the messages of the 1960s without recognition and realization that the '60s are indeed over. We continue the same language of victimization that oftentimes brings us to a place where we don't realize that within us, there is the capability to make change." Dr. Flake said that new models are available in our society, as well as new ways of doing business. He added that the paradigm shift has moved from "our historical dependence on the social-political to a more education and economic-focused paradigm." He also noted that some individuals discount these changes because they are afraid of change.

In addressing the faith-based community's role in these changes, Dr. Flake told the audience that the faith-based community is viewed by many as the entity in touch with the reality of everyday life and, therefore, it should be involved in improving reality. He noted that some leaders do not recognize the resources available to them and the potential they possess. Dr. Flake told the audience that "our perception of what is available to us is not often seen in the reality of what it is; we see what is as being forever and permanent while others see what is as being what will be once it has been changed...." Before concluding his speech, Dr. Flake challenged the audience to view their attendance at the conference as God's way of calling on them to deal with shifting paradigms.

On the following day, Bishop Dr. Harold Calvin Ray, Chairman and CEO of the National Center for Faith-Based Initiative and Sr. Pastor of Redemptive Life Fellowship in West Palm Beach Florida, told the group that a faith-based initiative was in his view, "a much deeper, much stronger, much broader avenue than anything people are thinking today." He explained, "We are not talking about having another cycle of grants, another cycle of handouts, we are talking about birthing our own billion-dollar economy and doing what we need to do ourselves, and then partnering with the various avenues and funding streams...We have to deal with the community, the family, the culture and the values...."

All attendees were also able to listen to and ask questions of two panels. One panel discussion was on predatory lending and the other featured funding for faith-based projects. For the elective sessions, conference organizers were careful to provide a wide range of workshop sessions that would address the conference participants' varied levels of experience. Among the specific conference modules were the following: building congregational vision and capacity for wealth creation in community economic development; accessing traditional and alternative funding for faith-based wealth-generating models; creative funding strategies for faith-based initiatives; building a community's economic assets and human resources; and mastering the mechanics of executing successful strategies. In all there were nine different workshops among which participants could choose; here are a few selected synopses.

Workshop presenter Thomas Bailey, Vice President and cofounder of Strategic Intervention, Inc., encouraged his listeners to think about their organization's current situation and vision. He discussed how to build community support and commitment for a leader's vision and how to plan strategically for future goals. Mr. Bailey introduced the group to three stages of strategic planning: defining the organization's values, vision, and mission; aligning the organization's programs, products, and services to its mission; and, positioning the organization to play a pivotal role in changing the face of the community. His workshop encouraged critical thinking and his exercises and handouts gave the group a means of assessment.

Reverend Mark Whitlock II, Economic Development Officer of First AME Church in Los Angeles, shared the FAME Renaissance Center model for economic development with attendees of his workshops. Rev. Whitlock, in explaining that the Renaissance Center is a business incubator, talked about what the center does and how it is successful in supporting small businesses. He showed how business incubators affect a community, citing a 1997 study funded by the U.S. Department of Commerce finding that firms graduating from incubators have an 87 percent success rate and that 84 percent remain in their local communities. He also shared insights on how other faith-based organizations could emulate the FAME model.


Conference Co-Chairs Reverend Ray Hammond, M.D. (left) and Reverend Wesley Roberts, Ph.D. welcome the audience.

Tina Z. Moore, Director of Administration and Development for Windsor Village United Methodist Church in Houston, began her workshop by allaying potential fears about faith-based organizations becoming involved in financial matters. Referring to passages in the Bible about money and debt, she highlighted the Bible's perspectives on these issues. Then she worked with the group to name different kinds of debt, highlighted some decision-making rules for borrowing, and discussed numerous funding sources for faith-based initiatives.

One of the goals of this conference was to draw people's attention to the power and influence that our faith-based communities possess and their ability to influence change. It is the hope of the Federal Reserve Bank of Boston and its partners that the information and tools learned will enable the participants to go out and be voices of change in their communities. Judgements about the conference's success will ultimately depend on the collaborations that are formed to implement change. Plans are currently under way at the Federal Reserve Bank of Atlanta to host a series of faith-based conferences during the fall of 2001.

The Federal Reserve Bank of Boston would like to thank its sponsors, speakers, and workshop presenters, for their time, effort, and commitment in making this national conference such a success.

About the Author

Anitt Wilkinson is a Community Affairs Analyst at the Federal Reserve Bank of Boston. She helped to coordinate the national Faith-Based Economic Development Conference.

Producing Skilled Labor: How the Workforce Investment Act Works

by Kathleen Gill

Since the early 1960s a series of national initiatives have shaped the employment and training landscape. The Manpower Development and Training Act of 1962 led to the Comprehensive Employment and Training Act of 1973 and the Job Training Partnership Act of 1982. In 1998, the Workforce Investment Act was signed into law, beginning a new era in workforce development.

The Workforce Investment Act (WIA), which became effective in July 1999 after five years of national debate, makes substantial changes in employment and training service delivery systems. The purpose of the legislation is to create a single, streamlined system from the 60 to 70 federal job-related programs that currently exist. In addition, it aims to include a private-industry voice in job training activities. Finally, the WIA mandates that program administrators use private training programs, instead of developing state-sponsored programs.

The structure of the training program's administration has also changed under the WIA. The Private Industry Council governing structure of the Jobs Training Partnership Act (JPTA) is replaced with a system of Local Workforce Investment Boards, aimed at increasing accountability and coordination. Private-sector representatives chair the boards with membership drawn from businesses, education institutions, labor organizations, and community-based organizations. The local boards report to a State Workforce Investment Board composed of the governor, two members from each chamber of the state legislature, and representatives of business, labor organizations, chief elected officials, state agency heads, and others, as designated by the governor.

In a major departure from the compartmentalized JTPA employment and training delivery system, the WIA requires that a One-Stop delivery system be established in each local area. The One-Stop concept was established under an earlier piece of national legislation and folded into the WIA. One-Stop Career Centers focus employment and training activities in the area and are intended to attract the community at large. Under the new WIA definition, those eligible for training services include the unemployed and the underemployed. Underemployed workers-those not earning sustaining wages-may train for better-paying professions while continuing to work.

The key principles of the WIA as specified by the U.S. Department of Labor are as follows:

- Streamlined services
- Universal access
- Increased accountability
- New roles for local boards
- State and local flexibility
- Improved youth programs.

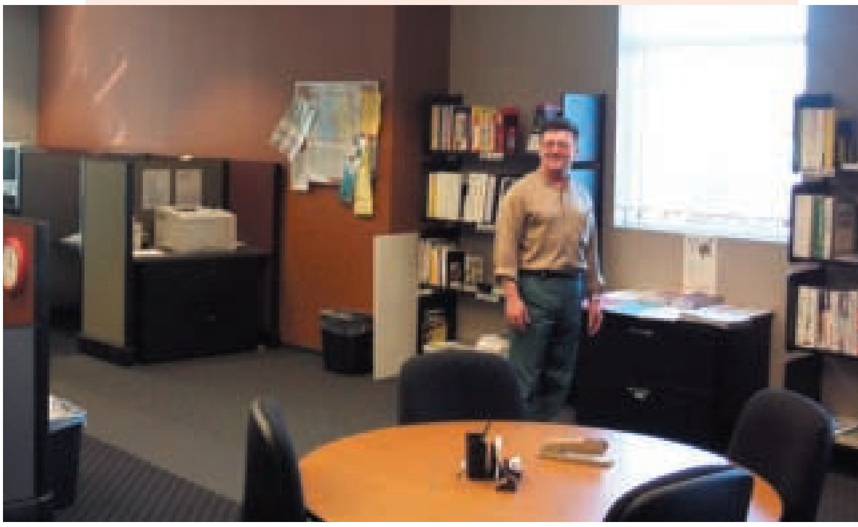
Within the WIA's structural requirements, states are encouraged to create the best system for their needs and use flexibility in designing Career Centers. Some states have folded WIA Centers into community colleges or the Department of Labor; other Centers share space with unemployment offices. Maine and Rhode Island provide examples of different methods of implementing the WIA.

Maine

Maine has taken an energetic approach to implementing the WIA. While most states in New England have reaped employment benefits from the country's economic expansion, many of Maine's rural areas have not fared well. The timber, paper and shoe industries that were major employers in western Maine have shrunk and unemployment in Maine's western regions is much higher than in coastal areas--referred to as the Gold Coast.

One of the state's first steps was to confront the public relations problem resulting from its unemployment offices and job service programs being housed in undesirable properties. Instead of using existing facilities to create One-Stop sites, Maine invested in new buildings located in shopping malls and other non-traditional locations to provide better community access. The state currently has at least one Career Center in each county. Bryant Hoffman, Executive Director of Local Workforce Area of Central Maine, believes improving the physical structures has had a significant impact on people's perceptions.

The Career Center in Lewiston, Maine, has a modern reception area fashioned after a business office, computers with touch screens for easy access to the jobs database, several conference rooms, and a private area for one-on-one career counseling.



The Career Center's services are divided into several categories. The most basic type of service is access to the computer database of job openings. All Maine residents are welcome to use the computers to view jobs available in their field. A second set of services include an intake service to evaluate the job-seeker and business skills training programs, addressing topics such as accurately reading employment advertisements and dressing for business. Maine's Career Centers help people learn to budget and provide a referral service for clients who want counseling. For example, if a young, single mother living in poverty wants counseling, the center might call upon an organization called Women, Work and Learning to provide those services. To facilitate this service exchange, the Career Centers coordinate (sometimes by committing office space) with the Bureau of Rehabilitation Services, which works with people who have barriers to employment.

Because WIA legislation encourages active communication with the business community as well as the job-seeking community, Maine's Career Centers have developed a set of programs to solicit employers as customers. Mr. Hoffman says that businesses will provide further training to people if the Centers can guide them to potential employees. Businesses, says Hoffman, "will enfranchise people because there isn't anyone else to do the work." Using a brand-new approach to attract job seekers and business customers, the Maine Career Center recently participated in a business expo in Augusta. By displaying its services, the Center tried to encourage business as well as employee interest.

Another new business-oriented program begun by the Maine Career Center is called Rapid Response. After a business announces a layoff, the Career Center holds a seminar at the business site to assist employees. The Career Center tries to have recruiters from other businesses at the seminar so that workers can begin the transition to other employment. The Center provides information about available services and how to use them. This partnership with businesses reducing workforce and those looking for employees serves the business community and the workers.

Maine's additional employer assistance programs funded by the WIA have been implemented through the Department of Labor and the Bureau of Employment Services.

The Training Initiative is one such program. Sponsored by the Governor's Office, it provides partial reimbursement of employers' training costs when they hire new employees or improve their workers' skills. To be considered eligible, the business must pay wages equal to at least 85 percent of the average wage for that occupation in the labor market. For companies with more than 25 employees, they must also contribute at least 50 percent of the premium cost of employee health insurance. Other programs include the Apprenticeship Program, which reimburses employers for up to 50 percent of the cost of hiring an eligible job seeker, and the Business Visitation Program, which sends Career Center workers to local businesses to discuss the Career Center's services and provide a free business evaluation.

Rhode Island

When the WIA was enacted, Rhode Island was already operating four of six planned One-Stop Centers. As in Maine, Rhode Island remodeled its facilities. The offices were shut down and rebuilt or, in some cases, moved to more convenient sites and redesigned to be user friendly. The staff was retrained and the offices computerized. The new offices, located in Pawtucket, Providence, Warren, Wakefield, West Warwick and Woonsocket, are known as netWORKri.

Rhode Island has incorporated employer services representatives as the link between netWORKri offices, the State Department of Labor, and the employer community. These 12 representatives connect businesses to the One-Stop system. Richard Beneduce, Chief Administrator of the State Workforce Investment Office says, "Basically we have two customers, the job seeker and the employer."

Because the WIA prevents Local Workforce Investment Boards from providing training directly, the boards must contract with trainers and educators. The WIA also requires that job seekers have training and a choice of provider institution. To facilitate this process, Rhode Island has developed an "Eligible Training Provider List." Providers of training in high demand occupations apply for acceptance through the Local Boards and then the State Board. When job seekers are selecting training programs, they are provided with information on individual program results such as the number of students served and the numbers of students who have completed the program, got jobs, got jobs related to the training, and were retained in employment for at least six months after they left the program. Information on each program's cost and length is also provided. Then, local One-Stop Centers work intensively with clients to ensure that they select appropriate training programs.

Once residents have selected a training program, the state allocates a certain dollar amount per student for the selected training program. Rhode Island caps the training budget at $4,000 per student and then provides a voucher. The dollar amount is based on the cost of a two-year community college program. Recently, Rhode Island has been concentrating its training dollars on software and other computer-related training.

Conclusion

The Workforce Investment Act has already accomplished its first goal of creating a centralized, coordinated system of One-Stop Centers where both the unemployed and the underemployed have training opportunities. The confusing bureaucracy job seekers faced in years past is eliminated by the One-Stop system. The WIA has also stopped the recreation of the wheel, by getting government out of the job-training business. Private training offers some assurance that the skills developed will be marketable, because if a program isn't useful, lack of demand will close the program.

Since the Act has been in effect for less than a year, the Career Centers have not yet produced measurable results. However, the economy's need for trained workers and the collaborative nature of the WIA suggest that One-Stop Career Centers may succeed in providing businesses with the skilled workers they need and employees with the opportunity they desire.

About the Author

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Compliance Corner

Looking at changes affecting Regulations P and Z

Understanding the new ESIGN Act

by Anthony Ricko

Regulation P: Privacy of Consumer Financial Information

Q. What are the main requirements of the new Regulation P?

A. Regulation P implements the provisions of the Gramm-Leach-Bliley Act that establish comprehensive protections regarding privacy of consumer financial information. Regulation P became effective November 13, 2000 and compliance with the regulation is optional until July 1, 2001. The final rules impose three main requirements as established by the Act:

- Financial institutions must provide notices to customers about their privacy policies and practices, describing the conditions under which they may disclose nonpublic personal information to nonaffiliated third parties;
- Financial institutions must provide annual notices of their privacy policies to their current customers; and
- Financial institutions must provide a reasonable method for consumers to "opt out" to prevent the disclosure of nonpublic personal information to nonaffiliated third parties.

Q. Does the new privacy law cover all individuals?

A. The law applies only to information about a consumer, defined as any individual who obtains or has obtained a financial product or service that is to be used primarily for personal, family, or household purpose. Accordingly, business customers of a financial institution are not covered.

Q. If an individual has both consumer and commercial accounts and he elects to opt out of having his personal information shared, can a financial institution share personal information obtained in connection with the commercial account?

A. As mentioned above the privacy regulation only applies to consumers. Accordingly, the individual's opt-out has no impact on the individual's commercial account and that information may be shared.

Q. Does a financial institution that does not share customer information with nonaffiliated third parties still have to comply with the privacy regulations?

A. Yes. All financial institutions must comply with the privacy regulations regardless of their information-sharing practices. If a financial institution elects not to disclose nonpublic personal information to nonaffiliated third parties, it need not provide "opt out" notices to its customers. The financial institution, however, must still provide initial and annual privacy policy notices to all of its customers.

Q. Must a financial institution post privacy notices in its main or branch offices?

A. The privacy regulations do not require a financial institution to post its privacy policy in any of its physical locations. The regulation does require each financial institution to provide any required privacy policies and opt-out notices so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically. The regulation also provides that merely posting policies or notices in a branch or main office does not meet the test of reasonable expectation of actual delivery.

Q. Are there any exceptions to the opt-out notice provisions of the regulation?

A. The final regulation contains exceptions that allow financial institutions to share nonpublic personal information with certain nonaffiliated third parties without having to provide the notice of the right to opt out. One exception allows financial institutions to share information with a nonaffiliated third party that performs services for or functions on behalf of the financial institution. This includes the marketing of the financial institution's products or services. Other exceptions include disclosures in connection with servicing, processing or maintaining the consumer's account. Other exceptions include those for disclosures necessary to administer or enforce a transaction, to protect against fraud and other liability, and to the extent specifically permitted or required by other laws.

Q. How does the new privacy regulation affect the Fair Credit Reporting Act (FCRA)?

A. The FCRA has not changed. Under the FCRA a financial institution could be considered a "credit reporting agency" if it shares certain information with affiliates and does not provide consumers with a notice and the opportunity to opt out of the information-sharing. The Federal Reserve and the other bank and thrift regulators issued proposed regulations on October 20, 2000, that implement the notice and opt-out provisions of the FCRA. The proposed rules are intended to minimize the compliance burden on banks by making the notice and opt-out provisions consistent with the privacy regulations.

Regulation Z: Truth in Lending Act

Q. Are the credit card disclosures contained in Regulation Z subject to any type-size requirements?

A. Regulation Z was amended on September 27, 2000 to enhance the consumer's ability to notice and understand the cost information that must be disclosed for credit card applications and solicitations. Compliance with the amendments is mandatory as of October 1, 2001. Under the final rules the Annual Percentage Rate (APR) for purchases must be in at least 18-point type. The final rule also provides that credit card disclosures must be "readily noticeable" as well as "reasonably understandable." As to type size, the final rule provides that disclosures are deemed to be "readily noticeable" if they are in at least 12-point type. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard.

Electronic Signatures in Global and National Commerce (ESIGN) Act

Q. What are the major provisions of the ESIGN Act?

A. In June 2000, Congress passed the ESIGN Act, which was effective October 1, 2000. The Act permits institutions to satisfy any Federal law requirement that information be provided to a consumer in writing by providing the information electronically after obtaining the consumer's affirmative consent. Before consent can be given consumers must be provided with information regarding:

- The right to receive disclosures in paper form;
- The right to withdraw consent to have records provided electronically and the consequences of doing so;
- How the consumer may obtain a paper copy upon request; and
- The hardware and software requirements for access to and retention of the electronic information.

Q. How does a consumer consent to receive information electronically?

A. The consumer must consent electronically or confirm consent in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent." If the institution implements changes to hardware or software requirements that may prevent the consumer from obtaining access to or retaining electronic information, consumers must be notified of the new requirements and allowed to withdraw consent without charge.

Q. How does the ESIGN Act impact the interim rules under Regulations DD and E regarding the electronic delivery of disclosures?

A. The ESIGN Act grandfathers existing agreements between a consumer and an institution to deliver information electronically. On or after October 1, 2000, however, institutions must comply with the ESIGN Act when entering into new agreements with consumers for delivery of information electronically. Accordingly, the interim rules under Regulations DD and E do not apply to agreements between a consumer and institution regarding electronic delivery of information on or after October 1, 2000.

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The mission of *Communities and Banking* is to enhance community and economic development by exploring effective ways for lenders to work with public, private, and nonprofit sectors toward proactive compliance with the Community Reinvestment Act.

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