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New York State Policy Priorities
2010/2011

BACKGROUND

Formed in 1998, the New York State Association for Affordable Housing (NYSAFAH) is the trade association for New York's affordable housing industry statewide. Our 300 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSAFAH's members are responsible for most of the housing built in New York State with federal, state, or local subsidies.

Across the state, New Yorkers are facing a serious and growing shortage of homes they can afford - from Binghamton, to Buffalo, to Nassau-Suffolk, over 50% of renters in these disparate communities cannot afford a two bedroom apartment.[i] While this crisis takes different forms throughout the state, too many New York families face the same impossible choice: whether to accept substandard living conditions, spend half or more of their incomes on rent, or leave the state entirely.

New York can solve this crisis by increasing its commitment to capital subsidies for affordable housing, which stimulates and leverages private investment to create housing, in turn producing an immediate return in jobs, with sustained, long-term wages, taxes and other revenue to the State and local governments. A study by the National Association of Home Builders found that producing 100 multi-family tax credit units generates during construction alone, 151 jobs, $7.3 million in wages and business income, and $0.78 million in revenue to government; while annually thereafter sustaining 53 jobs, $3.1 million in income and $0.743 million in revenue to government.[ii]

Given this clear financial return to the state from housing investment, NYSAFAH in recent years has joined with other housing groups to call for an influx of $500 million in capital funding for affordable housing programs. Because this $500 million would be bonded, the immediate actual cost to the budget would be $33.5 million (assuming one self-amortizing bond at 5.35% for 30 years).

<u>Since 2000, funding levels for housing programs in New York have remained essentially flat; given continued budgetary constraints, it is essential New York State take action to utilize</u>

limited public subsidy efficiently, and facilitate leveraging state dollars with private investment and federal government funding.

NYSAFAH's state policy priorities reflect this objective. In addition to an influx in state capital subsidies, top priorities include:

I. **Prevent the imposition of prevailing wage on affordable housing construction** Studies show requiring these wage mandates would cut the number of affordable units in half, while bearing no benefit in safety or quality of construction. Studies further show affordable housing developers already pay reasonable wages.

II. **Repeal counterproductive FY 2010-11 measures to balance the budget by reducing subsidy sources.** A new charge on bond activity through the NYC Housing Development Corporation, and the deferral of state tax credits critical to affordable housing development not only stalls construction, but reduces job growth and revenue to the state. The three year deferral of the State Low Income Housing Credit (SLIHC) for example, contained in the FY 2010-11 Revenue Budget Bill puts in jeopardy projects that have closed with, or were planning to utilize this tax credit. It also could lead to long-term disinvestment of private capital in New York's housing market, as large national investors cannot be expected to support a program where the state has a history of not honoring its financial commitments. By deferring SLIHC, just a $2 to $4 million program, New York is surely losing more financially than it gains when shovel ready projects cannot move forward, and private investors shift resources to other states.

III. **Update and Improve the Rural Housing Initiative/Leveraged Loan Program** The Leveraged Loan Program was created as a unique collaboration between DHCR and the USDA RD to leverage state and federal resources for affordable housing production in rural New York. Now over 10 years old, the terms of partnership between DHCR and RD have become outmoded and should be updated to: allow for flexibility in specific resources committed to the program; eliminate duplicative or contradictory program oversight; and promote both construction of new housing and preservation of aging housing stock.

These three priorities, along with additional policy agenda items at the conclusion of this paper, focus at a time of economic constraint, on utilizing public subsidy efficiently, and facilitating conditions that promote leveraging state resources with private investment and other government funding to maximize the amount of affordable housing produced and preserved across New York State.

STATE POLICY PRIORITIES

I. Oppose Prevailing Wage Mandates on Affordable Housing Development and Operation

NYSAFAH strongly opposes the imposition of prevailing wage on affordable housing construction. Because affordable housing programs have strict rent and income guidelines, the additional expense cannot be absorbed by the tenant or homeowner. Significant public subsidy is required to make any affordable project feasible; requiring prevailing wage would devastate New York's ability to produce affordable housing.

A 2008 report by the Citizens Housing & Planning Council[iii] (Attachment A) found that imposing prevailing wage on affordable housing would:

- Increase total labor costs by 25%;
- double the amount of government subsidy needed; or
- cut the number of units produced in half

In addition, the report found:

- No evidence that imposing prevailing wage would improve construction quality
- Workers on affordable projects are already earning a reasonable wage; most are receiving a living wage or better
- No evidence that imposing prevailing wage would improve safety; affordable housing construction is closely monitored by government agencies, lenders and investors

Finally, the report found that imposing prevailing wages would be less likely to benefit black and Latino construction workers and could even cost many of them jobs, since minorities are disproportionately underrepresented in unionized construction, and higher wage union workers are disproportionately white.

Many of the subcontractors who work on affordable housing projects are small, locally based businesses, often owned by minorities. Requiring prevailing wage would place undue burden on smaller minority contractors, who are unable to pay the higher wages; the prevailing wage compliance requirements alone could be too burdensome.

Oppose Affordable Housing Prevailing Wage Mandates in IDA Reform
In continued efforts to reform Industrial Development Agencies (IDA), some legislators have proposed requiring prevailing wage for IDA financing, which is an important resource for affordable housing development:

- At least 4,000 units of affordable housing have been built in recent years with IDA financing. Almost all of these projects are located in either upstate New York or in the downstate suburban counties where affordable housing is especially difficult to develop.
- Private activity bond financing from IDA's automatically leverages federal 4% low income housing tax credits.

A prevailing wage requirement for IDA financing of affordable housing projects could result in the loss or delayed development of 1,000 units of affordable housing and $54 million in matching federal subsidies annually.

Examples of the impact of prevailing wage on affordable projects:

- South End Revitalization is a 52-unit affordable family project in Albany's South End with total hard costs of $7 million. Carpenters on this project were paid an hourly market rate of $19.65 and electricians $25.00. The prevailing wage rates for these trades are $36.22 and $43.55, respectively. A prevailing wage requirement would increase total labor costs 75%, which would result in a 32% increase in construction costs. An additional $43,000 per unit of subsidy would be required to keep these units affordable to the same families.

- Jefferson Terrace, Stuhr Gardens, and Davies South Terrace are three preservation projects currently being redeveloped with IDA financing in Westchester and Dutchess counties at a construction cost of about $70 per square foot. The same projects with prevailing wages would have cost approximately $91 per square foot, an increase of 30%.

- Plymouth Manor/Carlson Commons is an awarding-winning, 144-unit project that has transformed the Kennedy-Olean neighborhood in downtown Rochester. An analysis performed when construction began in 2004 demonstrated that prevailing wages would have increased construction costs for this project by 25%, a total increase of $4.35 million. This increase would have made the project infeasible.

II. Repeal counterproductive FY 2010-11 measures to balance the budget by reducing subsidy sources, eliminating the State Low Income Housing Credit Deferral

Background on SLIHC

The State Low Income Housing Credit (SLIHC), since its creation 10 years ago, has provided a vital source of gap funding for affordable housing projects throughout New York State, which otherwise would not have been financially viable. Credits are monetized and purchased by third party investors, who provide capital for projects in exchange for a dollar-for-dollar reduction in state taxes. SLIHC is modeled on the federal low income tax credit program, with an important difference in income eligible households – SLIHC units can serve households with incomes at or below 90% of the area median income, versus the 60% AMI standard of the federal program. This allows New York to offer affordable housing options to working families, who otherwise would be earning just enough to disqualify them from a home they could afford.

Like any tax credit program, investors must gain confidence over time that purchasing the credits is a sound investment. New York's affordable housing industry worked diligently since SLIHC's creation 10 years ago to establish it as a sound program – one that grew to receive support from some of the country's largest investors. From FY2001-02 through FY2007-08, NYS allocated $2 million annually to the program, increasing the annual allocation to $4 million for FY2008-09 and FY2009-10.

The SLIHC Deferral and its Short and Long-Term Impact

As a purported cost-saving measure, the FY2010-11 Revenue Budget Bill deferred over 30 state tax credits for three years, including the State Low Income Housing Credit, where the investor has over $2 million in aggregate state tax credits. Because SLIHC is primarily purchased by large national investors, with well over $2 million in aggregate credits, the deferral's affect on affordable housing projects is severe. Projects that have already closed with SLIHC are now faced with a significant gap in funding – just who is responsible for filling this gap is likely to vary project by project depending on contractual obligations.

In addition to existing projects, affordable housing projects in the final stages of planning, which were intending to use SLIHC, are now left without the financing needed to move forward. Again, the affect varies by project – some will be stalled longer than others – nonprofits that are undercapitalized will likely be the hardest hit, unable to come-up with a ready replacement source of financing.

<u>The deferral not only jeopardizes in the immediate three-year deferral term projects underwritten with or planning to use SLIHC, but could also cause a long-term disinvestment of housing capital in New York State.</u> Even after 2013, investors cannot be expected to consider SLIHC a sound investment when the state has a history of not honoring its financial responsibility to the program. Investors will simply shift their resources to affordable housing projects in other states.

Furthermore, affordable housing development is some of the only construction taking place in the current economy – in stalling shovel-ready projects with SLIHC deferral, New York State is not only inhibiting the production of affordable homes, but preventing job creation when the state needs it most. As noted earlier, producing 100 multi-family tax credit units generates during construction alone, 151 jobs, $7.3 million in wages and business income, and $0.78 million in revenue to government; while annually thereafter sustaining 53 jobs, $3.1 million in income and $0.743 million in revenue to government.

The entire SLIHC programs only costs the State of New York roughly $14 million annually in foregone revenue. Given the tax revenue and jobs created through affordable housing development, the state is likely losing more than it gains by deferring SLIHC.

The deferral's adverse economic impact, together with the state's growing need for homes working families can afford is reason enough to retroactively repeal the SLIHC deferral through a chapter amendment to the FY2010-11 Revenue Budget Bill.

III. Redouble Commitment to the Rural Housing Initiative - By Updating and Improving the Leveraged Loan Program Memorandum of Understanding

History of the Program

The Rural Housing Initiative/Leveraged Loan Program was created as a collaboration between DHCR and the USDA Rural Development (RD) to maximize federal dollars awarded to rural New York State affordable housing projects. Initially under the program, USDA RD agreed to provide 1% interest 30 year capital loan funds, through the Section 515 Rural Rental Housing Program, given DHCR's commitment of rental assistance through its Rural Rental Assistance

Program. Because Section 515 funds are not adequate on their own to make most rural housing projects feasible, affordable housing developers in many states chose not to pursue Section 515 funds. New York, because of its unique collaboration, has been able to maximize leveraging of this available federal resource, where other states have not, drawing nearly $31 million in RD loans to build 1,715 units of affordable housing throughout rural New York communities.

Over time since the program's inception, New York State has also provided capital funds to the Leveraged Loan Program and RD has provided rental assistance – the relative amounts of each provided by the state and federal government have varied from year to year depending on available resources. In total, in addition to $30,740,903 in low interest loan funds, RD has provided 852 units of rental assistance; while New York State has provided $55,626,160 in low interest loan funds (including 1% interest 30 year loans through the NYS Low Income Housing Trust Fund and the Housing Trust Fund Corporation). New York State has also committed $81,854,033 in Low Income Housing Tax Credits to the program, as well as 923 rental assistance vouchers. (See Attachment B).

Currently, due to fiscal constraints, New York State is under great pressure to reduce its rental assistance expenditures on the program – in fact, in 2009, NYS provided no rental vouchers to the program, with RD providing all 60 of the vouchers needed to make the two Rural Housing Initiative projects viable that year.

Revise Current MOU

The current Memorandum of Understanding between DHCR and USDA (at the time referred to as the Farmers Home Administration) dates to the Leveraged Loan Program's creation and calls for NYS to provide only rental assistance and the federal government to provide just low interest loans. (Attachment C) <u>To support the program's perpetuation, the MOU should be updated to reflect current financial realities, allowing for flexibility in the relative rental assistance and capital funds provided by NYS and USDA RD.</u>

<u>Given aging housing stock in the RD portfolio, the Leveraged Loan Program MOU should also be updated to allow for preservation projects</u> – this would enable leveraging with the RD Multifamily Housing Revitalization Program (MPR), which offers debt deferred financing to rehabilitate projects.

<u>Also critical, is updating the coordinating roles of RD and DHCR as outlined in the MOU.</u> In recent years, oversight of Leveraged Loan projects from these two agencies has become duplicative and in instances contradictory, resulting in unnecessary costs to projects and agencies, at a time when streamlining operations due to fiscal constraints is of utmost importance. Earlier, it was agreed RD would conduct property inspections; in recent years, DHCR began conducting the same inspections – in essence, projects now have double the inspections, with at times different standards, and affordable housing providers are left to compensate. For instance, developers were initially required to comply with disability accessibility standards determined by USDA RD. Over time, NYS imposed its own accessibility standards on projects – an example of the result: the federal government requires chair rails to be placed on the back or front of shower stalls; the state requires them placed on either side – consequently, developers must place them on the side and front or back, installing two different

plumbing units to service both. Contradictions and unnecessary costs like these should be resolved in reworking the MOU. Ideally, the agencies could agree to underwrite loans in partnership, with clear definitions of which staff perform which functions, and which standards apply.

There is a clear and growing need for affordable housing in rural New York, with roughly 50% of residents unable to afford the cost of a two bedroom apartment in many rural communities throughout the state. In the past, New York has been a leader in leveraging federal funds to meet this need; with a renewed commitment to collaboration, there is an opportunity to update and improve the unique state/federal partnership of the Rural Housing Initiative/Leveraged Loan Program to ensure the state's rural families have safe, decent housing they can afford well into the future.

ADDITIONAL STATE POLICY PRIORITIES

Repeal the Historic Rehabilitation Tax Credit and Brownfields Tax Credit Deferrals
In addition to deferring SLIHC for 3 years, the FY2010-11 Revenue Budget Bill deferred the Historic Rehabilitation Tax Credit and the Brownfields Tax Credit – both critical resources for affordable housing development. NYSAFAH supports retroactively repealing their deferral.

The Historic Rehabilitation Tax Credit (HRTC), created in 2009, is an essential financing tool for affordable housing, particularly in upstate New York. The credit is limited to distressed census tracks in New York State; with the deferral, many shovel-ready affordable housing projects critical to economic revitalization in distressed New York State communities will be stalled, unable to move forward without this important gap financing.

The Brownfields Tax Credit is also a critical source of support for affordable housing development. This tax credit program was just revised in 2008 to ensure efficient use of the resource in financing the remediation of abandoned or under-used properties where expansion or redevelopment is prevented by environmental contamination. Brownfields often pose not only environmental, but legal and financial burdens on communities. Left vacant, contaminated sites can diminish property value of surrounding sites and potentially threaten the economic viability of adjoining properties. As with deferral of SLIHC, deferring the Brownfields Tax Credit will not only inhibit future brownfields remediation and redevelopment, but will jeopardize existing projects that were underwritten with this tax credit.

Eliminate the HDC Bond Issuance Charge
In March 2009, the legislature passed an emergency appropriations bill that included for the first time a tax on bond activity by the New York City Housing Development Corporation (HDC). This Bond Issuance Charge had an immediate impact on HDC's affordable housing financing capacity. HDC estimates their capacity to finance affordable housing will diminish by 285-430 units per year and result in an additional cost of approximately $10-15 million per year incurred by HDC and its affordable housing projects.

In addition, the Bond Issuance Charge threatens the feasibility of existing multi-year transactions for which HDC has issued an initial series of bonds. The tax simply increases projects costs, creating gaps incumbent on the government to fill – effectively, the state must compensate with additional public subsidy for what it is receiving through this new tax. NYSAFAH therefore supports retroactively repealing the HDC Bond Issuance Charge.

Allow for Bifurcation of the State Low Income Housing Credit and the Federal Low Income Housing Credit

Since its creation in 2000, SLIHC has been an important resource in affordable housing development throughout New York State. However, the program's efficiency could be easily improved with a cost neutral structural change to enhance value and increase credit prices. The proposed minor change would significantly increase the money paid by investors for the same dollar of SLIHC, and provide more affordable housing for NYS residents.

Bifurcation allows buyers of a project to separate the state credits from the federal credits. Most projects with NYS credits also have federal credits. Currently, an investor must purchase both in direct proportion to the percentage of the ownership they acquire. By simply bifurcating the credits, different investors would be allowed, but not required, to separately purchase only the amount of state credits, or alternatively, the federal credits they need. This would enlarge the investor pool, increase market demand, and correspondingly, increase the price paid for the credit.

Reform the Scaffold Law

The Scaffold Law refers to Sections 240 and 241 of the Labor Law, which holds owners absolutely liable when a worker is injured in a gravity-related accident, even if the employee is negligent. The Scaffold Law has substantially contributed to skyrocketing insurance rates, which drive most insurance companies out of the market and make general liability coverage cost-prohibitive for affordable housing builders.

NYSAFAH supports legislation that would apply normal negligence standards to the circumstances covered by Sections 240 and 241, thus moving away from absolute liability to normal tort procedures. Under this compromise, the worker injured in a gravity-related accident would still have the right to sue his or her employer, but the liability would be apportioned to the actual party at fault, whether it is the employer or employee.

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[i] National Low Income Housing Coalition, *Out of Reach 2010*, June 2010.

[ii] National Association of Home Builders, *The Local Impact of a Typical Tax Credit Housing Project: Income, Jobs and Taxes Generated*, September 2007.

[iii] Citizens Housing and Planning Council, *Prevailing Wisdom: The Potential Impact of Prevailing Wages on Affordable Housing*, December 2008.