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Committee on Housing and Buildings
Oversight Hearing on Homeownership and HPD Programs

My name is Gale Brewer and I am the Manhattan Borough President. Thank you Chair Williams and members of the Committee on Housing and Buildings for holding this hearing.

Placing 'homeownership' and 'Manhattan' together may conjure up images of luxury condos such as the infamous One57 located on Billionaires' Row. While this is certainly one reality among Manhattan's homeownership population, many of the 23.5% of Manhattanites who own their homes are not among the super rich.[1] Throughout New York City, including Manhattan, homeownership opportunities exist for low- to moderate-income families. It is therefore important to ensure that the many HPD programs designed to make homeownership attainable for low- and moderate-income households are supported with the proper resources and oversight.

Before I delve into specific HPD homeownership programs, I believe it is important to clarify what can often be misunderstood as tension between property ownership and the role of a public oversight agency such as HPD. Homeowners in single-family houses are responsible for all aspects of maintenance and upkeep of their homes; owners of multifamily buildings are responsible for ensuring financial viability of both their individual apartments and the building's common assets, particularly for co-op shareholders who are charged with ensuring that their building, collectively owned under a cooperative corporation, remains solvent. Homeownership will always entail responsible stewardship of one's assets at all times.

When an affordable homeownership project involves transfer of public properties or government subsidies, responsible stewardship takes on the added obligation of ensuring long-term affordability throughout the life of the subsidy or the restrictions placed on the property. The goal is to ensure that the deployment of public resources — conveyance of city-owned properties, property tax caps and exemptions, new construction and rehab financing, etc. — benefit successive generations of homeowners beyond a home's initial buyers.

It is with this understanding of stewardship in mind that I will discuss the various HPD homeownership programs below.

[1] Manhattan homeownership rate is based on 2015 data from NYU Furman Center's State of New York City's Housing and Neighborhoods in 2016 report.

HDFC Cooperatives

As the committee knows, HPD released a draft regulatory agreement for HDFCs in spring 2016. I invited HPD to present on its proposal at the July 2016 Manhattan Borough Board meeting. In its current form, the draft Regulatory Agreement includes the following key requirements in exchange for a 40-year tax exemption that will be deeper than the current DAMP tax cap:

- Limits purchasers' annual household income at 120% of AMI and assets at 175% of AMI
- Sets unit resale prices affordable to households with a maximum of 110% of AMI
- Requires a third-party monitor
- Requires outside manager unless building obtains a waiver from HPD
- Requires a 30% flip tax on sales profit, with the amount going toward the building's reserve fund

I support HPD's intent to preserve the long-term affordability of HDFC co-ops and believe that the Regulatory Agreements is a necessary mechanism to safeguard the availability and affordability of New York City's approximately 30,000 units of HDFC co-ops. As entities incorporated under the NYS Private Housing Finance Law to be housing for persons of low income, HDFC co-ops and the Board of Directors that manage each building have an obligation to the law and to their incorporation document to maintain affordability of units beyond those who currently live there.[2]

I and my staff have spoken with various HDFC stakeholders to understand their concerns regarding the proposed Regulatory Agreement. Based on feedback we received from current HDFC shareholders, housing advocates, and HPD, I believe the draft Regulatory Agreement must be revised so that buildings that choose to adopt the agreement will not be punished financially for doing so. In particular:

- The deeper property tax incentive should be a 100% full tax exemption. HDFC co-ops located in neighborhoods with low real-estate value are projected to have their property taxes reduced to zero under HPD's current proposal. Yet properties located in high-value real estate markets are the very ones that need deeper tax incentives in order to offset increased expenses upon adopting the Regulatory Agreement. The Council should extend full tax exemption to all buildings upon entering regulation.
- Retaining third-party manager is an added expense for an HDFC. While HPD allows for the waiver of outside managers, qualifying buildings must demonstrate a sufficient level of reserves. This requirement is particularly difficult to meet for HDFCs that have past or current 25-year Security Agreement with HPD, which requires 40% of a sale's profit to go toward HPD. Under this agreement, the building is unable to leverage profit splits to fund its reserves. HPD should take this into consideration and allow for management waivers of well-operated buildings that may not have had the opportunity to build up its reserves due to the Security Agreement.

[2] Under the NYS Private Housing Finance Law, Article XI §573(3) requires that the certification of incorporation of HDFC co-ops to provide "that the company has been organized exclusively to develop housing project for persons of low income." As the oversight agency, HPD has the discretion to determine affordability levels for persons of low income. The law applies to all HDFC co-ops regardless of whether they adopt HPD's proposed Regulatory Agreement.

Foreclosures of HDFCs under Third Party Transfer (TPT)

My office has worked extensively on identifying HDFC co-ops from the Round X TPT list that can be financially stabilized and avoid foreclosure. As outlined in my letter to Commissioner Maria Torres-Springer in October, the following criteria were used:

- The HDFC has obtained payment plan(s) with city agencies to pay off outstanding municipal arrears and has been timely in repayments.
- The HDFC has secured outside financing to repay outstanding liens in full and has been timely in loan repayments.
- The HDFC has leveraged recent sales to pay down outstanding arrears and is now in the position to improve its financial health, and the recent sales are at prices affordable to low-income households.
- The HDFC has vacant or underused commercial unit(s) that can bring in additional building revenue to stabilize its finances.

Under these criteria, not every HDFC co-op can be saved from foreclosure and some will even benefit from going through TPT. But for buildings still trying to financially stabilize, I have the following recommendations:

- HPD has expressed commitment to work with TPT buildings that are willing to seek Article XI tax exemption. As City Councilmembers, I urge the committee and your colleagues to ensure timely processing of Article XI applications for these HDFCs before foreclosures move forward for Round X TPT buildings in early 2018.
- HPD must commit to better inform building owners, co-op shareholders, and elected officials of the TPT process going forward. Round X of TPT experienced a rush at the end because very few properties received communication from HPD in the over two years of being on the Round X list. Looking ahead into Round XI, HPD must engage with HDFC shareholders and elected officials from the beginning.

Affordable Neighborhood Cooperative Program (ANCP)

I thank HPD for implementing the changes to ANCP that Deputy Commissioner Anne-Marie Hendrickson announced before this committee at the TIL/ANCP hearing on April 27, 2017. Income-eligible ANCP tenants can now purchase their unit for $250 as they would have under TIL, and since the hearing, HPD has increased its subsidy to each ANCP unit from $110,000 to $200,000 which helps offset the total development cost for rehabilitation. HPD’s ANCP team has worked hard to move multiple projects forward, a marked improvement from the stalled progress and eventual discontinuation of the TIL program in early 2010s.

The challenge remains to ensure ANCP buildings that become co-ops are truly affordable long-term to the low-income tenants who currently live in those buildings. The biggest hurdle is the cost incurred from financing the roof-to-cellar rehab, which I recognize as a much needed step in order to set up a new HDFC co-op for success. However, any rehab cost not offset by HPD subsidies and other sources of capital funds is turned into a private lien placed on the building. This leads to higher monthly maintenance charges than if the building does not have to pay off private debt.

Eliminating the private debt is currently possible through Reso-A capital funds. One example is 615 W 150th Street, a building that received capital awards from me and from Councilmember Mark Levine. Through combined capital support and additional subsidies provided by HPD, this building and its counterpart on 601 W 148th Street will have no private debt. This allows both buildings to set initial maintenance charges at a level affordable to households making 38% of Area Median Income (down from 60% AMI with private debt) and limits the income of those purchasing vacant units to 80% of AMI (down from 120% AMI with private debt).

I urge members of this committee, other City Councilmembers, and my fellow Borough Presidents to consider what level of capital support can be possible to assist ANCP buildings in your respective districts. The difference in projected monthly maintenance between 38% AMI and 60% AMI is $373 for one-bedroom units, $448 for two-bedroom units, and $518 for three-bedroom units. This difference absolutely determines whether low-income tenants or senior tenants living on fixed income can afford to live in their HDFC units.

One point of clarification on Reso-A funding. Under new HPD policy as of 2016, Reso-A funds administered by HPD are underwritten as repayable loans with deferred payment during the loan term, as opposed to forgivable loans as they had been prior to 2016. The intent behind this policy change is to incentivize the extension of affordability at the end of a project's contract term, a goal which I support. However, when Reso-A funds are used to establish HDFC co-ops, which are restricted as affordable housing for the life of the buildings by law, HPD should not recapture Reso-A funds for principal or interest pay-down.

My understanding is that the ANCP Regulatory Agreement contains a flip tax requirement, and that HPD will direct its share of a sale's profit split toward paying down principal on the loan. This is essentially directing Reso-A funding into the city's general funds, with no guarantee that the recaptured funds will be used toward affordable housing. If Reso-A recapture is to happen at all, HPD should put that money toward a dedicated fund for the development and preservation of affordable housing, preferably designated for the same council district or borough where the initial Reso-A award originated.

I also have two additional recommendations for ANCP:

- Tenants of 615 W 150th Street have asked about the possibility to self-manage beyond the first year after co-op conversion but were told by HPD that this cannot be done. However, HPD's proposed Regulatory Agreement for existing HDFCs offers the option to obtain a waiver to self-manage — language that has already been reviewed and approved by HPD's legal department. ANCP buildings that become HDFCs should have a self-management option using the same criteria.
- The standard income restriction for buyers of vacant ANCP units is 120% AMI. A significant portion of TIL/ANCP buildings have vacant units. These units will be purchased by households that are much higher income than the initial shareholders, many of whom are very low income or seniors living on fixed income. I continue to call for partnering with HRA to fill vacant units with responsible, working families who need permanent housing and who are at the same income level as low-income ANCP tenants.

Mitchell-Lama

In October, Mayor de Blasio announced the launch of HDC's Mitchell-Lama Reinvestment Program, with an initial investment of $250 million to restructure Mitchell-Lama co-ops' existing debt and finance needed capital repairs. The reinvestment program addresses one of the top challenges for aging Mitchell-Lama co-ops: deteriorating structures and built environment that sometimes require tens of millions of financing to repair and maintain. I applaud the administration's commitment to preserving Mitchell-Lama co-ops.

In addition to securing sufficient capital financing, Mitchell-Lamas face other challenges:

- HPD offers Article XI tax exemption to Mitchell-Lama co-ops that opt to convert from Article II housing (Mitchell-Lama) to Article XI (HDFC). I do not accept converting permanently affordable housing to time-limited affordability as "preservation." While HPD presents Article XI conversion as a preservation option for Mitchell-Lama co-ops that are already considering privatization, Mitchell-Lama advocates have informed me that having the option to convert to an HDFC and thereby allowing for the ability to make a profit upon unit sales actually propels co-ops to explore Article XI conversion. Article XI must not be used to encourage Mitchell-Lama dissolution.
- Aging Mitchell-Lama residents are concerned by the lack of clarity in succession rights among HPD-supervised co-ops. HPD must improve its communication and transparency regarding Mitchell-Lama succession rules. Additionally, I urge HPD to put safeguards in place against an increasingly common observation I have made: children who succeed Mitchell-Lama apartments often become proponents of privatization in hope of selling their inherited units for a profit. As more Mitchell-Lama co-op units are succeeded by the next generation, HPD — and NYS HCR for state-supervised Mitchell-Lamas — must act now to prevent future waves of privatization by the children of current residents.
- While it is a Board's responsibility to hire a good management company to help with its day-to-day operations, Mitchell-Lamas face the added challenge of having a smaller pool of managers to choose from that are knowledgeable in handling the operations of this very specific type of limited-equity co-op. In my interaction with Mitchell-Lama residents, I have heard numerous horror stories of bad and even corrupt management. Since HPD maintains a list of "qualified" management companies for Mitchell-Lamas, it must tighten its oversight and remove unqualified managers from the list.

HomeFirst Down Payment Assistance Program

Aside from financing the construction and rehabilitation of homeownership projects and serving as the oversight agency of tax incentives such as Article XI and the DAMP tax cap, HPD also provides direct down payment and closing cost assistance to homebuyers with an annual household income of 80% AMI or below through HomeFirst, in the form of forgivable loans of up to $25,000 to income-eligible homebuyers at 6% of home purchase price.[3] The program prescribes maximum purchase price for the home and, for the forgivable loan to fully amortize, buyers must commit to living in their home for at least 10 years.

[3] The Expanded HomeFirst Down Payment Assistance Program expands eligibility to households with annual income between 80% AMI and 120% AMI, but funds for the expanded program have been fully committed for the current fiscal year as of November 22, 2017.

One of the barriers to homeownership among low- and moderate-income New Yorkers is the lack of savings that prospective homebuyers can put toward down payment for a home that they can otherwise afford through monthly mortgage payments. For example, a $15,000 HomeFirst assistance would enable a family to buy a home at $250,000 by paying $35,000 in down payment instead of $50,000. The monthly mortgage payment for the family, assuming a 20% down payment and a fixed-rate loan at 4% interest, would be estimated at $955. If this home is a one-bedroom HDFC unit that carries $500 in maintenance cost, then the total monthly housing expense of $1,455 would be affordable to a household with an annual income of $58,200.

In speaking with membership organizations of the New York Mortgage Coalition, my staff has found the HomeFirst program to be invaluable to low- to moderate-income buyers, with the 6% assistance often being a key deciding factor between whether the prospective homebuyer can proceed with obtaining a mortgage and afford the purchase. However, housing counselors from these organizations also expressed frustration that HPD's HomeFirst division is understaffed, causing delays in closing, sometimes so much so that the buyer has to forego the down payment assistance in order to proceed with the purchase. For example, in November, a housing counselor tried to schedule a HomeFirst closing for his client in December before the client's purchase contract expires, but learned that all the available closing slots in December had been filled. The hombuyer in this instance was able to negotiate an alternate arrangement with the seller to delay closing until January. Otherwise, he would have had to forego HomeFirst assistance or let the purchase fall through.

As home purchase prices continue to rise in New York City and the need for down payment assistance programs like HomeFirst grows, increasing the capacity and resources at HPD's HomeFirst unit can reduce delays and enable more low- and moderate-income New Yorkers to become homeowners.

Thank you very much for the opportunity to testify. I look forward to working with the committee and with HPD to preserve affordable homeownership for low- and moderate-income New Yorkers.