NYSAFAH

NEW YORK STATE ASSOCIATION FOR AFFORDABLE HOUSING

**NYSAFAH Testimony before the Joint Legislative Budget Committee**
**2024-25 New York State Budget**
**Housing Priorities and Funding**
**February 14, 2024**

Thank you, Chairs Krueger, Weinstein, Kavanagh and Rosenthal, and members of this legislative budget committee for the opportunity to participate in today's hearing regarding Governor Kathy Hochul's Fiscal Year 2025 Executive Budget on Housing.

I am Jolie Milstein, President and CEO of the New York State Association for Affordable Housing (NYSAFAH). NYSAFAH was founded twenty-six years ago by a small cohort of affordable housing industry professionals who recognized the need for greater public-private partnership. Today NYSAFAH is the largest affordable housing trade group in the country, and thanks to your commitment, our State has achieved an impressive record of investment in low- to moderate income neighborhoods.

It is a privilege to be here on behalf of our four hundred members that include for-profit and not-for-profit developers, lenders, investors, attorneys, architects, and others active in the financing, construction, and operation of affordable housing. They are the mission driven partners working to deploy the resources you have allocated to ease the affordable housing crisis and give New Yorkers a better quality of life.

Before providing insight into the Executive Budget, I would first like to thank Governor Hochul and the Legislature for previously enacting – and continuing - a $25 billion, five-year housing plan to create and preserve 100,000 new affordable homes. NYSAFAH's members are responsible for most of the housing built in New York State with federal, state, and local subsidies. I am pleased to say they have been employing these resources, often in partnership with our state agency partner, the Division of Housing and Community Renewal, to help address the housing affordability and supply crisis across our State.

Despite our successes, the work we do has never been more vital than it is today. Much of the federal COVID-19 aid and administrative relief has come to an end, but post-pandemic consequences continue to plague households and the affordable housing they call home. While the Executive Budget generally maintains housing capital programs at last year's levels, it does not take into consideration the unique post-pandemic circumstances that have placed stress on affordable housing property operations and their financial health.

**New Affordable Housing Relief Fund**

To preserve these at-risk properties, we urge you to appropriate $250 million in funding for a new Affordable Housing Relief Fund. The Fund would offer needed capital funds and debt restructuring to ensure at-risk affordable housing properties remain available.

A 2023 Affordable Housing Credit Study by CohnReznick found that nationwide, "[r]ent collection losses and operating expense spikes caused 23% of the stabilized federal Low-Income Housing Tax Credit properties to operate at a below breakeven in 2022."[1] As you know tax credits are one of the primary investment tools that subsidize the acquisition, construction, and rehabilitation of affordable housing. This is an indicator that affordable housing continues to suffer from post-pandemic era effects and those of the broader economy. Labor shortages, construction delays, cost overruns, interest rates and rising insurance costs have forced projects to absorb additional debt. The study indicates that nationwide operating expenses increased by 8.2% between 2021 and 2022 alone. [2]

It further indicates that in 2022 federal Low-Income Housing Tax Credit properties in New York State had an economic occupancy rate of 94.3% down from 97% in 2019.[3] Economic occupancy is a formula that reflects the annual collected rent divided by annual gross potential rent.[4] At the same time New York's physical occupancy rate was at 97% in 2022.[5] This is an indicator that rent collections are down, but affordable housing demand has remained robust. It is likely that eviction moratoriums successfully helped to maintain the physical occupancy rate demand, but at the same time negatively impacted property operations and financial health.

An affordable housing property financed with federal Low-Income Housing Tax Credits must be maintained for a 15-year compliance period. At the end of this period, owners are permitted to refinance or recapitalize with new credits to address capital needs, while preserving the units as affordable for an additional term. However, a convergence of the factors mentioned has caused these properties to operate at a deficit, placing them at risk of financial and physical distress before reaching their 15-year compliance period. This includes new properties that were under construction during the pandemic. Given that these properties already operate on tight margins, there is an emergent and ongoing threat of losing affordable housing units.

Residents living in these properties are among the most vulnerable, typically earning 60% or less of the area's median income, with many earning less than 30% of AMI. As you know, AMI is calculated annually by HUD for every metropolitan area and region in the nation and is the basis for the formula that establishes maximum allowable rents in federal Low-Income Housing Tax Credit units.

We recognize that last year the Legislature championed $391 million in the enacted state budget for the payment of rental arrears for tenants in public housing, including NYCHA, and federal Section 8 voucher recipients. This was a critical and significant investment in what NYSAFAH estimated was an approximately $2 billion need portfolio wide.

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[1] CohnReznick LLC, *Affordable Housing Credit Study, A Comprehensive LIHTC Property Performance Report,* Pg.15, (November 2023). See https://www.cohnreznick.com/insights/2023-affordable-housing-credit-study

[2] CohnReznick LLC, Pg.89

[3] CohnReznick LLC, *Affordable Housing Credit Tool.*

[4] CohnReznick LLC, Pg.100

[5] CohnReznick LLC, *Affordable Housing Credit Tool*.

An additional $250 million investment in a new Affordable Housing Relief Fund for at-risk properties will complement the Legislature's prior year commitment. We thank you in advance for your support.

Additionally, we urge you to prioritize the following:

**Reform State Insurance Law**

New York's affordable housing has seen a massive rise in insurance premium rates and the availability of insurance property and casualty insurance, which is endangering such housing. To ensure that there is no discrimination in the insurance market against affordable housing, housing in urban areas where crime rates are higher, and landlords that rent to Section 8 voucher holders, we support the Executive budget proposal (A.8308/A.8808; Part FF) and stand-alone legislation, S.7298 (Kavanagh)/A.7910 (Weprin), which would prohibit such insurance-related discrimination against affordable housing.

**Scaffold Law**

We urge the Legislature to implement a three-year pilot program that would carve out affordable housing from the Scaffold Law and enable us to measure the impact that lower insurance rates will have on housing supply.

The Scaffold Law (Labor Law §§ 240 and 241) holds owners absolutely liable when a worker is injured in a gravity-related accident, even if the employee or third-party contractor is negligent. The law is unfair and outdated, and it has contributed to skyrocketing insurance rates and driven most insurance companies from the New York market - adding substantial costs to general liability coverage for affordable housing developments.

Today, insurance accounts for 10% of construction costs for affordable housing in New York City alone, depriving it of hundreds of potential affordable units every year. An affordable housing carve out from the Scaffold Law would save millions of dollars in insurance costs, resulting in substantially more affordable housing production.

**Protect Affordable Housing in Key Reviews**

We recommend an amendment to the State Environmental Review Act (SEQRA) that would assure affordable housing projects receive the appropriate environmental review, while allowing projects to be sited and developed.

The review mandated through SEQRA has been strategically exploited to delay affordable housing projects for years. New York is one of only six states that requires environmental review for zoning changes.

We urge that affordable multifamily housing developments be allowed, under appropriate thresholds, to be built using a process that requires best practices for site testing and evaluation and in infill areas that have access to sewers.

**Enhance the New York State Historic Tax Credit**

State historic tax credits provide critical capital to affordable housing projects that rehabilitate historic buildings. However, current restrictions require that the same investor take all the tax credits in the deal, including federal historic tax credits, state historic tax credits, and federal Low-Income Housing Tax Credits, which greatly diminishes the price of all the credits. In turn, this results in less private investment and therefore less funding for affordable housing preservation projects.

We recommend the law be amended to allow the state historic tax credit to be sold to a different investor from the federal historic tax credit investor, as is permitted in twenty-four other states, which will increase the attractiveness of the state historic tax credit and its value – bringing greater private investment to affordable housing projects. A not-for-profit partner should also be allowed to sell the credit to further enhance its value. This would bring more equity to the project at no cost to the taxpayer.

**As of Right Tax Benefit to Spur NYC Affordable Housing Development**
Affordable housing development statewide, and especially in New York City, is falling further behind historic need. New York State must enact an as of right tax benefit to replace the expired 421-a tax abatement.

**Preserve Upstate Public Housing**
Public housing authorities have seen a massive disinvestment in capital funding by the federal government over the last twenty years. Many public housing authorities have been unable to undertake necessary repairs and upgrades as a result, and now have an estimated capital deficit of $400 million. We recommend the appropriation of $150 million in capital funding for public housing authorities outside of New York City. This funding will help public housing authorities to preserve our aging public housing.

**Reform the Martin Act to Preserve Affordable Housing**
When properties exit the 421-a program, the affordable units are at risk of being lost, as there are no current programs that preserve such housing. We support S.3566-A (Cleare)/A.6921 (Epstein) which would allow developers and not-for-profits to preserve expiring affordable units created by 421-a. It would amend the Martin Act to reduce the threshold for condominium conversion from 50% of residents to 15% (the threshold before the 2019 rent law reform) if a building preserves its expiring affordable 421-a units in perpetuity.

**Streamline Affordable Housing Development for Faith-Based Organizations**
Many houses of worship and other faith-based organizations want to develop affordable housing on their own land, but the land use process is lengthy, expensive, and highly uncertain.

We support the Faith Based Affordable Housing Act (S.7791 (Gounardes)/A.8386 (Cunningham)) which would provide land use regulatory relief for faith-based organizations to develop affordable housing on their own land.

Thank you for the opportunity to testify today, and for your consideration of our budget requests. I welcome any questions or comments you may have.

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